

SENATE BILL NO. 375

INTRODUCED BY BISHOP

BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

IN THE SENATE

FEBRUARY 18, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 20, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 21, 1987 PRINTING REPORT.

FEBRUARY 23, 1987 SECOND READING, DO PASS.

FEBRUARY 24, 1987 ENGROSSING REPORT.

FEBRUARY 25, 1987 THIRD READING, PASSED.
AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987 SECOND READING, CONCURRED IN.

MARCH 30, 1987 THIRD READING, CONCURRED IN.
AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 of the injury and death; and

2 (5) reasonable compensation for the decedent's pain
3 and suffering before his death."

4 Section 2. Section 27-1-501, MCA, is amended to read:

5 "27-1-501. Survival of cause of action or defense --
6 death or disability or transfer of interest. (1) An Except
7 as provided in subsection (2), an action, cause of action,
8 or defense does not abate because of the death or disability
9 of a party or the transfer of any interest therein, but
10 whenever the cause of action or defense arose in favor of
11 such party prior to his death or disability or transfer of
12 interest therein, it survives and may be maintained by his
13 representatives or successors in interest. If the action has
14 not been begun or defense interposed, the action may be
15 begun or defense interposed in the name of his
16 representatives or successors in interest. If the action
17 has been begun or defense interposed, the action or
18 proceeding may be continued as provided in Rule 25,
19 M.R.Civ.P.

20 (2) No action may be brought under this section if an
21 action may be brought under 27-1-513."

22 Section 3. Section 27-1-512, MCA, is amended to read:

23 "27-1-512. Action by parent or guardian for injury to
24 ~~or--death--of~~ child or ward. Either parent may maintain an
25 action for the injury ~~or--death--of~~ to a minor child and a

1 guardian for injury ~~or--death--of~~ to a ward when such injury
2 ~~or--death~~ is caused by the wrongful act or neglect of
3 another. Such action may be maintained against the person
4 causing the injury ~~or--death~~ or, if such person be employed
5 by another person who is responsible for his conduct, also
6 against such other person."

7 Section 4. Section 27-1-513, MCA, is amended to read:

8 "27-1-513. Action for wrongful death ~~of--adult.~~ (1)
9 When injuries to and the death of one person;--not--being--a
10 minor;--is are caused by the wrongful act or neglect of
11 another, ~~his--heirs--or~~ the personal representatives
12 representative of the decedent's estate may maintain an
13 action for damages against the person causing the death or,
14 if such person be employed by another person who is
15 responsible for his conduct, then also against such other
16 person. There may be only one legal action for the injuries
17 to and death of the decedent.

18 (2) Damages received in a suit under this section must
19 be distributed through the probate court in accordance with
20 probate law."

21 NEW SECTION. Section 5. Applicability. This act
22 applies to causes of action arising after the effective date
23 of this act.

24 NEW SECTION. Section 6. Effective date. This act is
25 effective on passage and approval.

-End-

-4-

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 375
2 INTRODUCED BY BISHOP
3 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 LAWS RELATING TO CIVIL ACTIONS FOR THE WRONGFUL DEATH OF
7 ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES
8 TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF
9 ANOTHER; ~~PROVIDING THAT THERE MAY BE ONLY ONE LEGAL ACTION~~
10 ~~FOR SUCH INJURIES AND DEATH;~~ PROVIDING THAT SUCH AN ACTION
11 MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE
12 DECEDENT'S ESTATE; ~~ESTABLISHING THE COMPENSABLE ELEMENTS IN~~
13 ~~SUCH ACTIONS~~ PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY
14 ONCE; AMENDING SECTIONS 27-1-323, 27-1-501, 27-1-512, AND
15 27-1-513, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN
16 IMMEDIATE EFFECTIVE DATE."

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19 Section 1. Section 27-1-323, MCA, is amended to read:
20 "27-1-323. Wrongful death. In every action under
21 ~~27-1-512 and 27-1-513,~~ such damages may be given as under
22 all the circumstances of the case may be just. The elements
23 of these damages may include only the following:
24 (1) loss of consortium by the surviving spouse;
25 (2) pecuniary loss of comfort and society of the

