

# SENATE BILL No. 124

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-23-1.

**Synopsis:** Wrongful death actions and attorney's fees. Provides that, in a general wrongful death action, if a decedent leaves a widow or widower, dependent children, or dependent next of kin, damages may include reasonable attorney's fees incurred for bringing and maintaining the wrongful death action. Specifies that, in an adult wrongful death action, damages may include reasonable attorney's fees incurred for bringing and maintaining the action.

**Effective:** July 1, 2016.

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## Randolph Lonnie M

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January 5, 2016, read first time and referred to Committee on Civil Law.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 124

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A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-23-1-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. **(a)** When the death  
3 of one is caused by the wrongful act or omission of another, the  
4 personal representative of the former may maintain an action therefor  
5 against the latter, if the former might have maintained an action had he  
6 or she, as the case may be, lived, against the latter for an injury for the  
7 same act or omission. When the death of one is caused by the wrongful  
8 act or omission of another, the action shall be commenced by the  
9 personal representative of the decedent within two (2) years, and the  
10 damages shall be in such an amount as may be determined by the court  
11 or jury, including, but not limited to, reasonable medical, hospital,  
12 funeral, and burial expenses, **reasonable attorney's fees incurred for**  
13 **bringing and maintaining the action**, and lost earnings of such  
14 deceased person resulting from said wrongful act or omission. That part  
15 of the damages which is recovered for reasonable medical, hospital,  
16 funeral, and burial expense shall inure to the exclusive benefit of the  
17 decedent's estate for the payment thereof. **That part of the damages**



1 **which is recovered for reasonable attorney's fees shall inure to the**  
 2 **exclusive benefit of the estate and any other person who incurred**  
 3 **the attorney's fees to bring and maintain the action.** The remainder  
 4 of the damages, if any, shall, subject to the provisions of this article,  
 5 inure to the exclusive benefit of the widow or widower, as the case may  
 6 be, and to the dependent children, if any, or dependent next of kin, to  
 7 be distributed in the same manner as the personal property of the  
 8 deceased.

9 (b) If such decedent ~~described in subsection (a) depart~~ **departs** this  
 10 life leaving no such widow or widower, or dependent children or  
 11 dependent next of kin, surviving her or him, the damages inure to the  
 12 exclusive benefit of the person or persons furnishing necessary and  
 13 reasonable hospitalization or hospital services in connection with the  
 14 last illness or injury of the decedent, performing necessary and  
 15 reasonable medical or surgical services in connection with the last  
 16 illness or injury of the decedent, to a funeral director or funeral home  
 17 for the necessary and reasonable funeral and burial expenses, and to the  
 18 personal representative, as such, for the necessary and reasonable costs  
 19 and expenses of administering the estate and prosecuting or  
 20 compromising the action, including a reasonable attorney's fee, and in  
 21 case of a death under such circumstances, and when such decedent  
 22 leaves no such widow, widower, or dependent children, or dependent  
 23 next of kin, surviving him or her, the measure of damages to be  
 24 recovered shall be the total of the necessary and reasonable value of  
 25 such hospitalization or hospital service, medical and surgical services,  
 26 such funeral expenses, and such costs and expenses of administration,  
 27 including ~~attorney~~ **attorney's fees.**

28 SECTION 2. IC 34-23-1-2 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) As used in this  
 30 section, "adult person" means an unmarried individual:

- 31 (1) who does not have any dependents; and  
 32 (2) who is not a child (as defined in IC 34-23-2-1).

33 (b) If the death of an adult person is caused by the wrongful act or  
 34 omission of another person, only the personal representative of the  
 35 adult person may maintain an action against the person whose wrongful  
 36 act or omission caused the death of the adult person.

37 (c) In an action to recover damages for the death of an adult person,  
 38 the damages:

- 39 (1) must be in an amount determined by a:  
 40 (A) court; or  
 41 (B) jury;  
 42 (2) may not include:



- 1 (A) damages awarded for a person's grief; or  
 2 (B) punitive damages; and  
 3 (3) may include but are not limited to the following:  
 4 (A) Reasonable medical, hospital, funeral, and burial expenses  
 5 necessitated by the wrongful act or omission that caused the  
 6 adult person's death.  
 7 (B) Loss of the adult person's love and companionship.  
 8 **(C) Reasonable attorney's fees incurred for bringing and**  
 9 **maintaining the action.**  
 10 (d) Damages awarded under subsection (c)(3)(A) for medical,  
 11 hospital, funeral, and burial expenses inure to the exclusive benefit of  
 12 the adult person's estate for the payment of the expenses. **Damages**  
 13 **awarded under subsection (c)(3)(C) for reasonable attorney's fees**  
 14 **inure to the exclusive benefit of the adult person's estate and any**  
 15 **other person who incurred the attorney's fees to bring and**  
 16 **maintain the action.** The remainder of the damages inure to the  
 17 exclusive benefit of a nondependent parent or nondependent child of  
 18 the adult person.  
 19 (e) Aggregate damages that may be recovered under subsection  
 20 (c)(3)(B) may not exceed three hundred thousand dollars (\$300,000).  
 21 A jury may not be advised of the monetary limits placed on damages  
 22 under this subsection. If the jury awards the plaintiff damages under  
 23 subsection (c)(3)(B) in an amount that exceeds three hundred thousand  
 24 dollars (\$300,000), the court shall reduce that part of the damages  
 25 awarded to the plaintiff to three hundred thousand dollars (\$300,000).  
 26 (f) A parent or child who wishes to recover damages under this  
 27 section has the burden of proving that the parent or child had a  
 28 genuine, substantial, and ongoing relationship with the adult person  
 29 before the parent or child may recover damages.  
 30 (g) In an action brought under this section, a court or a jury may not  
 31 hear evidence concerning the lost earnings of the adult person that  
 32 occur as a result of the wrongful act or omission.  
 33 (h) In awarding damages under this section to more than one (1)  
 34 person, the court or the jury shall specify the amount of the damages  
 35 that should be awarded to each person.  
 36 (i) In an action brought under this section, the trier of fact shall  
 37 make a separate finding with respect to damages awarded under  
 38 subsection (c)(3)(B).

