

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-30-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982



ENROLLED

Com. Sub. for
HOUSE BILL No. 1094

(By Mr. Wooten)



Passed March 13, 1982

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1094
(By MR. WOOTON)

[Passed March 13, 1982; 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 distribution of amounts recovered or awarded in actions for wrongful death; and providing for distribution to illegitimate persons in certain cases.

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 person
3 who has been duly appointed in this state, or in any other
4 state, territory or district of the United States, or in any
5 foreign country, and the amount recovered in every such
6 action shall be recovered by said personal representative

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

17 (b) In every such action for wrongful death the jury, or
18 in a case tried without a jury, the court, may award such
19 damages as to it may seem fair and just, and, after making
20 provision for those expenditures, if any, specified in sub-
21 division (2), subsection (c) of this section, may direct in
22 what proportion the remaining net damages shall be distrib-
23 uted to the surviving spouse and children, including adopted
24 children, stepchildren, and grandchildren of the deceased, and
25 other persons, if any who were dependent upon the decedent
26 for support, in whole or in part, or if there be none such, then
27 to parents, bothers and sisters of the deceased, or if there
28 be none such, then to such other persons, if any, entitled to
29 inherit pursuant to the provisions of section one, article one,
30 chapter forty-two of this code, unless the jury shall by its
31 verdict allocate the remaining net amount in differing amounts
32 and proportions among any surviving spouse, children, adopted
33 children, stepchildren, grandchildren, other dependents, par-
34 ents, brothers and sisters of the deceased. Where the matter
35 was tried without a jury the court may find upon just and
36 equitable principles that such net amount recovered should
37 be distributed to such last named persons in different amounts
38 and proportions, in which event the court shall make written
39 findings of fact and then and there order such remaining net
40 damages distributed to those persons in such amounts and
41 proportions as the court finds to be fair, just and equitable.

42 (c) (1) The verdict of the jury shall include, but may
43 not be limited to, damages for the following: (A) Sorrow,
44 mental anguish, and solace which may include society, com-
45 panionship, comfort, guidance, kindly offices and advice of the

46 decedent; (B) compensation for reasonably expected loss
47 of (i) income of the decedent, and (ii) services, protection,
48 care and assistance provided by the decedent; (C) expenses
49 for the care, treatment and hospitalization of the decedent
50 incident to the injury resulting in death; and (D) reasonable
51 funeral expenses.

52 (2) In its verdict the jury shall set forth separately the
53 amount of damages, if any, awarded by it for reasonable
54 funeral, hospital, medical and said other expenses incurred
55 as a result of the wrongful act, neglect or default of the
56 defendant or defendants which resulted in death, and any
57 such amount recovered for such expenses shall be so expended
58 by the personal representative.

59 (d) Every such action shall be commenced within two
60 years after the death of such deceased person. The provisions
61 of this section shall not apply to actions brought for the death
62 of any person occurring prior to the first day of July, one
63 thousand nine hundred eighty-two.

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

1 The personal representative of the deceased may compro-
2 mise any claim to damages arising under section five of this
3 article before or after action brought, with the consent of
4 the person or persons who would be entitled to the damages
5 recovered in an action therefor brought by such representative
6 under section six of this article; or if any such persons are
7 incapable from any cause of giving consent, the personal
8 representative may compromise with the approval of the
9 judge of the court wherein any such action which has been
10 brought, or if none has been brought, with the consent of
11 the judge of the court wherein such action may be brought.
12 Such approval may be applied for by the personal representa-
13 tive, on petition to the judge in term or vacation, stating the
14 compromise, the terms thereof, and reasons therefor, and
15 convening the parties in interest. What is received by the
16 personal representative under the compromise shall be treated
17 as if recovered by him in an action under the section last
18 mentioned. When the judge acts in vacation, he shall return
19 all the papers in the case, and orders made therein, to the

20 clerk's office of such court. The clerk shall file the papers
21 in his office as soon as received, and forthwith enter the
22 order in the order book on the law side of the court. Such
23 orders, and all the proceedings in vacation, shall have the
24 same force and effect as if made or had in term. Upon ap-
25 proval of the settlement, the court shall apportion and
26 distribute such damages, or the settlement agreed upon, after
27 making provisions for those expenditures, if any, specified
28 in subdivision (2), subsection (c), section six of this article,
29 in the same manner as in the cases tried without a jury and
30 make written findings of fact and then and there order the
31 remaining net damages distributed in such amounts and pro-
32 portions as the court deems fair, just and equitable.

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

R. P. Bayh
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Wittis
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Warren E. Hearnes
President of the Senate

W. M. Seay, Jr.
Speaker House of Delegates

The within is approved this the 30
day of March, 1982.

John D. Parkey
Governor

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OFFICE
SECY. OF STATE