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Sokola, Sturgeon, Walsh; Reps. Baumbach, Briggs King,  
Bush, K. Johnson, Lambert, Osienski

DELAWARE STATE SENATE  
152nd GENERAL ASSEMBLY

SENATE BILL NO. 81

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO WRONGFUL DEATH ACTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 37, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3721. Definitions.

As used in this subchapter:

(1) "Child" includes ~~an illegitimate child~~ any natural born child or adopted child.

(2) "Parent" includes the mother and father or adopted mother and father of a deceased ~~illegitimate child~~.

(3) "Person" includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(4) "Sibling" means brothers and sisters of the whole and half blood, or by order of adoption.

(5) "Wrongful act" means an act, neglect, or default, including a felonious act, which would have entitled the party injured to maintain an action and recover damages if death had not ensued.

§ 3722. Liability notwithstanding death.

(a) An action may be maintained against a person whose wrongful act causes the death of another.

(b) If the death of a person was caused by a wrongful act, neglect, or default of a vessel, an action in rem may be maintained against the vessel.

(c) If a person whose wrongful act caused the death of another dies before an action under this section is commenced, the action may be maintained against a personal representative.

§ 3723. Wrongful act occurring outside of Delaware [Repealed].

Repealed by 71 Del. Laws, c. 265, § 1, effective Apr. 20, 1998.

§ 3724. Action for wrongful death.

(a) An action under this subchapter shall be for the benefit of the spouse, parent, child, and siblings of the deceased person.

(b) If there are no persons who qualify under subsection (a) of this section, an action shall be for the benefit of any person related to the deceased person by blood or marriage.

(c) In an action under this subchapter, damages may be awarded to the beneficiaries proportioned to the injury resulting from the wrongful death. The amount recovered shall be divided among the beneficiaries in shares directed by the verdict. Whether a person is a spouse, parent, child, and siblings of the deceased person is a question for the jury to decide.

(d) In fixing the amount of damages to be awarded under this subchapter, the court or jury shall consider all the facts and circumstances and from them fix the award at such sum as will fairly compensate for the injury resulting from the death. In determining the amount of the award the court or jury may consider the following:

(1) Deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries that would have resulted from the continued life of the deceased;

(2) Loss of contributions for support;

(3) Loss of parental, marital and household services, including the reasonable cost of providing for the care of minor children;

(4) Reasonable funeral expenses not to exceed \$7,000 or the amount designated in §5546(a) of Title 29, whichever is greater;

(5) Mental anguish resulting from such death to the surviving spouse and next-of-kin of such deceased person. However, when mental anguish is claimed as a measure of damages under this subchapter, such claim for mental anguish will be applicable only to the surviving spouse, children and persons to whom the deceased stood in *loco parentis* at the time of the injury which caused the death of the deceased, parents and persons standing in *loco parentis* to the deceased at the time of the injury which caused the death of the deceased (if there is no surviving spouse, children or persons to whom the deceased stood in *loco parentis*), and siblings (if there is no surviving spouse, children, persons to whom the deceased stood in *loco parentis* at the time of the injury, parents or persons standing in *loco parentis* to the deceased at the time of the injury which caused the death of the deceased).

(6) In any action for wrongful death, punitive damages may be awarded only if it is found that the death was maliciously intended or was the result of reckless, willful or wanton misconduct by the tortfeasor and may be awarded only if separately awarded by the trier of fact in a separate finding from any finding of compensatory damages which separate finding shall also state the amounts being awarded for each such category of damages.

51 (e) Only 1 action under the subchapter lies in respect to the death of a person.

52 (f) For the purposes of this section, a person born to parents who have not participated in a marriage ceremony  
53 with each other is considered to be the child of the mother. The person is considered to be the child of the other parent only  
54 if the father:

55 (1) Has been judicially determined to be the father; or

56 (2) Prior to the death of the child:

57 a. Has acknowledged himself, in writing, to be the father; or

58 b. Has openly and notoriously recognized the person to be his child; or

59 c. Has subsequently married the mother and has acknowledged himself, orally or in writing, to  
60 be the father.

61 § 3725. Purpose.

62 The purpose of this subchapter is to permit the recovery of damages not limited to pecuniary losses by  
63 persons injured as the result of the death of another person.

#### SYNOPSIS

This statutory addition to Delaware's Wrongful Death Act will permit the spouse, parents, children, and siblings of a deceased person to recover punitive damages when the actions resulting in the death of another person were maliciously intended or the result of willful or wanton misconduct by the at fault party. Punitive damages are intended to deter the at fault party from future similar conduct and to punish the at fault party for reckless conduct. Presently, an estate can recover punitive damages under a survival action pursuant to 10 Del C. § 3701. A survival action involves the death of an individual as the result of the at fault party where that individual suffers for a period of time before dying. Whereas, a wrongful death action involves the instantaneous death of an individual as the result of the at fault party. This led to cases where the issue of whether a defendant faced punitive damages depended not on the defendant's own actions, but on whether the deceased had suffered long enough for a survival action. This Act also clarifies the definitions of "child" and "parent."

Author: Senator Townsend