1 decedent, grief, and emotional distress suffered by:
2 (a) (i) the surviving spouse; and
3 (ii) the decedent's child or parent who resided with
4 the decedent at the time of death and to whose support the
5 decedent contributed;
6 (b) if there is no surviving person described in
7 subsection (2)(a), a child of the decedent who was not
8 living with and supported in whole or in part by the
9 decedent at the time of death;
10 (c) if there is no surviving person described in
11 subsection (2)(a) or (2)(b), a parent of the decedent who
12 was not living with and supported in whole or in part by the
13 decedent at the time of death;
14 (d) if there is no surviving person described in
15 subsection (2)(a), (2)(b), or (2)(c), a brother or sister of
16 the decedent and any child or grandchild of any deceased
17 brother or sister of the decedent; or
18 (e) if there is no surviving person described in
19 subsections (2)(a) through (2)(d), other next of kin of the
20 decedent;
21 (3) reasonable value of the contributions in money
22 that the decedent would reasonably have made for the
23 support, education, training, and care of the surviving
24 family members during the respective life expectancies of
25 the decedent and the survivors;

~~(4) medical and funeral expenses incurred as a result of the injury and death, and~~
~~(5) reasonable compensation for the decedent's pain and suffering before his death."~~

Section 2. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest. (1) AN Except as provided in subsection (2), an AN action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

~~(2) No action may be brought under this section if an action may be brought under 27-1-513.~~

(2) ACTIONS BROUGHT UNDER THIS SECTION AND 27-1-513 MUST BE COMBINED IN ONE LEGAL ACTION AND ANY ELEMENT OF DAMAGES MAY BE RECOVERED ONLY ONCE."

Section 3. Section 27-1-512, MCA, is amended to read:

"27-1-512. Action by parent or guardian for injury to or death of child or ward. Either parent may maintain an action for the injury or death of to a minor child and a guardian for injury or death of to a ward when such injury or death is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or death or, if such person be employed by another person who is responsible for his conduct, also against such other person."

Section 4. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death of ~~adult~~. ~~(1)~~ When injuries to and the death of one person, not being a minor, is are caused by the wrongful act or neglect of another, ~~his heirs or~~ the personal representatives representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person. ~~There may be only one legal action for the injuries to and death of the decedent.~~

~~(2) Damages received in a suit under this section must be distributed through the probate court in accordance with probate law."~~

NEW SECTION. Section 5. Applicability. This act

1 applies to causes of action arising after the effective date
2 of this act.

3 NEW SECTION. Section 6. Effective date. This act is
4 effective on passage and approval.

-End-

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3 BY REQUEST OF THE SENATE JUDICIARY COMMITTEE

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7 ANOTHER; REQUIRING THE JOINDER OF CIVIL ACTIONS FOR INJURIES
8 TO AND DEATH OF A PERSON CAUSED BY THE WRONGFUL CONDUCT OF
9 ANOTHER; ~~PROVIDING THAT THERE MAY BE ONLY ONE LEGAL ACTION~~
10 ~~FOR SUCH INJURIES AND DEATH~~; PROVIDING THAT SUCH AN ACTION
11 MAY BE BROUGHT ONLY BY THE PERSONAL REPRESENTATIVE OF THE
12 DECEDENT'S ESTATE; ~~ESTABLISHING THE COMPENSABLE ELEMENTS IN~~
13 ~~SUCH ACTIONS~~ PROVIDING THAT DAMAGES MAY BE RECOVERED ONLY
14 ONCE; AMENDING SECTIONS 27-1-323, 27-1-501, 27-1-512, AND
15 27-1-513, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN
16 IMMEDIATE EFFECTIVE DATE."

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19 Section 1. Section 27-1-323, MCA, is amended to read:

20 "27-1-323. Wrongful death. In every action under
21 27-1-512 and 27-1-513, such damages may be given as under
22 all the circumstances of the case may be just. ~~The elements~~
23 ~~of these damages may include only the following:~~

24 ~~(1) loss of consortium by the surviving spouse;~~

25 ~~(2) pecuniary loss of comfort and society of the~~

1 ~~decedent, grief, and emotional distress suffered by;~~

2 ~~(a) (i) the surviving spouse, and~~

3 ~~(ii) the decedent's child or parent who resided with~~
4 ~~the decedent at the time of death and to whose support the~~
5 ~~decedent contributed;~~

6 ~~(b) if there is no surviving person described in~~
7 ~~subsection (2)(a), a child of the decedent who was not~~
8 ~~living with and supported in whole or in part by the~~
9 ~~decedent at the time of death;~~

10 ~~(c) if there is no surviving person described in~~
11 ~~subsection (2)(a) or (2)(b), a parent of the decedent who~~
12 ~~was not living with and supported in whole or in part by the~~
13 ~~decedent at the time of death;~~

14 ~~(d) if there is no surviving person described in~~
15 ~~subsection (2)(a), (2)(b), or (2)(c), a brother or sister of~~
16 ~~the decedent and any child or grandchild of any deceased~~
17 ~~brother or sister of the decedent, or~~

