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SENATE BILL 5816

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kline, Fairley, Kohl-Welles and Weinstein

Read first time 02/01/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to actions for wrongful injury or death; amending  
2 RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, and 4.24.010; and creating  
3 new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** It is the intent of this act to overrule  
6 *Otani v. Broudy*, 151 Wn.2d 750, 92 P.3d 192 (2004) and *Philippides v.*  
7 *Bernard*, 151 Wn.2d 376, 86 P.3d 939 (2004), and to amend Washington's  
8 wrongful death and survival statutes by broadening the scope of  
9 beneficiaries who may recover under these statutes and by clarifying  
10 the scope of damages that may be recovered in wrongful death and  
11 survival actions.

12            **Sec. 2.** RCW 4.20.010 and 1917 c 123 s 1 are each amended to read  
13 as follows:

14            (1) When the death of a person is caused by the wrongful act,  
15 neglect, or default of another or entity, his or her personal  
16 representative may maintain an action (~~((for damages))~~) against the  
17 person or entity causing the death(~~((; and although))~~) for the economic  
18 and noneconomic damages sustained by the beneficiaries listed in RCW

1 4.20.020 as a result of the decedent's death, in such amounts as  
2 determined by a jury to be just under all the circumstances of the  
3 case.

4 (2) This section applies regardless of whether or not the death  
5 ((shall have been)) was caused under such circumstances as amount, in  
6 law, to a felony.

7 **Sec. 3.** RCW 4.20.020 and 1985 c 139 s 1 are each amended to read  
8 as follows:

9 Every ~~((such))~~ action under RCW 4.20.010 shall be for the benefit  
10 of the wife, husband, child or children, including stepchildren, of the  
11 person whose death shall have been so caused. If there be no wife or  
12 husband or such child or children, such action may be maintained for  
13 the benefit of the parents, sisters, or brothers ~~((, who may be~~  
14 ~~dependent upon the deceased person for support, and who are resident~~  
15 ~~within the United States at the time of his death))~~ of the deceased.

16 In every such action the jury may give such damages as, under all  
17 circumstances of the case, may to them seem just.

18 **Sec. 4.** RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as  
19 follows:

20 (1) ~~((All))~~ Upon a person's death, any cause((s)) of action ((by a  
21 person or persons)) that the decedent may have had against another  
22 person or ~~((persons shall))~~ another person's estate survives to the  
23 decedent's personal representative((s of the former and against the  
24 personal representatives of the latter, whether such actions arise)).  
25 This section applies regardless of whether or not the action arises  
26 on contract or otherwise, and regardless of whether or not such actions  
27 would have survived at the common law or prior to the date of enactment  
28 of this section((: PROVIDED, HOWEVER, That)).

29 (2) In addition to recovering the decedent's economic losses under  
30 this section, the personal representative ((shall only be)) is entitled  
31 to recover on behalf of those beneficiaries listed under RCW 4.20.020  
32 any noneconomic damages ((for pain and suffering, anxiety, emotional  
33 distress, or humiliation)) personal to ((and suffered by a deceased on  
34 behalf of those beneficiaries enumerated in RCW 4.20.020, and such)) a  
35 decedent including, but not limited to, damages for the decedent's pain  
36 and suffering, anxiety, emotional distress, loss of life itself, loss

1 of enjoyment of life, shortened life expectancy, or humiliation, in  
2 such amounts as determined by a jury to be just under all the  
3 circumstances of the case.

4 (3) Damages under subsections (1) and (2) of this section are  
5 recoverable regardless of whether or not the death was occasioned by  
6 the injury that is the basis for the action.

7 (4) The liability of property of a husband and wife held by them as  
8 community property subject to execution in satisfaction of a claim  
9 enforceable against such property so held shall not be affected by the  
10 death of either or both spouses; and a cause of action shall remain an  
11 asset as though both claiming spouses continued to live despite the  
12 death of either or both claiming spouses.

13 ~~((+2))~~ (5) Where death or an injury to person or property,  
14 resulting from a wrongful act, neglect or default, occurs  
15 simultaneously with or after the death of a person who would have been  
16 liable therefor if his death had not occurred simultaneously with such  
17 death or injury or had not intervened between the wrongful act, neglect  
18 or default and the resulting death or injury, an action to recover  
19 damages for such death or injury may be maintained against the personal  
20 representative of such person.

