

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Date: (Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 581, L.D. 934, “An Act to Amend the Laws Governing Damages Awarded for Wrongful Death”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 18-C MRSA §1-108, sub-§1, ¶B, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by Pt. F, §1 and PL 2019, c. 417, Pt. B, §14, is amended to read:

B. "Reference base index" means ~~the Consumer Price Index for calendar year 2017;~~

(1) With respect to calculations made under this section relating to dollar amounts stated in sections 2-102, 2-402, 2-403, 2-405 and 3-1201, the Consumer Price Index for calendar year 2017; and

(2) With respect to calculations made under this section relating to dollar amounts stated in section 2-807, the Consumer Price Index for calendar year 2023.

Sec. 2. 18-C MRSA §1-108, sub-§2, as amended by PL 2019, c. 417, Pt. A, §1, is further amended to read:

2. Automatic adjustment of amounts for inflation. The dollar amounts stated in sections 2-102, 2-402, 2-403, 2-405 and 3-1201 apply to the estate of a decedent who died in or after 2017, but for the estate of a decedent who died after 2018, these dollar amounts must be increased or decreased if the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. For a wrongful death action brought with respect to a person who died after 2023, the dollar amounts stated in section 2-807, subsection 2 must be adjusted if the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. The amount of any increase or decrease is computed by multiplying each dollar amount by the percentage by which the Consumer Price Index for the calendar year immediately preceding the year of death exceeds or is less than the reference base index. If any increase or decrease produced by the computation is not a multiple of \$100, the increase or decrease is rounded down, if an increase, or up, if a decrease, to the next

COMMITTEE AMENDMENT

1 multiple of \$100, but for the purpose of section 2-405, the periodic installment amount is
2 the lump-sum amount divided by 12. If With respect to calculations made under this
3 section relating to dollar amounts stated in sections 2-102, 2-402, 2-403, 2-405 and 3-1201,
4 if the Consumer Price Index for 2018 is changed by the United States Department of Labor,
5 Bureau of Labor Statistics, the reference base index must be revised using the rebasing
6 factor reported by the Bureau of Labor Statistics or other comparable data if a rebasing
7 factor is not reported. With respect to calculations made under this section relating to the
8 dollar amounts stated in section 2-807, if the Consumer Price Index for 2023 is changed by
9 the United States Department of Labor, Bureau of Labor Statistics, the reference base index
10 must be revised using the rebasing factor reported by the Bureau of Labor Statistics or other
11 comparable data if a rebasing factor is not reported.

12 **Sec. 3. 18-C MRSA §2-807, sub-§1-A** is enacted to read:

13 **1-A. Liability for abortion without consent of father.** The abortion of a fetus is the
14 death of a person caused by a wrongful act, neglect or default of the mother under
15 subsection 1, unless the mother seeking the abortion obtains consent from the father of the
16 fetus prior to having the abortion. If a mother has an abortion without first obtaining consent
17 from the father of the fetus, the father may maintain an action and recover damages under
18 this section. If the father does not maintain an action against the mother under this section,
19 an immediate family member may maintain an action against the mother under this section
20 but any damages that would have been recovered by the immediate family member must
21 be donated to a public charity, as defined in Title 5, section 194, subsection 1, determined
22 by the family member, except that the damages may not be donated to:

23 A. The Planned Parenthood Federation of America, Inc. or any of its subsidiary or
24 successor organizations;

25 B. Any public charity that provides abortions or services in support of abortion; or

26 C. Any public charity that provides funding, support or protection for abortions or that
27 has spoken or issued public statements in support of abortion.

28 Under this subsection, a fetus that has been aborted is considered a family member who
29 has died. A father or immediate family member who brings an action under this subsection
30 may give a name to that deceased family member and bring the action in the name of that
31 family member. A father and an immediate family member may not bring separate claims
32 under this subsection.

33 As used in this subsection, "abortion" has the same meaning as in Title 22, section 1598,
34 subsection 2, paragraph A.

35 **Sec. 4. 18-C MRSA §2-807, sub-§2,** as amended by PL 2019, c. 198, §1 and c.
36 417, Pt. A, §3, is further amended to read:

37 **2. Wrongful death action; damages; limitations.** Every wrongful death action must
38 be brought by and in the name of the personal representative or special administrator of the
39 deceased person, and is distributable, after payment for funeral expenses and the costs of
40 recovery including attorney's fees, directly to the decedent's heirs without becoming part
41 of the probate estate, except as may be specifically provided in this subsection. The amount
42 recovered in every wrongful death action, except as specifically provided in this subsection,
43 is for the exclusive benefit of the deceased's heirs to be distributed to the individuals and
44 in the proportions as provided under the intestacy laws of this State in sections 2-101 to

1 2-113. The jury may give damages as it determines a fair and just compensation with
2 reference to the pecuniary injuries resulting from the death. Damages are payable to the
3 estate of the deceased person only if the jury specifically makes an award payable to the
4 estate for reasonable expenses of medical, surgical and hospital care and treatment and for
5 reasonable funeral expenses or, in the case of a settlement, the settlement documents
6 specifically provide for such an allocation to the estate for the same. In addition, the jury
7 may give damages not exceeding \$750,000 adjusted for inflation as provided in section
8 1-108 for the loss of comfort, society and companionship of the deceased, including any
9 damages for emotional distress arising from the same facts as those constituting the
10 underlying claim, to the persons for whose benefit the action is brought. The jury may also
11 give punitive damages not exceeding \$250,000 adjusted for inflation as provided in section
12 1-108. An action under this section must be commenced within ~~2~~ 3 years after the
13 decedent's death, except that if the decedent's death is caused by a homicide, the action may
14 be commenced within 6 years of the date the personal representative or special
15 administrator of the decedent discovers that there is a just cause of action against the person
16 who caused the homicide. If a claim under this section is settled without an action having
17 been commenced, the amount paid in settlement must be distributed as provided in this
18 subsection. A settlement on behalf of minor children is not valid unless approved by the
19 court, as provided in Title 14, section 1605.'

20 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
21 number to read consecutively.

22 SUMMARY

23 This amendment, which is a minority report of the committee, replaces the bill. The
24 amendment creates a wrongful death cause of action for the father or immediate family
25 member of an aborted fetus unless the mother seeking the abortion obtains consent from
26 the father of the fetus prior to having the abortion. The amendment requires that damages
27 awarded in an action brought by an immediate family member must be donated to a public
28 charity determined by the family member, but that the public charity may not be affiliated
29 with Planned Parenthood Federation of American, Inc., provide abortion services or
30 provide support for abortions.

31 The amendment also adjusts the amounts of noneconomic and punitive damages
32 available in an action for wrongful death based on inflation calculated in relation to the
33 Consumer Price Index. The amendment also, like the bill, increases from 2 years to 3 years
34 the time after the decedent's death within which a wrongful death action may be
35 commenced.

36 FISCAL NOTE REQUIRED

37 (See attached)