

IN THE SENATE

SENATE BILL NO. 1340, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CIVIL ACTIONS; AMENDING SECTION 5-311, IDAHO CODE, TO REFERENCE A CODE SECTION IN RELATION TO THE DEFINITION OF A TERM, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 5-327, IDAHO CODE, TO PROVIDE FOR THE CONTINUATION OF CERTAIN CAUSES OF ACTION RELATING TO PERSONAL INJURY OR PROPERTY DAMAGE UPON THE DEATH OF THE INJURED PERSON, TO LIMIT DAMAGES AND TO PROVIDE FOR THE COMMENCEMENT OR CONTINUATION OF SUCH ACTIONS BY THE DECEDENT'S PERSONAL REPRESENTATIVE OR HEIRS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-311, Idaho Code, be, and the same is hereby amended to read as follows:

5-311. SUIT FOR WRONGFUL DEATH BY OR AGAINST HEIRS OR PERSONAL REPRESENTATIVES -- DAMAGES. (1) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case as may be just.

(2) For the purposes of subsection (1) of this section, and subsection (2) of section 5-327, Idaho Code, "heirs" means:

(a) Those persons who would be entitled to succeed to the property of the decedent according to the provisions of subsection (2) of section 15-1-201, Idaho Code.

(b) Whether or not qualified under subsection (2) (a) of this section, the decedent's spouse, children, stepchildren, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the illegitimate child of a mother, but not the illegitimate child of the father unless the father has recognized a responsibility for the child's support.

1. "Support" includes contributions in kind as well as money.

2. "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the heirs of the decedent. These services may vary according to the identity of the decedent and heir and shall be determined under the particular facts of each case.

1 (c) Whether or not qualified under subsection (2) (a) or (2) (b) of this
2 section, the putative spouse of the decedent, if he or she was dependent
3 on the decedent for support or services. As used in this subsection,
4 "putative spouse" means the surviving spouse of a void or voidable
5 marriage who is found by the court to have believed in good faith that
6 the marriage to the decedent was valid.

7 (d) Nothing in this section shall be construed to change or modify the
8 definition of "heirs" under any other provision of law.

9 SECTION 2. That Section 5-327, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 5-327. PERSONAL INJURIES -- PROPERTY DAMAGE -- DEATH OF WRONGDOER --
12 DEATH OF INJURED PARTY -- SURVIVAL OF ACTION. (1) Causes of action arising
13 out of injury to the person or property, or death, caused by the wrongful
14 act or negligence of another, except actions for slander or libel, shall
15 not abate upon the death of the wrongdoer, and each injured person or the
16 personal representative of each one meeting death, as above stated, shall
17 have a cause of action against the personal representative of the wrongdoer;
18 provided, however, the punitive damages or exemplary damages shall not be
19 awarded nor penalties adjudged in any such action; provided, however, that
20 the injured person shall not recover judgment except upon some competent,
21 satisfactory evidence corroborating the testimony of said injured person
22 regarding negligence and proximate cause.

23 (2) A cause of action for personal injury or property damage caused by
24 the wrongful act or negligence of another shall not abate upon the death of
25 the injured person from causes not related to the wrongful act or negligence.
26 Provided however, that the damages that may be recovered in such action are
27 expressly limited to those for: (i) medical expenses actually incurred,
28 (ii) other out-of-pocket expenses actually incurred, and (iii) loss of
29 earnings actually suffered, prior to the death of such injured person and as
30 a result of the wrongful act or negligence. Such action shall be commenced
31 or, if already commenced at the time of the death of the injured person, shall
32 be thereafter prosecuted by the personal representative of the estate of
33 the deceased person or, if there be no personal representative appointed,
34 then by those persons who would be entitled to succeed to the property of the
35 deceased person according to the provisions of section 5-311(2) (a), Idaho
36 Code.