

1 **Senate Bill No. 612**

2 (By Senator Chafin)

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4 [Introduced February 16, 2012; referred to the Committee on the

5 Judiciary.]

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10 A BILL to amend and reenact §55-7-6 of the Code of West Virginia,

11 1931, as amended, relating to the distribution of damage

12 awards in wrongful death actions; removing those who would be

13 equitably entitled to share in the distribution; and notice to

14 heirs of distribution hearing.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §55-7-6 of the Code of West Virginia, 1931, as amended,

17 be amended and reenacted to read as follows:

18 **ARTICLE 7. ACTIONS FOR INJURIES.**

19 **§55-7-6. By whom action for wrongful death to be brought; amount**

20 **and distribution of damages; period of limitation.**

21 (a) Every ~~such~~ wrongful death action shall be brought by and

22 in the name of the personal representative of such deceased person

23 who has been duly appointed in this state or in any other state,

1 territory or district of the United States or in any foreign
2 country. ~~and~~ Notwithstanding any code provision to the contrary,
3 the amount recovered in every such action shall be recovered by
4 said personal representative and be distributed in accordance
5 ~~herewith.~~ with this section. If the personal representative was
6 duly appointed in another state, territory or district of the
7 United States or in any foreign country, such personal
8 representative shall, at the time of filing of the complaint, post
9 bond with a corporate surety ~~thereon~~ authorized to do business in
10 this state in the sum of \$100 ~~conditioned~~ with the condition that
11 such personal representative ~~shall~~ pay all costs adjudged against
12 him or her and that he or she ~~shall~~ comply with the provisions of
13 this section. The circuit court may increase or decrease the
14 amount of said bond for good cause.

15 (b) Notwithstanding any other provision of this code to the
16 contrary, in every such action for wrongful death, the jury or, in
17 a case tried without a jury, the court may award such damages ~~as to~~
18 ~~it may seem~~ as seems fair and just and ~~may~~ direct in what
19 proportions the damages shall be distributed to the surviving
20 spouse and children, including adopted children and stepchildren,
21 brothers, sisters, parents and any persons who were financially
22 dependent upon the decedent at the time of his or her death ~~or~~
23 ~~would otherwise be equitably entitled to share in such distribution~~
24 after making provision for those expenditures, if any, specified in

1 subdivision (2), subsection (c) of this section. If there are no
2 such survivors, ~~then~~ the damages shall be distributed in accordance
3 with the decedent's will or, if there is no will, in accordance
4 with the laws of descent and distribution as set forth in chapter
5 forty-two of this code. If the jury renders only a general verdict
6 on damages and does not provide for the distribution thereof, the
7 court shall distribute the damages in accordance with the
8 provisions of this subsection.

9 (c) (1) The verdict of the jury shall include, but ~~may not be~~
10 is not limited to, damages for the following:

11 (A) Sorrow, mental anguish and solace which may include
12 society, companionship, comfort, guidance, kindly offices and
13 advice of the decedent;

14 (B) Compensation for reasonably expected loss of: (i) Income
15 of the decedent; and (ii) services, protection, care and assistance
16 provided by the decedent;

17 (C) Expenses for the care, treatment and hospitalization of
18 the decedent incident to the injury resulting in death; and

19 (D) Reasonable funeral expenses.

20 (2) In its verdict the jury shall set forth separately the
21 amount of damages, if any, awarded by it for reasonable funeral,
22 hospital, medical and said other expenses incurred as a result of
23 the wrongful act, neglect or default of the defendant or defendants
24 which resulted in death and any ~~such~~ amount recovered for such

1 expenses shall be so expended by the personal representative.

2 (d) Every such action shall be commenced within two years
3 after the death of ~~such~~ a deceased person subject to the provisions
4 of section eighteen, article two, chapter fifty-five. The
5 provisions of this section ~~shall~~ do not apply to actions brought
6 for the death of any person occurring prior to July 1, 1988.

7 (e) At least ten days prior to a distribution hearing
8 scheduled pursuant to a wrongful death matter under this section,
9 the court will cause proper notice of the hearing to be served upon
10 all heirs identified on the estate appraisement forms filed in the
11 county clerk's office.

NOTE: The purpose of this bill is to remove those who would be "equitably entitled" to share in the distribution of damage awards in a wrongful death action and to provide notice to heirs of a distribution hearing.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.