

SUBJECT: Survival of a wrongful death suit upon the death of the plaintiff

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Bosse, Janek, Hope, Nixon, Smithee, Zbranek
0 nays
3 absent — Clark, Dutton, Martinez Fischer

WITNESSES: For — None
Against — None
On — Mike Ramsey, Texas Trial Lawyers Association

BACKGROUND: Under current law, if a surviving spouse brings a wrongful death action based on the death of the deceased spouse, and the surviving spouse subsequently dies, the surviving spouse's cause of action for wrongful death dies with that spouse.

DIGEST: CSSB 947 would amend the Civil Practice and Remedies Code by adding sec. 71.023 to address the death of a plaintiff. Under this section, if a surviving spouse brought a wrongful death action based on the death of the deceased spouse, and the surviving spouse subsequently died, then a child of the deceased spouse (whose death prompted the wrongful death action) could be substituted as the plaintiff. The action would continue as though the surviving spouse had not died.

The bill would apply to an action for any kind of damages. It would not affect an individual's right to recover damages in any suit brought in that individual's own name.

CSSB 947 would define "child" to mean a child who was an heir of the body of the parent within the meaning of Texas Constitution, Art. 16, sec. 26.

The bill would take effect September 1, 2001, and only would apply to a cause of action accruing after that date.

SUPPORTERS
SAY:

CSHB 947 would be a deterrent for defendants who wish to purposefully stall or delay wrongful death actions. Under current law, if the surviving spouse dies, then the defendant is not liable for damages arising out of a wrongful death action brought by that spouse. The cause of action for wrongful death dies with the surviving spouse. This sometimes provides an incentive for defendants to stall or delay wrongful death actions, particularly in cases where the surviving spouse is elderly or in poor health. This bill would remove that incentive.

The bill would ensure that the family of a wrongful death victim would receive just compensation, even if the surviving spouse died. It would not affect a surviving child's right to seek damages on the child's own behalf for the wrongful death of the child's parent.

CSHB 947 would not create a new cause of action. The bill only would allow continuation of a wrongful death cause of action upon the death of the surviving spouse.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

In the bill as filed, sec. 71.023(b) would have allowed substitution of the child of either spouse. The committee substitute only would allow for substitution of the spouse who was the subject of the wrongful death cause of action.