

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senator Bell

A Bill

SENATE BILL 46

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 16-62-102 TO
9 LIMIT THE BENEFICIARIES IN A WRONGFUL DEATH ACTION AND TO
10 CLARIFY PROCEDURES FOR APPORTIONMENT OF AWARDS; AND FOR
11 OTHER PURPOSES."

Subtitle

14 "TO LIMIT THE BENEFICIARIES IN A
15 WRONGFUL DEATH ACTION AND CLARIFY
16 PROCEDURES FOR APPORTIONMENT OF AWARDS"

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20 SECTION 1. Arkansas Code Annotated § 16-62-102 is amended to read as
21 follows:

22 "16-62-102. Wrongful death actions - Survival.

23 (a)(1) Whenever the death of a person shall be caused by a wrongful
24 act, neglect, or default and the act, neglect, or default is such as would
25 have entitled the party injured to maintain an action and recover damages in
26 respect thereof, if death had not ensued, then, and in every such case, the
27 person who, or company, or corporation which would have been liable if death
28 had not ensued shall be liable to an action for damages, notwithstanding the
29 death of the person injured, and although the death may have been caused
30 under such circumstances as amount in law to a felony.

31 (2) The cause of action created in this subsection shall survive
32 the death of the person wrongfully causing the death of another and may be
33 brought, maintained, or revived against the personal representatives of the
34 person wrongfully causing the death of another.

35 (b) Every action shall be brought by and in the name of the personal

1 representative of the deceased person. If there is no personal
2 representative, then the action shall be brought by the beneficiaries of the
3 action as defined in subsection (d).

4 (c) Every action authorized by this section irrespective of the basis
5 of liability shall be commenced within the following time periods, whichever
6 is later; *except that nothing in this act shall be construed to alter the*
7 *statute of limitations in wrongful death actions where the basis of liability*
8 *is medical malpractice:*

9 (1) Within three (3) years after the death of the person alleged
10 to have been wrongfully killed; or

11 (2) If a nonsuit is suffered, the action shall be brought within
12 one (1) year from the date of the nonsuit without regard to the date of the
13 death of the person alleged to have been wrongfully killed.

14 (d) The beneficiaries of the action created in this section are the
15 surviving spouse, children, father and *mother, brothers and sisters of the*
16 *deceased person, persons* standing in loco parentis to the deceased person and
17 persons to whom the deceased stood in loco parentis.

18 (e) No part of any recovery referred to in this section shall be
19 subject to the debts of the deceased or become, in any way, a part of the
20 assets of the estate of the deceased person.

21 (f)(1) The jury, or the court in cases tried without a jury, may fix
22 such damages as will be fair and just compensation for pecuniary injuries,
23 including a spouse's loss of the services and companionship of a deceased
24 spouse and any mental anguish resulting from the death to the surviving
25 spouse and beneficiaries of the deceased person. In any action for wrongful
26 death submitted to a jury, the jury shall make separate awards to each
27 beneficiary it finds to be entitled to a recovery.

28 (2) When mental anguish is claimed as a measure of damages under
29 this section, mental anguish will include grief normally associated with the
30 loss of a loved one.

31 (g) *The judge of the court in which the claim or cause of action for*
32 *wrongful death is tried without a jury or is submitted for approval of a*
33 *compromise settlement, by judgment or order and upon the evidence presented*
34 *during trial or in connection with any submission for approval of a*
35 *compromise settlement, shall fix the share of each beneficiary, and*

1 *distribution shall be made accordingly. In any action by the personal*
2 *representative, and tried to a jury, the personal representative shall have*
3 *the right to elect whether a single verdict for total damages shall be*
4 *returned, or whether damages shall be apportioned among the beneficiaries by*
5 *separate verdicts. If a single verdict is returned, damages shall thereafter*
6 *be apportioned, after hearing, by the court. In all cases, apportionment*
7 *shall be done without consideration of benefits received by any beneficiary*
8 *from sources collateral to the party or parties against whom the wrongful*
9 *death claim is made.*

10 (h) Nothing in this section shall limit or affect the right of probate
11 courts having jurisdiction to approve or authorize settlement of claims or
12 causes of action for wrongful death, but the probate courts shall consider
13 the best interests of all the beneficiaries under this section and not merely
14 the best interest of the widow and next of kin as now provided by
15 § 28-49-104."

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17 SECTION 2. All provisions of this act of a general and permanent
18 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
19 Code Revision Commission shall incorporate the same in the Code.

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21 SECTION 3. If any provision of this act or the application thereof to
22 any person or circumstance is held invalid, such invalidity shall not affect
23 other provisions or applications of the act which can be given effect without
24 the invalid provision or application, and to this end the provisions of this
25 act are declared to be severable.

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27 SECTION 4. All laws and parts of laws in conflict with this act are
28 hereby repealed.

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30 SECTION 5. EMERGENCY. It is hereby found and determined by the
31 Eightieth General Assembly of the State of Arkansas that the Arkansas law
32 regarding the beneficiaries in wrongful death actions needs to have limits
33 placed on those causes of action; that allowing these situations to continue
34 creates an unequal situation among the beneficiaries of wrongful death
35 actions; and this act is needed to address the problem in an expeditious

1 manner. Therefore, in order to relieve this inequity of wrongful death
2 actions, an emergency is hereby declared to exist and this act being
3 necessary for the immediate preservation of the public peace, health, and
4 safety, shall be in full force and effect from and after its passage and
5 approval.

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/s/Bell