

SECOND REGULAR SESSION

[CORRECTED]

# HOUSE BILL NO. 1684

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DEGROOT.

5303H.02I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 537.090, RSMo, and to enact in lieu thereof one new section relating to damages in wrongful death actions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 537.090, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 537.090, to read as follows:

537.090. In every action brought under section 537.080, the trier of the facts may give to the party or parties entitled thereto such damages as the trier of the facts may deem fair and just for the death and loss thus occasioned, having regard to the pecuniary losses suffered by reason of the death, funeral expenses, and the reasonable **present** value of the services, consortium, companionship, comfort, instruction, guidance, counsel, training, and support of which those on whose behalf suit may be brought have been deprived by reason of such death and without limiting such damages to those which would be sustained prior to attaining the age of majority by the deceased or by the person suffering any such loss. **The trier of facts may also offset the costs not incurred by those on whose behalf suit may be brought for raising, supporting, and educating the deceased.** In addition, the trier of the facts may award such damages as the deceased may have suffered between the time of injury and the time of death and for the recovery of which the deceased might have maintained an action had death not ensued. The mitigating or aggravating circumstances attending the death may be considered by the trier of the facts, but damages for grief and bereavement by reason of the death shall not be recoverable. If the deceased was not employed full time and was at least fifty percent responsible

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 for the care of one or more minors or disabled persons, or persons over sixty-five years of age,  
17 there shall be a rebuttable presumption that the value of the care provided, regardless of the  
18 number of persons cared for, is equal to one hundred and ten percent of the state average weekly  
19 wage, as computed under section 287.250. If the deceased is under the age of eighteen, there  
20 shall be a rebuttable presumption that the annual ~~[pecuniary losses suffered by reason of the~~  
21 ~~death shall be calculated based on the annual income of the deceased's parents, provided that if~~  
22 ~~the deceased has only one parent earning income, then the calculation shall be based on such~~  
23 ~~income, but if the deceased had two parents earning income, then the calculation shall be based~~  
24 ~~on the average of the two incomes]~~ **earning capacity of the deceased once the deceased would**  
25 **reach eighteen years of age is equal to one hundred ten percent of the state average weekly**  
26 **wage, as determined under section 287.250. There shall be a rebuttable presumption that**  
27 **the deceased had no earning capacity before the deceased would reach eighteen years of**  
28 **age. A loss of the deceased's earning capacity shall not be considered as a pecuniary loss,**  
29 **but may be considered by the trier of facts in determining the reasonable value of the**  
30 **deceased's support of those on whose behalf suit may be brought. If a loss of the**  
31 **deceased's earning capacity is considered, the trier of facts shall also consider deductions**  
32 **for the deceased's own consumption, maintenance, and support during the deceased's**  
33 **expected lifetime and the deceased's support of other dependents during the deceased's**  
34 **expected lifetime.**

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