



Rep. James D. Brosnahan

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09500HB1798ham001

LRB095 08371 AJ0 34952 a

1 AMENDMENT TO HOUSE BILL 1798

2 AMENDMENT NO. _____. Amend House Bill 1798 by replacing
3 everything after the enacting clause with the following:

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

1 deceased person.

2 ~~In every such action, the jury shall determine the amount~~
3 ~~of damages to be recovered without regard to and with no~~
4 ~~special instruction as to the dollar limits on recovery imposed~~
5 ~~by this Section. In no event shall the judgment entered upon~~
6 ~~such verdict exceed \$20,000 where such death occurred prior to~~
7 ~~July 14, 1955, and not exceeding \$25,000 where such death~~
8 ~~occurred on or after July 14, 1955 and prior to July 8, 1957,~~
9 ~~and not exceeding \$30,000 where such death occurs on or after~~
10 ~~July 8, 1957 and prior to the effective date of this amendatory~~
11 ~~Act of 1967, and without limitation where such death occurs on~~
12 ~~or after the effective date of this amendatory Act of 1967.~~

13 The amount recovered in any such action shall be
14 distributed by the court in which the cause is heard or, in the
15 case of an agreed settlement, by the circuit court, to each of
16 the surviving spouse and next of kin of such deceased person in
17 the proportion, as determined by the court, that the percentage
18 of dependency of each such person upon the deceased person
19 bears to the sum of the percentages of dependency of all such
20 persons upon the deceased person.

21 Where the deceased person left no surviving spouse or next
22 of kin entitled to recovery, the damages shall, subject to the
23 following limitations inure, to the exclusive benefit of the
24 following persons, or any one or more of them:

25 (a) to the person or persons furnishing hospitalization or
26 hospital services in connection with the last illness or injury

1 of the deceased person, not exceeding \$450;

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

5 (c) to the personal representatives, as such, for the costs
6 and expenses of administering the estate and prosecuting or
7 compromising the action, including a reasonable attorney's
8 fee. In any such case the measure of damages to be recovered
9 shall be the total of the reasonable value of such
10 hospitalization or hospital service, medical and surgical
11 services, funeral expenses, and such costs and expenses of
12 administration, including attorney fees, not exceeding the
13 foregoing limitations for each class of such expenses and not
14 exceeding \$900 plus a reasonable attorney's fee.

15 Every such action shall be commenced within 2 years after
16 the death of such person but an action against a defendant
17 arising from a crime committed by the defendant in whose name
18 an escrow account was established under the "Criminal Victims'
19 Escrow Account Act" shall be commenced within 2 years after the
20 establishment of such account. For the purposes of this Section
21 2, next of kin includes an adopting parent and an adopted
22 child, and they shall be treated as a natural parent and a
23 natural child, respectively. However, if a person entitled to
24 recover benefits under this Act, is, at the time the cause of
25 action accrued, within the age of 18 years, he or she may cause
26 such action to be brought within 2 years after attainment of

1 the age of 18.

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

7 The trier of fact shall first determine the decedent's
8 contributory fault in accordance with Sections 2-1116 and
9 2-1107.1 of the Code of Civil Procedure. Recovery of damages
10 shall be barred or diminished accordingly. The trier of fact
11 shall then determine the contributory fault, if any, of each
12 beneficiary on behalf of whom the action was brought:

13 (1) Where the trier of fact finds that the contributory
14 fault of a beneficiary on whose behalf the action is
15 brought is not more than 50% of the proximate cause of the
16 wrongful death of the decedent, then the damages allowed to
17 that beneficiary shall be diminished in proportion to the
18 contributory fault attributed to that beneficiary. The
19 amount of the reduction shall not be payable by any
20 defendant.

21 (2) Where the trier of fact finds that the contributory
22 fault of a beneficiary on whose behalf the action is
23 brought is more than 50% of the proximate cause of the
24 wrongful death of the decedent, then the beneficiary shall
25 be barred from recovering damages and the amount of damages
26 which would have been payable to that beneficiary, but for

1 the beneficiary's contributory fault, shall not inure to
2 the benefit of the remaining beneficiaries and shall not be
3 payable by any defendant.

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

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

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

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

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