21 **Sec. 5.** RCW 4.20.060 and 1985 c 139 s 2 are each amended to read  
22 as follows:

23 (1) No action for a personal injury to any person occasioning death  
24 shall abate, nor shall such right of action ~~((determine))~~ terminate, by  
25 reason of such death, if such person has a surviving spouse or child  
26 living, including stepchildren, or if leaving no surviving spouse or  
27 ~~((such))~~ children, ~~((if there is dependent upon the deceased for~~  
28 ~~support and resident within the United States at the time of decedent's~~  
29 ~~death,~~) the person has surviving parents, sisters, or brothers~~((; but~~  
30 ~~such action may be prosecuted, or commenced and prosecuted, by the~~  
31 ~~executor or administrator))~~.

32 (2) An action under this section shall be brought by the personal  
33 representative of the deceased, in favor of ~~((such))~~ the surviving  
34 spouse, or in favor of the surviving spouse and ~~((such))~~ children, or  
35 if no surviving spouse, in favor of ~~((such))~~ the child or children, or  
36 if no surviving spouse or ~~((such))~~ a child or children, then in favor

1 of the decedent's parents, sisters, or brothers (~~who may be dependent~~  
2 ~~upon such person for support, and resident in the United States at the~~  
3 ~~time of decedent's death~~)).

4 (3) In addition to recovering the decedent's economic losses under  
5 this section, the persons listed in subsection (1) of this section are  
6 entitled to recover any noneconomic damages personal to the decedent  
7 including, but not limited to, damages for the decedent's pain and  
8 suffering, anxiety, emotional distress, loss of life itself, loss of  
9 enjoyment of life, shortened life expectancy, or humiliation, in such  
10 amounts as determined by a jury to be just under all the circumstances  
11 of the case.

12 **Sec. 6.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read  
13 as follows:

14 (1) A mother or father of a child, or both, (who has regularly  
15 contributed to the support of his or her minor child, and the mother or  
16 father, or both, of a child on whom either, or both, are dependent for  
17 support)) may maintain or join as a party an action as plaintiff for  
18 the injury or death of the child if the mother or father has had  
19 significant involvement in the child's life including, but not limited  
20 to, either giving or receiving emotional, psychological, or financial  
21 support to or from the child.

22 (2) In addition to recovering damages for the child's health care  
23 expenses, loss of the child's services, loss of the child's financial  
24 support, and other economic losses, damages may be also recovered under  
25 this section for the loss of love and companionship of the child, loss  
26 of the child's emotional support, and for injury to or destruction of  
27 the parent-child relationship, in such amounts as determined by a jury  
28 to be just under all the circumstances of the case.

29 (3) An action may be maintained under this section regardless of  
30 whether or not the child has attained the age of majority.

31 (4) Each parent is entitled to recover for his or her own loss  
32 separately from the other parent regardless of marital status, even  
33 though this section creates only one cause of action(~~, but if the~~  
34 parents of the child are not married, are separated, or not married to  
35 each other damages may be awarded to each plaintiff separately, as the  
36 trier of fact finds just and equitable)).

1       (5) If one parent brings an action under this section and the other  
2 parent is not named as a plaintiff, notice of the institution of the  
3 suit, together with a copy of the complaint, shall be served upon the  
4 other parent:     PROVIDED, That notice shall be required only if  
5 parentage has been duly established.

6       Such notice shall be in compliance with the statutory requirements  
7 for a summons. Such notice shall state that the other parent must join  
8 as a party to the suit within twenty days or the right to recover  
9 damages under this section shall be barred. Failure of the other  
10 parent to timely appear shall bar such parent's action to recover any  
11 part of an award made to the party instituting the suit.

12       ~~((In such an action, in addition to damages for medical, hospital,  
13 medication expenses, and loss of services and support, damages may be  
14 recovered for the loss of love and companionship of the child and for  
15 injury to or destruction of the parent-child relationship in such  
16 amount as, under all the circumstances of the case, may be just.))~~

17       NEW SECTION.     **Sec. 7.** This act is remedial and retroactive and  
18 applies to all claims that are not time barred, as well as any claims  
19 pending in any court on the effective date of this act.

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