

SENATE No. 657

The Commonwealth of Massachusetts

SENATE, May 5, 1949.

The committee on the Judiciary, to whom was referred the petition (accompanied by bill, Senate, No. 191) of Charles I. Taylor that the method of assessing damages in actions for death be changed, the petition (accompanied by bill, Senate, No. 192) of Charles I. Taylor for legislation to change the method of assessing damages in actions for death, the petition (accompanied by bill, Senate, No. 193) of Charles I. Taylor for legislation to increase the minimum amount to be awarded as damages in certain death cases, the petition (accompanied by bill, Senate, No. 194) of Charles I. Taylor for legislation to increase the maximum and minimum limits recoverable in damages for wrongful death, the petition (accompanied by bill, House, No. 488) of John W. Vaughan for clarification of provisions of law relative to recovery of damages in actions for death and injuries resulting in death, the petition (accompanied by bill, House, No. 1736) of Edward R. Butterworth for legislation relative to the amount of damages for death by negligence, and the petition (accompanied by bill, House, No. 1744) of John W. Vaughan for legislation relative to the assessment of damages in actions for death and injuries resulting in death, report the accompanying Bill (Senate, No. 657).

For the committee,

CHARLES I. TAYLOR.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Nine.

AN ACT RELATIVE TO ACTIONS FOR DEATH AND INJURIES RESULTING IN DEATH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 229 of the General Laws is
2 hereby amended by striking out section 1 and inserting
3 in place thereof the following section: —

4 *Section 1.* If the life of a person is lost by reason
5 of a defect or a want of repair of or a want of a sufficient
6 railing in or upon a way, causeway or bridge, the
7 county, city, town or person by law obliged to repair
8 the same shall, if it or he had previous reasonable
9 notice of the defect or want of repair or want of
10 railing, be liable in damages not exceeding one thou-
11 sand dollars, to be assessed with reference to the degree
12 of culpability of the defendant and recovered in an
13 action of tort commenced within one year after the
14 injury causing the death by the executor or adminis-
15 trator of the deceased person, to the use of the follow-
16 ing persons and in the following shares: —

17 (1) If the deceased shall have been survived by a
18 wife or husband and no children or issue surviving,
19 then to the use of such surviving spouse.

20 (2) If the deceased shall have been survived by a
21 wife or husband and by one child or by the issue of one

22 deceased child, then one half to the use of such sur-
23 viving spouse and one half to the use of such child or
24 his issue by right of representation.

25 (3) If the deceased shall have been survived by a
26 wife or husband and by more than one child surviving
27 either in person or by issue, then one third to the use
28 of such surviving spouse and two thirds to the use of
29 such surviving children or their issue by right of repre-
30 sentation.

31 (4) If there is no surviving wife or husband, then
32 to the use of the next of kin.

1 SECTION 2. Said chapter 229 is hereby further
2 amended by striking out section 2 and inserting in
3 place thereof the following section:—

4 *Section 2.* If the proprietor of a common carrier of
5 passengers, except a railroad corporation or street
6 railway or electric railroad company, by reason of his
7 or its negligence or wilful, wanton or reckless act, or
8 by reason of the unfitness or gross negligence or care-
9 lessness, or the wilful, wanton or reckless act, of his
10 or its servants or agents, causes the death of a pas-
11 senger, he or it shall be liable in damages in the sum of
12 not less than two thousand nor more than fifteen
13 thousand dollars, to be assessed with reference to the
14 degree of culpability of the defendant or of his or its
15 servants or agents, and recovered and distributed as
16 provided in section one, and to the use of the persons
17 and in the proportions, therein specified.

1 SECTION 3. Said chapter 229 is hereby further
2 amended by inserting after section 2 the three follow-
3 ing sections:—

4 *Section 3.* If a corporation operating a railroad,

5 street railway or electric railroad, by reason of its
6 negligence or wilful, wanton or reckless act, or of the
7 unfitness or negligence, or the wilful, wanton or reck-
8 less act, of its agents or servants while engaged in its
9 business, causes the death of a passenger, or of a per-
10 son in the exercise of due care who is not a passenger
11 or in the employment of such corporation, it shall be
12 punished by a fine of not less than two thousand nor
13 more than fifteen thousand dollars, to be recovered by
14 an indictment prosecuted within one year after the
15 time of the injury which caused the death, which
16 shall be paid to the executor or administrator, and
17 distributed as provided in section one; but a cor-
18 poration which operates a railroad shall not be so
19 liable for the death of a person while walking or being
20 upon its railroad contrary to law or to the reasonable
21 rules and regulations of the corporation, and one
22 which operates an electric railroad shall not be so
23 liable for the death of a person while so walking or
24 being on that part of its railroad not within the limits
25 of a highway. Such corporation shall also be liable
26 in damages in the sum of not less than two thousand
27 nor more than fifteen thousand dollars, to be assessed
28 with reference to the degree of culpability of the cor-
29 poration or of its servants or agents, which shall be
30 recovered in an action of tort, begun within one year
31 after the injury which caused the death, by the execu-
32 tor or administrator of the deceased, and distributed
33 as provided in section one. If an employee of a rail-
34 road corporation, being in the exercise of due care, is
35 killed under such circumstances as would have en-
36 titled him to maintain an action for damages against
37 such corporation if death had not resulted, the cor-
38 poration shall be liable in the same manner and to
39 the same extent as it would have been if the deceased

40 had not been an employee. But no executor or ad-
41 ministrator shall, for the same cause, avail himself of
42 more than one of the remedies given by this section.

