



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1798

Introduced 2/23/2007, by Rep. John A. Fritchey

#### SYNOPSIS AS INTRODUCED:

740 ILCS 180/2

from Ch. 70, par. 2

Amends the Wrongful Death Act. Provides that the jury may award damages for grief, sorrow, and mental suffering to the surviving spouse and next of kin of the deceased. Provides that any amount reduced from a contributorily negligent beneficiary's share of damages shall be distributed to the other beneficiaries in proportion to their respective degrees of dependency. Deletes language regarding limitations on the amount of damages. Applies to causes of action accruing on or after the effective date of the amendatory Act. Effective immediately.

LRB095 08371 AJ0 28544 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Wrongful Death Act is amended by changing  
5 Section 2 as follows:

6 (740 ILCS 180/2) (from Ch. 70, par. 2)

7 Sec. 2. Every such action shall be brought by and in the  
8 names of the personal representatives of such deceased person,  
9 and, except as otherwise hereinafter provided, the amount  
10 recovered in every such action shall be for the exclusive  
11 benefit of the surviving spouse and next of kin of such  
12 deceased person. In and in every such action the jury may give  
13 such damages as they shall deem a fair and just compensation  
14 with reference to the pecuniary injuries resulting from such  
15 death, including damages for grief, sorrow, and mental  
16 suffering, to the surviving spouse and next of kin of such  
17 deceased person.

18 ~~In every such action, the jury shall determine the amount~~  
19 ~~of damages to be recovered without regard to and with no~~  
20 ~~special instruction as to the dollar limits on recovery imposed~~  
21 ~~by this Section. In no event shall the judgment entered upon~~  
22 ~~such verdict exceed \$20,000 where such death occurred prior to~~  
23 ~~July 14, 1955, and not exceeding \$25,000 where such death~~

1 ~~occurred on or after July 14, 1955 and prior to July 8, 1957,~~  
2 ~~and not exceeding \$30,000 where such death occurs on or after~~  
3 ~~July 8, 1957 and prior to the effective date of this amendatory~~  
4 ~~Act of 1967, and without limitation where such death occurs on~~  
5 ~~or after the effective date of this amendatory Act of 1967.~~

6 The amount recovered in any such action shall be  
7 distributed by the court in which the cause is heard or, in the  
8 case of an agreed settlement, by the circuit court, to each of  
9 the surviving spouse and next of kin of such deceased person in  
10 the proportion, as determined by the court, that the percentage  
11 of dependency of each such person upon the deceased person  
12 bears to the sum of the percentages of dependency of all such  
13 persons upon the deceased person.

14 Where the deceased person left no surviving spouse or next  
15 of kin entitled to recovery, the damages shall, subject to the  
16 following limitations inure, to the exclusive benefit of the  
17 following persons, or any one or more of them:

18 (a) to the person or persons furnishing hospitalization or  
19 hospital services in connection with the last illness or injury  
20 of the deceased person, not exceeding \$450;

21 (b) to the person or persons furnishing medical or surgical  
22 services in connection with such last illness or injury, not  
23 exceeding \$450;

24 (c) to the personal representatives, as such, for the costs  
25 and expenses of administering the estate and prosecuting or  
26 compromising the action, including a reasonable attorney's

1 fee. In any such case the measure of damages to be recovered  
2 shall be the total of the reasonable value of such  
3 hospitalization or hospital service, medical and surgical  
4 services, funeral expenses, and such costs and expenses of  
5 administration, including attorney fees, not exceeding the  
6 foregoing limitations for each class of such expenses and not  
7 exceeding \$900 plus a reasonable attorney's fee.

8 Every such action shall be commenced within 2 years after  
9 the death of such person but an action against a defendant  
10 arising from a crime committed by the defendant in whose name  
11 an escrow account was established under the "Criminal Victims'  
12 Escrow Account Act" shall be commenced within 2 years after the  
13 establishment of such account. For the purposes of this Section  
14 2, next of kin includes an adopting parent and an adopted  
15 child, and they shall be treated as a natural parent and a  
16 natural child, respectively. However, if a person entitled to  
17 recover benefits under this Act, is, at the time the cause of  
18 action accrued, within the age of 18 years, he or she may cause  
19 such action to be brought within 2 years after attainment of  
20 the age of 18.

21 In any such action to recover damages, it shall not be a  
22 defense that the death was caused in whole or in part by the  
23 contributory negligence of one or more of the beneficiaries on  
24 behalf of whom the action is brought, but the amount of damages  
25 given shall be reduced in the following manner.

26 The trier of fact shall first determine the decedent's

1 contributory fault in accordance with Sections 2-1116 and  
2 2-1107.1 of the Code of Civil Procedure. Recovery of damages  
3 shall be barred or diminished accordingly. The trier of fact  
4 shall then determine the contributory fault, if any, of each  
5 beneficiary on behalf of whom the action was brought:

6 (1) Where the trier of fact finds that the contributory  
7 fault of a beneficiary on whose behalf the action is  
8 brought is not more than 50% of the proximate cause of the  
9 wrongful death of the decedent, then the damages allowed to  
10 that beneficiary shall be diminished in proportion to the  
11 contributory fault attributed to that beneficiary. Any  
12 amount reduced from a contributorily negligent  
13 beneficiary's share shall be distributed to the other  
14 beneficiaries in proportion to their respective degrees of  
15 dependency. ~~The amount of the reduction shall not be~~  
16 ~~payable by any defendant.~~

17 (2) Where the trier of fact finds that the contributory  
18 fault of a beneficiary on whose behalf the action is  
19 brought is more than 50% of the proximate cause of the  
20 wrongful death of the decedent, then the beneficiary shall  
21 be barred from recovering damages. Any amount reduced from  
22 a contributorily negligent beneficiary's share shall be  
23 distributed to the other beneficiaries in proportion to  
24 their respective degrees of dependency. ~~and the amount of~~  
25 ~~damages which would have been payable to that beneficiary,~~  
26 ~~but for the beneficiary's contributory fault, shall not~~

1 ~~inure to the benefit of the remaining beneficiaries and~~  
2 ~~shall not be payable by any defendant.~~

3 The trial judge shall conduct a hearing to determine the  
4 degree of dependency of each beneficiary upon the decedent. The  
5 trial judge shall calculate the amount of damages to be awarded  
6 each beneficiary, taking into account any reduction arising  
7 from either the decedent's or the beneficiary's contributory  
8 fault.

9 This amendatory Act of the 91st General Assembly applies to  
10 all actions pending on or filed after the effective date of  
11 this amendatory Act.

12 This amendatory Act of the 95th General Assembly applies to  
13 causes of action accruing on or after its effective date.

14 (Source: P.A. 91-380, eff. 7-30-99.)

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.