

SENATE BILL No. 288

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-23.

Synopsis: Damages in wrongful death actions. Removes certain damage limitations in a wrongful death action if the act or omission that caused the death constituted a criminal act or certain tortious acts.

Effective: July 1, 2023.

Freeman

January 11, 2023, read first time and referred to Committee on Judiciary.



Introduced

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 288

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-23-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. **(a)** When the death
3 of one is caused by the wrongful act or omission of another, the
4 personal representative of the former may maintain an action therefor
5 against the latter, if the former might have maintained an action had he
6 or she, as the case may be, lived, against the latter for an injury for the
7 same act or omission. When the death of one is caused by the wrongful
8 act or omission of another, the action shall be commenced by the
9 personal representative of the decedent within two (2) years, and,
10 **except as provided in subsection (b)**, the damages shall be in such an
11 amount as may be determined by the court or jury, including, but not
12 limited to, reasonable medical, hospital, funeral and burial expenses,
13 and lost earnings of such deceased person resulting from said wrongful
14 act or omission. That part of the damages which is recovered for
15 reasonable medical, hospital, funeral and burial expense shall inure to
16 the exclusive benefit of the decedent's estate for the payment thereof.
17 The remainder of the damages, if any, shall, subject to the provisions

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1 of this article, inure to the exclusive benefit of the widow or widower,
 2 as the case may be, and to the dependent children, if any, or dependent
 3 next of kin, to be distributed in the same manner as the personal
 4 property of the deceased. **Except as provided in subsection (b)**, if
 5 such decedent depart this life leaving no such widow or widower, or
 6 dependent children or dependent next of kin, surviving her or him, the
 7 damages inure to the exclusive benefit of the person or persons
 8 furnishing necessary and reasonable hospitalization or hospital services
 9 in connection with the last illness or injury of the decedent, performing
 10 necessary and reasonable medical or surgical services in connection
 11 with the last illness or injury of the decedent, to a funeral director or
 12 funeral home for the necessary and reasonable funeral and burial
 13 expenses, and to the personal representative, as such, for the necessary
 14 and reasonable costs and expenses of administering the estate and
 15 prosecuting or compromising the action, including a reasonable
 16 attorney's fee, and in case of a death under such circumstances, and
 17 when such decedent leaves no such widow, widower, or dependent
 18 children, or dependent next of kin, surviving him or her, the measure
 19 of damages to be recovered shall be the total of the necessary and
 20 reasonable value of such hospitalization or hospital service, medical
 21 and surgical services, such funeral expenses, and such costs and
 22 expenses of administration, including attorney fees.

23 **(b) A personal representative that prevails in an action brought**
 24 **under this section may recover punitive damages if the wrongful**
 25 **act or omission that caused the death of the decedent constituted:**

- 26 **(1) a criminal act;**
- 27 **(2) an act of gross negligence;**
- 28 **(3) willful or wanton misconduct;**
- 29 **(4) fraud;**
- 30 **(5) deceit; or**
- 31 **(6) another intentional tort.**

32 SECTION 2. IC 34-23-1-2, AS AMENDED BY P.L.162-2022,
 33 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2023]: Sec. 2. (a) As used in this section, "adult person"
 35 means:

- 36 (1) an unmarried individual:
 - 37 (A) who does not have any dependents; and
 - 38 (B) who is not a child (as defined in IC 34-23-2-1); or
- 39 (2) a married individual:
 - 40 (A) who does not have any dependents; and
 - 41 (B) whose death was caused by the married individual's
 - 42 spouse.



1 (b) If the death of an adult person is caused by the wrongful act or
2 omission of another person, only the personal representative of the
3 adult person may maintain an action against the person whose wrongful
4 act or omission caused the death of the adult person.

5 (c) **Except as provided in subsection (j)**, in an action to recover
6 damages for the death of an adult person, the damages:

7 (1) must be in an amount determined by a:

8 (A) court; or

9 (B) jury;

10 (2) may not include:

11 (A) damages awarded for a person's grief; or

12 (B) punitive damages; and

13 (3) may include but are not limited to the following:

14 (A) Reasonable medical, hospital, funeral, and burial expenses
15 necessitated by the wrongful act or omission that caused the
16 adult person's death.

17 (B) Loss of the adult person's love and companionship.

18 (d) Damages awarded under subsection (c)(3)(A) for medical,
19 hospital, funeral, and burial expenses inure to the exclusive benefit of
20 the adult person's estate for the payment of the expenses. The
21 remainder of the damages inure to the exclusive benefit of a
22 nondependent parent or nondependent child of the adult person.

23 (e) **Except as provided in subsection (j)**, aggregate damages that
24 may be recovered under subsection (c)(3)(B) may not exceed three
25 hundred thousand dollars (\$300,000). A jury may not be advised of the
26 monetary limits placed on damages under this subsection. If the jury
27 awards the plaintiff damages under subsection (c)(3)(B) in an amount
28 that exceeds three hundred thousand dollars (\$300,000), the court shall
29 reduce that part of the damages awarded to the plaintiff to three
30 hundred thousand dollars (\$300,000).