43 *Section 4.* If, as the result of the negligence of an
44 employer himself, or of a person for whose negligence
45 an employer is liable under section one of chapter one
46 hundred and fifty-three, an employee is instantly killed,
47 or dies without conscious suffering, the surviving wife
48 or husband of the deceased or, if there is no wife or
49 husband surviving, the next of kin, who, at the time of
50 such death, were dependent upon the wages of the de-
51 ceased for support, shall have a right of action for
52 damages against the employer. This section shall not
53 apply to injuries caused to domestic servants or farm
54 laborers by fellow employees.

55 *Section 5.* Except as provided in sections one, two
56 and three, a person who by his negligence or by his
57 wilful, wanton or reckless act, or by the negligence or
58 wilful, wanton or reckless act of his agents or servants
59 while engaged in his business, causes the death of a
60 person in the exercise of due care, who is not in his
61 employment or service, shall be liable in damages in
62 the sum of not less than two thousand nor more than
63 fifteen thousand dollars, to be assessed with reference
64 to the degree of his culpability or of that of his agents
65 or servants, to be recovered in an action of tort, com-
66 menced, except as provided by sections four and ten
67 of chapter two hundred and sixty, within two years
68 after the injury which caused the death by the executor
69 or administrator of the deceased, to be distributed as
70 provided in section one.

1 SECTION 4. Said chapter 229 is hereby further
2 amended by striking out section 5A and inserting in
3 place thereof the following section: —

4 *Section 5A.* The causing of a death under such
5 circumstances as would create liability under section
6 one, two, four or five on the part of a person, if alive
7 at the time of such death, shall create a like liability
8 on his part if such death occurs after his own death
9 and such liability may be enforced against the executor
10 or administrator of his estate, subject to all provisions
11 of law otherwise applicable.

1 SECTION 5. Said chapter 229 is hereby further
2 amended by striking out section 6 and inserting in
3 place thereof the following section:—

4 *Section 6.* In any civil action brought under sec-
5 tion three, five or five A, damages may be recovered
6 under a separate count at common law for conscious
7 suffering resulting from the same injury, but any
8 sum so recovered shall be held and disposed of by the
9 executors or administrators as assets of the estate of
10 the deceased.

1 SECTION 6. Said chapter 229 is hereby further
2 amended by striking out sections 6A and 6B and
3 inserting in place thereof the following sections:—

4 *Section 6A.* All sums recovered under section one,
5 two, three, four, five or five A shall, if and to the
6 extent that the assets of the estate of the deceased
7 shall be insufficient to satisfy the same, be subject
8 to the charges of administration and funeral expenses
9 of said estate, to all medical and hospital expenses
10 necessitated by the injury which caused the death,
11 and to reasonable attorneys' fees incurred in such
12 recovery.

13 *Section 6B.* In the event that any sum recovered
14 under section one, two, three, five, five A or six comes

15 into the hands of the executor or administrator of
16 the deceased after the expiration of one year from the
17 time of his giving bond, such sum shall be treated as
18 new assets of the estate of the deceased within the
19 meaning of section eleven of chapter one hundred
20 and ninety-seven.

1 SECTION 7. Said chapter 229 is hereby further
2 amended by inserting after section 6B the four follow-
3 ing sections: —

4 *Section 7.* If a cause of action exists against
5 an employer under section one of chapter one hundred
6 and fifty-three, or because of the negligence of the
7 employer himself, for an injury resulting in death
8 which is not instantaneous or is preceded by conscious
9 suffering, if there is any person who would have been
10 entitled to bring an action under section four, the
11 legal representatives of the deceased may, in the action
12 under said section one, recover damages both for the
13 injury and for the death, and, if the employer is also
14 liable at common law, may in a separate count in the
15 same action recover damages for conscious suffering
16 resulting from the same injury.

17 *Section 8.* If an action is brought under section
18 four, or if the action is brought by the legal representa-
19 tives under the preceding section or under section one
20 of chapter one hundred and fifty-three, such action
21 shall not fail by reason of the fact that it should have
22 been brought under the other section, but at any time
23 prior to final judgment may be so amended as to
24 provide against such failure.

25 *Section 9.* If under section four or section seven
26 damages are awarded for death or for injury and death,
27 they shall be assessed with reference to the degree of

28 culpability of the employer or of the person for whose
29 negligence the employer is liable.

30 The amount of damages which may be awarded in
31 an action brought under section four shall not be less
32 than two thousand nor more than fifteen thousand
33 dollars.

34 The amount of damages which may be awarded for
35 injury and death in an action brought under section
36 seven shall be apportioned by the jury between the
37 legal representatives of the employee and the persons
38 who would have been entitled under section four to
39 bring an action for his death.

40 *Section 10.* An action under section four or section
41 seven shall be subject to all the provisions of section
42 six of chapter one hundred and fifty-three relative to
43 notice to the employer of the time, place and cause
44 of the injury, and the time within which the action
45 shall be commenced.

1 SECTION 8. This act shall take effect on January
2 first, nineteen hundred and fifty, and shall apply only
3 to deaths resulting from injuries or accidents occurring
4 on or after said date, provided that the provisions of
5 this section shall not affect any right of action which
6 accrued prior to the effective date of this act.