

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 1449, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Smalley

Smalley-TK-FS-Req#1735
2/18/2016 4:55 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

FLOOR SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1449

By: Calvey of the House

and

Smalley of the Senate

FLOOR SUBSTITUTE

An Act relating to wrongful death actions; amending
12 O.S. 2011, Section 1053, which relates to
limitation of actions and damages; clarifying
applicability of certain agreement to certain
actions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2011, Section 1053, is
amended to read as follows:

Section 1053. A. When the death of one is caused by the
wrongful act or omission of another, the personal representative of
the former may maintain an action therefor against the latter, or
his or her personal representative if he or she is also deceased, if
the former might have maintained an action, had he or she lived,
against the latter, or his or her representative, for an injury for
the same act or omission. The action shall be considered a

1 derivative action subject to a valid agreement entered by or on
2 behalf of the decedent to mediate, arbitrate or otherwise submit the
3 action to alternative dispute resolution. The action must be
4 commenced within two (2) years.

5 B. The damages recoverable in actions for wrongful death as
6 provided in this section shall include the following: Medical and
7 burial expenses, which shall be distributed to the person or
8 governmental agency as defined in Section 5051.1 of Title 63 of the
9 Oklahoma Statutes who paid these expenses, or to the decedent's
10 estate if paid by the estate.

11 The loss of consortium and the grief of the surviving spouse,
12 which shall be distributed to the surviving spouse.

13 The mental pain and anguish suffered by the decedent, which
14 shall be distributed to the surviving spouse and children, if any,
15 or next of kin in the same proportion as personal property of the
16 decedent.

17 The pecuniary loss to the survivors based upon properly
18 admissible evidence with regard thereto including, but not limited
19 to, the age, occupation, earning capacity, health habits, and
20 probable duration of the decedent's life, which must inure to the
21 exclusive benefit of the surviving spouse and children, if any, or
22 next of kin, and shall be distributed to them according to their
23 pecuniary loss.
24

1 The grief and loss of companionship of the children and parents
2 of the decedent, which shall be distributed to them according to
3 their grief and loss of companionship.

4 C. In proper cases, as provided by Section 9.1 of Title 23 of
5 the Oklahoma Statutes, punitive or exemplary damages may also be
6 recovered against the person proximately causing the wrongful death
7 or the person's representative if such person is deceased. Such
8 damages, if recovered, shall be distributed to the surviving spouse
9 and children, if any, or next of kin in the same proportion as
10 personal property of the decedent.

11 D. Where the recovery is to be distributed according to a
12 person's pecuniary loss or loss of companionship, the judge shall
13 determine the proper division.

14 E. The above-mentioned distributions shall be made after the
15 payment of legal expenses and costs of the action.

16 F. 1. The provisions of this section shall also be available
17 for the death of an unborn child as defined in Section 1-730 of
18 Title 63 of the Oklahoma Statutes.

19 2. The provisions of this subsection shall not apply to:

- 20 a. acts which cause the death of an unborn child if those
21 acts were committed during a legal abortion to which
22 the pregnant woman consented, or

1 b. acts which are committed pursuant to the usual and
2 customary standards of medical practice during
3 diagnostic testing or therapeutic treatment.

4 3. Under no circumstances shall the mother of the unborn child
5 be found liable for causing the death of the unborn child unless the
6 mother has committed a crime that caused the death of the unborn
7 child.

8 SECTION 2. This act shall become effective November 1, 2015.

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10 55-1-1735 TEK 2/18/2016 4:55:47 PM