31 (f) A parent or child who wishes to recover damages under this
32 section has the burden of proving that the parent or child had a
33 genuine, substantial, and ongoing relationship with the adult person
34 before the parent or child may recover damages.

35 (g) In an action brought under this section, a court or a jury may not
36 hear evidence concerning the lost earnings of the adult person that
37 occur as a result of the wrongful act or omission.

38 (h) In awarding damages under this section to more than one (1)
39 person, the court or the jury shall specify the amount of the damages
40 that should be awarded to each person.

41 (i) In an action brought under this section, the trier of fact shall
42 make a separate finding with respect to damages awarded under



1 subsection (c)(3)(B).

2 **(j) Subsection (c)(2) and subsection (e) do not apply to damages**
 3 **awarded in an action brought under this section if the wrongful act**
 4 **or omission that caused the death of the adult person constituted:**

- 5 **(1) a criminal act;**
 6 **(2) an act of gross negligence;**
 7 **(3) willful or wanton misconduct;**
 8 **(4) fraud;**
 9 **(5) deceit; or**
 10 **(6) another intentional tort.**

11 SECTION 3. IC 34-23-2-1, AS AMENDED BY P.L.129-2009,
 12 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 1. (a) This section does not apply to an abortion
 14 performed in compliance with:

- 15 (1) IC 16-34; or
 16 (2) IC 35-1-58.5 (before its repeal).

17 (b) As used in this section, "child" means an unmarried individual
 18 without dependents who is:

- 19 (1) less than twenty (20) years of age; or
 20 (2) less than twenty-three (23) years of age and is enrolled in a
 21 postsecondary educational institution or a career and technical
 22 education school or program that is not a postsecondary
 23 educational program.

24 The term includes a fetus that has attained viability (as defined in
 25 IC 16-18-2-365).

26 (c) An action may be maintained under this section against the
 27 person whose wrongful act or omission caused the injury or death of a
 28 child. The action may be maintained by:

- 29 (1) the father and mother jointly, or either of them by naming the
 30 other parent as a codefendant to answer as to his or her interest;
 31 (2) in case of divorce or dissolution of marriage, the person to
 32 whom custody of the child was awarded; and
 33 (3) a guardian, for the injury or death of a protected person.

34 (d) In case of death of the person to whom custody of a child was
 35 awarded, a personal representative shall be appointed to maintain the
 36 action for the injury or death of the child.

37 (e) In an action brought by a guardian for an injury to a protected
 38 person, the damages inure to the benefit of the protected person.

39 (f) **Except as provided in subsection (k)**, in an action to recover for
 40 the death of a child, the plaintiff may recover damages:

- 41 (1) for the loss of the child's services;
 42 (2) for the loss of the child's love and companionship; and



- 1 (3) to pay the expenses of:
 2 (A) health care and hospitalization necessitated by the
 3 wrongful act or omission that caused the child's death;
 4 (B) the child's funeral and burial;
 5 (C) the reasonable expense of psychiatric and psychological
 6 counseling incurred by a surviving parent or minor sibling of
 7 the child that is required because of the death of the child;
 8 (D) uninsured debts of the child, including debts for which a
 9 parent is obligated on behalf of the child; and
 10 (E) the administration of the child's estate, including
 11 reasonable attorney's fees.
- 12 (g) Damages may be awarded under this section only with respect
 13 to the period of time from the death of the child until:
 14 (1) the date that the child would have reached:
 15 (A) twenty (20) years of age; or
 16 (B) twenty-three (23) years of age, if the child was enrolled in
 17 a postsecondary educational institution or in a career and
 18 technical education school or program that is not a
 19 postsecondary educational program; or
 20 (2) the date of the child's last surviving parent's death;
 21 whichever first occurs.
- 22 (h) Damages may be awarded under subsection (f)(2) only with
 23 respect to the period of time from the death of the child until the date
 24 of the child's last surviving parent's death.
- 25 (i) Damages awarded under subsection (f)(1), (f)(2), (f)(3)(C), and
 26 (f)(3)(D) inure to the benefit of:
 27 (1) the father and mother jointly if both parents had custody of the
 28 child;
 29 (2) the custodial parent, or custodial grandparent, and the
 30 noncustodial parent of the deceased child as apportioned by the
 31 court according to their respective losses; or
 32 (3) a custodial grandparent of the child if the child was not
 33 survived by a parent entitled to benefit under this section.
- 34 However, a parent or grandparent who abandoned a deceased child
 35 while the child was alive is not entitled to any recovery under this
 36 chapter.
- 37 (j) This section does not affect or supersede any other right, remedy,
 38 or defense provided by any other law.
- 39 **(k) Subsection (f) does not apply to damages awarded in an**
 40 **action brought under this section if the wrongful act or omission**
 41 **that caused the death of the child constituted:**
 42 **(1) a criminal act;**



- 1 **(2) an act of gross negligence;**
- 2 **(3) willful or wanton misconduct;**
- 3 **(4) fraud;**
- 4 **(5) deceit; or**
- 5 **(6) another intentional tort.**

