

HOUSE No. 4120

By Mr. McGee of Lynn, petition of Thomas W. McGee and another relative to compensatory damages in recovery under the wrongful death statute. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT PROVIDING FOR COMPENSATORY DAMAGES IN RECOVERY UNDER THE WRONGFUL DEATH STATUTE.

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

1 Chapter 229 of the General Laws is hereby amended by
2 striking out section 2, as most recently amended by chapter
3 801 of the acts of 1971, and inserting in place thereof the
4 following section: —

5 *Section 2.* A person who (1) by his negligence causes the
6 death of a person in the exercise of due care, or (2) by willful,
7 wanton or reckless act causes the death of a person under such
8 circumstances that the deceased could have recovered damages
9 for personal injuries if his death had not resulted, or (3)
10 operates a common carrier of passengers and by his negligence
11 causes the death of a passenger, or (4) operates a common
12 carrier of passengers and by his willful, wanton or reckless act
13 causes the death of a passenger under such circumstances that
14 the deceased could have recovered damages for personal injuries
15 if his death had not resulted, shall be liable in damages in the
16 sum of not less than five thousand nor more than one hundred
17 thousand dollars, to be assessed with reference to the degree of
18 his culpability or, at the option of the plaintiff, with reference
19 to the pecuniary loss and distributed as provided in section
20 one; except that (1) the liability of an employer to a person in
21 his employment shall not be governed by this section, (2) a

22 person operating a railroad shall not be liable for negligence in
23 causing the death of a person while walking or being upon such
24 railroad contrary to law or to the reasonable rules and regula-
25 tions of the carrier, and (3) a person operating a street railway
26 or electric railroad shall not be liable for negligence for causing
27 the death of a person while walking or being upon that part of
28 the street railway or electric railroad not within the limits of a
29 highway. A person shall be liable for the negligence or the
30 willful, wanton or reckless act of his agents or servants while
31 engaged in his business to the same extent and subject to the
32 same limits as he would be liable under this section for his own
33 act, except that the damages shall be assessed with reference to
34 the degree of culpability of his agents or servants or, at the
35 option of the plaintiff, with reference to the pecuniary loss.
36 Damages under this section shall be recovered in an action of
37 tort by the executor or administrator of the deceased. No
38 recovery shall be had under this section for a death which does
39 not occur within two years after the injury which caused the
40 death. An action to recover damages under this section shall be
41 commenced within two years from the date of death or within
42 such time thereafter as is provided by section four, four B,
43 nine or ten of chapter two hundred and sixty.