

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 428

H.P. 316

House of Representatives, February 10, 2009

**An Act To Amend the Intestate Succession and Wills Laws
Concerning Wrongful Death**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DILL of Cape Elizabeth.
Cosponsored by Senator BLISS of Cumberland and
Representative: PRIEST of Brunswick.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 18-A MRSA §2-804, sub-§(b),** as amended by PL 2007, c. 280, §1, is
3 further amended to read:

4 (b). Every ~~such~~ wrongful death action must be brought by and in the name of the
5 personal representative of the deceased person, ~~and the~~. The amount recovered in every
6 such wrongful death action, except as otherwise provided, is for the exclusive benefit of
7 the surviving spouse if no minor children, ~~and~~ of the children if no surviving spouse, ~~and~~
8 one-half for the exclusive benefit of the surviving spouse and one-half for the exclusive
9 benefit of the minor children to be divided equally among them if there are both surviving
10 spouse and minor children, and to the deceased's heirs to be distributed as provided in
11 section 2-106 if there is neither surviving spouse nor minor children. The jury may give
12 ~~such~~ damages as it determines a fair and just compensation with reference to the
13 pecuniary injuries resulting from the death ~~to the persons for whose benefit the action is~~
14 ~~brought~~ and in addition shall give such damages as that will compensate the estate of the
15 deceased person for reasonable expenses of medical, surgical and hospital care and
16 treatment and for reasonable funeral expenses, ~~and in~~. In addition, the jury may give
17 damages not exceeding \$500,000 for the loss of comfort, society and companionship of
18 the deceased, including any damages for emotional distress arising from the same facts as
19 those constituting the underlying claim, to the persons for whose benefit the action is
20 brought, ~~and in addition~~. The jury may also give punitive damages not exceeding
21 ~~\$75,000, provided that \$250,000~~ \$250,000 if the action is commenced within 2 years after the
22 decedent's death. If a claim under this section is settled without an action having been
23 commenced, the amount paid in settlement must be distributed as provided in this
24 subsection. ~~No~~ A settlement on behalf of minor children is not valid unless approved by
25 the court, as provided in Title 14, section 1605.

26 **Sec. 2. 18-A MRSA §3-817, sub-§(a),** as amended by PL 2001, c. 217, §2, is
27 further amended to read:

28 (a). ~~No~~ A personal action or cause of action is not lost by the death of either party,
29 but the same, including claims for pecuniary losses of the deceased that would have been
30 realized but for the death, survives for and against the personal representative of the
31 deceased, except that actions or causes of action for the recovery of penalties and
32 forfeitures of money under penal statutes do not survive the death of the defendant. A
33 personal representative may seek relief from a judgment in an action to which the
34 deceased was a party to the same extent that the deceased might have done so.

35 **SUMMARY**

36 This bill amends the intestate succession and wills laws concerning wrongful death
37 by increasing the amount of punitive damages that may be awarded from \$75,000 to
38 \$250,000. The bill also clarifies that claims for pecuniary losses are not lost by the death
39 of either party.