

No. 382

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

Committee Substitute for
SENATE BILL NO. 382

(By Senator *Chapin*)



PASSED *March 30,* 1989

In Effect *90 days from* Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 382

(SENATOR CHAFIN, *original sponsor*)

[Passed March 30, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wrongful death damage award distribution and the removal of the requirement that the decedent's personal representative obtain consent to compromise such damages from persons entitled to a part of any award.

Be it enacted by the Legislature of West Virginia:

That sections six and seven, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

- 1 (a) Every such action shall be brought by and in the
- 2 name of the personal representative of such deceased

3 person who has been duly appointed in this state, or
4 in any other state, territory or district of the United
5 States, or in any foreign country, and the amount
6 recovered in every such action shall be recovered by
7 said personal representative and be distributed in
8 accordance herewith. If the personal representative
9 was duly appointed in another state, territory or
10 district of the United States, or in any foreign country,
11 such personal representative shall, at the time of filing
12 of the complaint, post bond with a corporate surety
13 thereon authorized to do business in this state, in the
14 sum of one hundred dollars, conditioned that such
15 personal representative shall pay all costs adjudged
16 against him and that he shall comply with the
17 provisions of this section. The circuit court may
18 increase or decrease the amount of said bond, for good
19 cause.

20 (b) In every such action for wrongful death the jury,
21 or in a case tried without a jury, the court, may award
22 such damages as to it may seem fair and just, and,
23 after making provision for those expenditures, if any,
24 specified in subdivision (2), subsection (c) of this
25 section, shall direct that the remaining net damages be
26 distributed in accordance with the decedent's will or,
27 if there be no will, in accordance with the laws of
28 descent and distribution as set forth in chapter forty-
29 two of this code.

30 (c) (1) The verdict of the jury shall include, but may
31 not be limited to, damages for the following: (A)
32 Sorrow, mental anguish, and solace which may
33 include society, companionship, comfort, guidance,
34 kindly offices and advice of the decedent; (B) compen-
35 sation for reasonably expected loss of (i) income of the
36 decedent, and (ii) services, protection, care and assis-
37 tance provided by the decedent; (C) expenses for the
38 care, treatment and hospitalization of the decedent
39 incident to the injury resulting in death; and (D)
40 reasonable funeral expenses.

41 (2) In its verdict the jury shall set forth separately
42 the amount of damages, if any, awarded by it for
43 reasonable funeral, hospital, medical and said other

44 expenses incurred as a result of the wrongful act,
45 neglect or default of the defendant or defendants
46 which resulted in death, and any such amount
47 recovered for such expenses shall be so expended by
48 the personal representative.

49 (d) Every such action shall be commenced within
50 two years after the death of such deceased person,
51 subject to the provisions of chapter fifty-five, article
52 two, section eighteen. The provisions of this section
53 shall not apply to actions brought for the death of any
54 person occurring prior to the first day of July, one
55 thousand nine hundred eighty-two.

§55-7-7. Compromise of claim for death by wrongful act.

1 The personal representative of the deceased may
2 compromise any claim to damages arising under
3 section five of this article before or after action
4 brought. What is received by the personal representa-
5 tive under the compromise shall be treated as if
6 recovered by him in an action under the section last
7 mentioned. When the judge acts in vacation, he shall
8 return all the papers in the case, and orders made
9 therein, to the clerk's office of such court. The clerk
10 shall file the papers in his office as soon as received,
11 and forthwith enter the order in the order book on the
12 law side of the court. Such orders, and all the
13 proceedings in vacation, shall have the same force and
14 effect as if made or had in term. Upon approval of the
15 compromise, the court shall apportion and distribute
16 such damages, or the compromise agreed upon, after
17 making provisions for those expenditures, if any,
18 specified in subdivision (2), subsection (c), section six
19 of this article, in the same manner as in the cases tried
20 without a jury.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parker
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Irish C. Wick
.....
Clerk of the Senate

Donald L. Hoop
.....
Clerk of the House of Delegates

John B. Tindal
.....
President of the Senate

Robert W. White
.....
Speaker House of Delegates

The within *is approved* this the *12th*
day of *April* 1989.
Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/6/89

Time 9:30

[Faint, illegible signature]