

By Mr. Mara of Brockton, petition of Francis G. Mara relative to actions for wrongful death. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT RELATIVE TO ACTIONS FOR WRONGFUL 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 hereby
2 amended by striking section 2 thereof and inserting in place there-
3 of the following:

4 Any person who (1) by his negligence causes the death of a
5 person, or (2) by willful, wanton or reckless act causes the death of
6 a person under such circumstances that the deceased could have
7 recovered damages for personal injuries if his death had not
8 resulted, or (3) operates a common carrier of passengers and by his
9 negligence causes the death of a passenger, or (4) operates a
10 common carrier of passengers and by his willful, wanton or reck-
11 less act causes the death of a passenger under such circumstances
12 that the deceased could have recovered damages for personal
13 injuries if his death had not resulted, or (5) is responsible for a
14 breach of warranty arising under Article 2 of chapter one hundred
15 and six which results in injury to a person that causes death, shall
16 be liable in damages in the amount of: (1) the fair monetary value
17 of the decedent to the persons entitled to receive the damages
18 recovered, as provided in section one, including but not limited to
19 compensation for the loss of the reasonably expected net income
20 and services of the decedent to the persons entitled to the damages
21 recovered; (2) the fair monetary value up to, but not exceeding a
22 total amount for all damages to all persons entitled thereto of two
23 hundred and fifty thousand dollars, of the decedent to the persons
24 entitled to receive the damages recovered, as provided in section
25 one, including but not limited to compensation for the loss of the

26 protection care, assistance, society, companionship, comfort, guid-
27 ance, counsel, and advice of the decedent to the persons entitled to
28 the damages recovered; (3) the reasonable funeral and burial
29 expenses of the decedent; (4) punitive damages in an amount of not
30 less than five thousand dollars in such case as the decedent's death
31 was caused by the malicious, willful, wanton or reckless conduct of
32 the defendant or by the gross negligence of the defendant, except
33 as set forth in section two C of this chapter; and except that (1) the
34 liability of an employer to a person in his employment shall not be
35 governed by this section, (2) a person operating a railroad shall not
36 be liable for negligence in causing the death of a person while
37 walking or being upon such railroad contrary to law or to the
38 reasonable rules and regulations of the carrier and (3) a person
39 operating a street railway or electric railroad shall not be liable for
40 negligence for causing the death of a person while walking or being
41 upon that part of the street railway or electric railroad not within
42 the limits of a highway. A person shall be liable for the negligence
43 or the willful, wanton or reckless act of his agents or servants while
44 engaged in his business to the same extent and subject to the same
45 limits as he would be liable under this section for his own act.
46 Damages under this section shall be recovered in an action of tort
47 by the executor or administrator of the deceased. No recovery
48 shall be had under this section for a death which does not occur
49 within two years after the injury which caused the death. An action
50 to recover damages under this section shall be commenced within
51 two years from the date of death or within such time thereafter as is
52 provided by section four, four B, nine or ten of chapter two
53 hundred and sixty.

54 No person other than a spouse of the decedent, a minor child of
55 the decedent, or a person, including a parent of the decedent, who
56 was economically dependent on the decedent at the time of the
57 decedent's death shall be entitled to recover damages under this
58 section for loss of reasonably expected net income, services, protec-
59 tion, care, assistance, society, companionship, comfort, guid-
60 ance, counsel, advice or consortium.

1 SECTION 2. Chapter 229 of the General Laws is hereby fur-
2 ther amended by adding section 2C as follows:

3 No physician who is licensed to practice medicine in the Com-
4 monwealth under the provisions of section two of chapter one
5 hundred and twelve shall be liable for punitive damages in an
6 action brought under section two but if, in any such action, there is
7 a finding that the decedent's death was caused by the malicious,
8 willful, wanton or reckless conduct or by the gross negligence of
9 such physician, the court shall refer such finding to the board of
10 registration in medicine established under section ten of chapter
11 thirteen for investigation and appropriate disciplinary action,
12 including but not limited to revocation, suspension or cancellation
13 of such physician's certificate of registration, reprimand or
14 censure.

1 SECTION 3. Chapter 229 of the General Laws is hereby fur-
2 ther amended by adding section 2D as follows:

3 A release, judgment, agreement, contract or stipulation exe-
4 cuted by or on behalf of, or otherwise applicable to and binding
5 upon, a deceased person, which would constitute a bar or defense
6 to an action by such deceased person, had he survived, against a
7 provider of health care based on an act or acts of malpractice,
8 negligence, error, omission, mistake, or the unauthorized render-
9 ing of professional services by such provider of health care in the
10 provision of or failure to provide health care, shall be a complete
11 bar or defense to any action under section two for the wrongful
12 death of such deceased person resulting from the same act or acts
13 of malpractice, negligence, error, omission, mistake, or the unau-
14 thorized rendering of professional services.

1 SECTION 4. Chapter 229 of the General Laws is hereby fur-
2 ther amended by striking section six thereof and inserting in place
3 thereof the following:

4 In any civil action brought under section two or five A, damages
5 not exceeding the amount of two hundred and fifty thousand
6 dollars may be recovered for conscious pain and suffering result-
7 ing from the same injury, but any sum so recovered shall be held
8 and disposed of by the executors or administrators as assets of the
9 estate of the deceased.

1 SECTION 5. This act shall apply to all causes of action arising
2 on or after the effective date of this act.

1 SECTION 6. The provisions of this act are severable and if any
2 of its provisions shall be held unconstitutional by any court of
3 competent jurisdiction the decision of such court shall not impair
4 any of the remaining sections.