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## Judiciary Committee

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### 2ESSB 6508

**Title:** An act relating to wrongful death or survival actions by changing the class of persons entitled to recoveries and by limiting the liability of state and local agencies or political subdivisions in those recoveries.

**Brief Description:** Changing the class of persons entitled to recoveries under a wrongful death action or survival action.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Fairley, Prentice, Pridemore, Kline, Rockefeller, Ranker, Tom, McDermott, Gordon and Keiser).

<p style="text-align: center;"><b>Brief Summary of Second Engrossed Substitute Bill</b></p> <ul style="list-style-type: none"><li>• Makes changes to statutes governing wrongful death and survival actions, including changes relating to the persons entitled to recoveries and the liability of governmental entities under these actions.</li></ul>
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**Hearing Date:** 2/17/10

**Staff:** Edie Adams (786-7180).

**Background:**

At common law, a person's cause of action for personal injuries did not survive the person's death, and there was no right of recovery for the wrongful death of a person. The Legislature has provided for such actions through interrelated statutes governing four types of wrongful death and survival actions: (1) general wrongful death; (2) wrongful death of a child; (3) general survival; and (4) special survival.

Wrongful death statutes provide a new cause of action on behalf of specified beneficiaries for damages they suffer as a result of the decedent's death. In contrast, survival actions do not create a new cause of action; rather they allow for the continuation of any causes of actions that the

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decedent could have brought had he or she survived. Under the general survival statute, any cause of action that the decedent could have brought prior to death may be brought by the decedent's personal representative. The special survival statute allows for the continuation of actions for personal injuries resulting in death.

#### Beneficiaries.

Under the wrongful death of a child statute, a parent may bring a cause of action for the wrongful injury or death of a minor child if the parent regularly contributed to the minor child's support. If the deceased child is an adult, the parent may bring the action only if the parent was substantially dependent on the adult child for support.

Beneficiaries under the general wrongful death statute and the special survival statute are separated into two tiers. The primary beneficiaries are the spouses or domestic partners and children. The secondary beneficiaries are the parents and siblings and they are entitled to recover only if: there are no primary beneficiaries; they were dependent on the decedent for support; and they resided within the U.S. at the time of the decedent's death.

An action under the general survival statute is for the benefit of, and passes through, the decedent's estate. However, the personal representative may recover the decedent's non-economic damages only on behalf of the two tiers of beneficiaries described above.

#### Damages.

The damages that are recoverable under wrongful death and survival actions vary under the statutes and case law.

The wrongful death of a child statute specifies the following recoverable damages: medical, hospital, and medication expenses; loss of the child's services and support; loss of the child's love and companionship; and injury to or destruction of the parent-child relationship (which includes mental anguish, grief, and suffering).

The general wrongful death statute does not specify the types of damages that are recoverable. However, case law has established that actual pecuniary losses may be recovered. "Pecuniary losses" include not only actual monetary losses, but also intangible losses such as the loss of the decedent's support, services, love, affection, care, companionship, society, and consortium.

The general survival statute provides that the personal representative may only recover the decedent's non-economic damages for pain and suffering, anxiety, emotional distress, and humiliation on behalf of the statutory beneficiaries. Under case law, recoverable damages for the estate are the pecuniary losses to the estate such as loss of earnings, medical and hospital expenses, and funeral and burial expenses.

The special survival statute does not specifically list the damages that may be recovered. Under case law, damages include the decedent's lost earnings; medical and funeral expenses; and the pain and suffering, anxiety, emotional distress, and humiliation suffered by the decedent.

#### Joint and Several Liability.

With some exceptions, a defendant in a tort case is responsible only for his or her own percentage of fault in causing the claimant's harm. In some instances, multiple defendants may

be "jointly and severally" liable for the sum of their proportionate shares of the claimant's damages. Joint and several liability means that a plaintiff may recover the entire damages awarded from any one of the defendants against whom judgment was entered. The paying defendant then has a right of contribution against the other defendants to recover shares of the damages based on each defendant's fault. Joint and several liability applies in actions where the defendants were acting in concert or in cases where the plaintiff is entirely free from fault in causing his or her own injuries.

### **Summary of Bill:**

#### Beneficiary Provisions.

The wrongful death of a child statute is limited to actions for the death of a minor child. Parents who are financially dependent on the minor child or who have had significant involvement in the minor child's life are able to bring the action (in addition to parents who regularly contributed to the support of the child). Parents are entitled to a separate recovery regardless of marital status.

The beneficiaries entitled to recover under the general wrongful death statute and the survival statutes are revised. For these actions, the second tier of beneficiaries (parents and siblings) are separated into a second and third tier. Second-tier beneficiaries are the parents of a deceased adult child if the parents are financially dependent on the adult child for support or had significant involvement in the adult child's life. Third-tier beneficiaries are siblings who are financially dependent on the decedent for support and they are entitled to recover only if there are no first- or second-tier beneficiaries. The residency requirement for parents and siblings is removed.

"Financially dependent for support" means substantial dependence based on the receipt of services that have a monetary or economic value, or actual monetary payments or contributions. "Significant involvement" means demonstrated support of an emotional, psychological, or financial nature at or reasonably near the time of death or the time of the incident causing death.

#### Damages Provisions.

Provisions of the wrongful death and survival statutes are amended to provide more specificity to the damages that are recoverable.

#### Joint and Several Liability.

Joint and several liability is eliminated in some circumstances under the general wrongful death statute, the wrongful death of a child statute, and the special survival statute (but not the general survival statute). In actions under these statutes that are based on a parent's significant involvement in a child's life, the liability of the state and its political subdivisions is several and not joint.

#### Other Provisions.

The Risk Management Division of the Office of Financial Management (OFM) is required to report to various committees of the Legislature each December on the incidents covered by the act that involve state agencies. Local risk management pools must report to local government legislative bodies each December on the incidents covered by the act that involve the local government.

The act applies to causes of action filed on or after the effective date of the act.

**Appropriation:** None.

**Fiscal Note:** Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.