18 ~~(e) if there is no surviving person described in~~
19 ~~subsections (2)(a) through (2)(d), other next of kin of the~~
20 ~~decedent;~~

21 ~~(3) reasonable value of the contributions in money~~
22 ~~that the decedent would reasonably have made for the~~
23 ~~support, education, training, and care of the surviving~~
24 ~~family members during the respective life expectancies of~~
25 ~~the decedent and the survivors;~~

~~{4}--medical-and-funeral-expenses-incurred-as-a--result
of-the-injury-and-death;-and~~

~~{5}--reasonable--compensation--for--the-decedent's-pain
and-suffering-before-his-death-"~~

Section 2. Section 27-1-501, MCA, is amended to read:

"27-1-501. Survival of cause of action or defense -- death or disability or transfer of interest. (1) An Except as--provided--in--subsection--(2),--an AN action, cause of action, or defense does not abate because of the death or disability of a party or the transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his death or disability or transfer of interest therein, it survives and may be maintained by his representatives or successors in interest. If the action has not been begun or defense interposed, the action may be begun or defense interposed in the name of his representatives or successors in interest. If the action has been begun or defense interposed, the action or proceeding may be continued as provided in Rule 25, M.R.Civ.P.

~~{2}--No--action-may-be-brought-under-this-section-if-an
action-may-be-brought-under-27-1-513-~~

(2) ACTIONS BROUGHT UNDER THIS SECTION AND 27-1-513
MUST BE COMBINED IN ONE LEGAL ACTION AND ANY ELEMENT OF
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Section 4. Section 27-1-513, MCA, is amended to read:

"27-1-513. Action for wrongful death ~~of--adult. {1}~~ When injuries to and the death of one person,-not-being-a minor,-is are caused by the wrongful act or neglect of another, ~~his---heirs---or~~ the personal representatives representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his conduct, then also against such other person. ~~There-may-be-only-one-legal-action-for-the-injuries to-and-death-of-the-decedent-~~

~~{2}--Damages-received-in-a-suit-under-this-section-must be-distributed-through-the-probate-court-in-accordance--with probate-law-~~"

NEW SECTION. Section 5. Applicability. This act

SB 0375/02

1 applies to causes of action arising after the effective date
2 of this act.

3 NEW SECTION. Section 6. Effective date. This act is
4 effective on passage and approval.

-End-

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1 decedent, grief, and emotional distress suffered by;

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3 (ii) the decedent's child or parent who resided with
4 the decedent at the time of death and to whose support the
5 decedent contributed;

6 (b) if there is no surviving person described in
7 subsection (2)(a), a child of the decedent who was not
8 living with and supported in whole or in part by the
9 decedent at the time of death;

10 (c) if there is no surviving person described in
11 subsection (2)(a) or (2)(b), a parent of the decedent who
12 was not living with and supported in whole or in part by the
13 decedent at the time of death;

14 (d) if there is no surviving person described in
15 subsection (2)(a), (2)(b), or (2)(c), a brother or sister of
16 the decedent and any child or grandchild of any deceased
17 brother or sister of the decedent; or

18 (e) if there is no surviving person described in
19 subsections (2)(a) through (2)(d), other next of kin of the
20 decedent;

21 (3) reasonable value of the contributions in money
22 that the decedent would reasonably have made for the
23 support, education, training, and care of the surviving
24 family members during the respective life expectancies of
25 the decedent and the survivors;

~~(4) -- medical and funeral expenses incurred as a result of the injury and death; and~~

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~~(2) -- Damages received in a suit under this section must be distributed through the probate court in accordance with probate law."~~

NEW SECTION. Section 5. Applicability. This act

SB 0375/03

1 applies to causes of action arising after ~~the-effective-date~~
2 ~~of-this-act~~ JULY 1, 1987.

3 NEW SECTION. Section 6. Effective date. This act is
4 effective ~~on-passage-and-approval~~ JULY 1, 1987.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 26,

19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 375

do pass
 do not pass

be concurred in
 be not concurred in

as amended
 statement of intent attached



Chairman

1. Title, line 16.
Strike: "IMMEDIATE"

2. Page 5, lines 1 and 2.
Strike: "the effective date of this act"
Insert: "July 1, 1987"

3. Page 5, line 4.
Strike: "on passage and approval"
Insert: "July 1, 1987"



THIRD reading copy (BLUE)
color

REP. MERCER WILL CARRY THE BILL!