

SUPPORT HOUSE BILL 1798 AS AMENDED
(BROSNAHAN- FLOWERS - FRITCHEY)
Wrongful Death Act

CURRENT LAW: Currently under the Wrongful Death Act damages for the grief, sorrow and mental anguish of the family of a person wrongfully killed are **not** allowed. The law requires that the jury be instructed **not** to award damages for grief and sorrow of the widow and children in wrongful death cases.

PROPOSED LAW: HB 1798 simply allows the jury to consider and award damages for grief, sorrow and mental suffering under the Wrongful Death Act.

PURPOSE: HB 1798 corrects a current injustice in the law that prevents a jury from awarding damages for the grief, sorrow or mental anguish of the family of the deceased. Prohibiting the jury from considering the grief and sorrow of the family is based on an antiquated concept that the deceased is valued only as an economic asset. This prohibition is illogical, inequitable and discriminatory. Currently, a jury is instructed not to award damages for grief and sorrow in wrongful death cases. This instruction often times confuses the jury on the issue of loss of society (which includes love, companionship, and affection) that is allowed in these cases. The Supreme Court of Alaska has stated, “Where a statute allows damages for loss of companionship, comfort and guidance, it would be inconsistent to forbid recovery for emotional pain and suffering.” There is no good reason why plaintiffs who have wrongfully lost loved ones should not have a jury hear and consider their grief and sorrow. **Current law in Illinois allows pet owners to sue for “emotional distress” caused by the wrongful death of a pet, but parents can’t ask for damages for grief and sorrow for the loss of a child.** This change is long overdue.

BACKGROUND: The Wrongful Death Act was first enacted in Illinois in 1853. Illinois has long followed the harsh pecuniary loss rule that wrongful death is measured by financial contributions. It was not until the 1980’s that Illinois recognized damages under the Wrongful Death Act for loss of society for spouses, parents, children and siblings. The Supreme Court of North Dakota in allowing damages for grief and sorrow stated “The existence of mental suffering by a parent for the loss of a child is a fact so universal and general that it also may be fairly assumed and recognized as existing in any given case. Yet, we do not allow juries to consider and quantify that kind of suffering. We should.” Twenty-three states allow damages for grief, sorrow and mental anguish in wrongful death cases. It is time for Illinois to join them.

States that currently allow grief and sorrow include: Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Kansas, Louisiana, Maine, Maryland, Montana, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.