
By: **Delegate Fulton**

Introduced and read first time: February 23, 1999

Assigned to: Rules and Executive Nominations

Re-referred to: Judiciary, February 26, 1999

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 27, 1999

CHAPTER _____

1 AN ACT concerning

2 **Wrongful Death - Intestate Succession - Parent Not Entitled to Damages or**
3 **Distribution**

4 FOR the purpose of prohibiting a parent ~~of a child who has been the victim of sexual~~
5 ~~abuse by that parent who has committed certain crimes or acts~~ from receiving
6 damages awarded in an action for wrongful death of a child of the parent under
7 certain circumstances; prohibiting a parent ~~of a child who has been the victim of~~
8 ~~sexual abuse by that parent who has committed certain crimes or acts~~ from
9 receiving a distribution from the intestate estate of the child under certain
10 circumstances; providing for the application of this Act; making this Act an
11 emergency measure; and generally relating to ~~the prevention of a parent who~~
12 ~~has sexually abused the child of the parent from a prohibition against a parent~~
13 who commits certain crimes or acts receiving any benefit from an action for
14 wrongful death or an intestate succession distribution under certain
15 circumstances.

16 BY repealing and reenacting, with amendments,
17 Article - Courts and Judicial Proceedings
18 Section 3-904
19 Annotated Code of Maryland
20 (1998 Replacement Volume)

21 BY adding to
22 Article - Estates and Trusts
23 Section 3-111
24 Annotated Code of Maryland

1 (1991 Replacement Volume and 1998 Supplement)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Courts and Judicial Proceedings**

5 3-904.

6 (a) (1) An action under this subtitle shall be for the benefit of the wife,
7 husband, parent, and child of the deceased person.

8 (2) A PARENT MAY NOT BE A BENEFICIARY IN A WRONGFUL DEATH
9 ACTION FOR THE DEATH OF A CHILD OF THE PARENT IF:

10 (I) 1. THE PARENT IS CONVICTED UNDER ARTICLE 27, § 35C, §
11 335, § 462, § 463, § 464, § 464A, § 464B, OR § 464C OF THE CODE; OR

12 2. THE PARENT COMMITTED AN ACT PROHIBITED UNDER
13 ARTICLE 27, § 35C, § 335, § 462, § 463, § 464, § 464A, § 464B, OR § 464C OF THE CODE;

14 (II) THE OTHER PARENT OF THE CHILD IS THE VICTIM OF THE
15 CRIME OR ACT DESCRIBED UNDER ITEM (I) OF THIS PARAGRAPH; AND

16 (III) THE OTHER PARENT OF THE CHILD IS A CHILD OF THE PARENT.

17 (b) If there are no persons who qualify under subsection (a), an action shall be
18 for the benefit of any person related to the deceased person by blood or marriage who
19 was substantially dependent upon the deceased.

20 (c) (1) In an action under this subtitle, damages may be awarded to the
21 beneficiaries proportioned to the injury resulting from the wrongful death.

22 (2) Subject to § 11-108(d)(2) of this article, the amount recovered shall be
23 divided among the beneficiaries in shares directed by the verdict.

24 (d) The damages awarded under subsection (c) are not limited or restricted by
25 the "pecuniary loss" or "pecuniary benefit" rule but may include damages for mental
26 anguish, emotional pain and suffering, loss of society, companionship, comfort,
27 protection, marital care, parental care, filial care, attention, advice, counsel, training,
28 guidance, or education where applicable for the death of:

29 (1) A spouse;

30 (2) A minor child;

31 (3) A parent of a minor child; or

32 (4) An unmarried child who is not a minor child if:

33 (i) The child is 21 years old or younger; or

1 (ii) A parent contributed 50 percent or more of the child's support
2 within the 12-month period immediately before the date of death of the child.

3 (e) For the death of a child, who is not described under subsection (d) of this
4 section, or a parent of a child, who is not a minor child, the damages awarded under
5 subsection (c) are not limited or restricted by the "pecuniary loss" or "pecuniary
6 benefit" rule but may include damages for mental anguish, emotional pain and
7 suffering, loss of society, companionship, comfort, protection, care, attention, advice,
8 counsel, training, education, or guidance where applicable.

9 (f) Only one action under this subtitle lies in respect to the death of a person.

10 (g) (1) Except as provided in paragraph (2) of this subsection, an action
11 under this subtitle shall be filed within three years after the death of the injured
12 person.

13 (2) (i) In this paragraph "occupational disease" means a disease
14 caused by exposure to any toxic substance in the person's workplace and contracted
15 by a person in the course of the person's employment.

16 (ii) If an occupational disease was a cause of a person's death, an
17 action shall be filed:

- 18 1. Within 10 years of the time of death; or
19 2. Within 3 years of the date when the cause of death was
20 discovered, whichever is the shorter.

21 (h) For the purposes of this section, a person born to parents who have not
22 participated in a marriage ceremony with each other is considered to be the child of
23 the mother. The person is considered to be the child of the father only if the father:

24 (1) Has been judicially determined to be the father in a proceeding
25 brought under § 5-1010 of the Family Law Article or § 1-208 of the Estates and
26 Trusts Article; or

27 (2) Prior to the death of the child:

28 (i) Has acknowledged himself, in writing, to be the father;

29 (ii) Has openly and notoriously recognized the person to be his
30 child; or

31 (iii) Has subsequently married the mother and has acknowledged
32 himself, orally or in writing, to be the father.

33 ~~(f) THIS SECTION DOES NOT APPLY TO A PARENT WHO HAS BEEN CONVICTED~~
34 ~~OF SEXUAL ABUSE OF A CHILD OF THAT PARENT UNDER ARTICLE 27, § 35C OF THE~~
35 ~~CODE.~~

1

Article - Estates and Trusts

2 3-111.

3 ~~SECTION 3-104 OF THIS SUBTITLE DOES NOT APPLY TO A PARENT WHO HAS~~
4 ~~BEEN CONVICTED OF SEXUAL ABUSE OF A CHILD OF THAT PARENT UNDER ARTICLE~~
5 ~~27, § 35C OF THE CODE.~~

6 A SURVIVING PARENT IS NOT ENTITLED UNDER § 3-104 OF THIS SUBTITLE TO A
7 DISTRIBUTION OF THE NET ESTATE OF A CHILD OF THE PARENT IF:

8 (1) (I) THE PARENT IS CONVICTED UNDER ARTICLE 27, § 35C, § 335, §
9 462, § 463, § 464, § 464A, § 464B, OR § 464C OF THE CODE; OR

10 (II) THE PARENT COMMITTED ANY ACT PROHIBITED UNDER
11 ARTICLE 27, § 35C, § 335, § 462, § 463, § 464, § 464A, § 464B, OR § 464C OF THE CODE;

12 (2) THE OTHER PARENT OF THE CHILD IS THE VICTIM OF THE CRIME OR
13 ACT DESCRIBED UNDER ITEM (1) OF THIS SUBSECTION; AND

14 (3) THE OTHER PARENT OF THE CHILD IS A CHILD OF THE PARENT.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
16 construed retroactively and shall be applied to and interpreted to affect a claim for
17 damages in an action for wrongful death or for rights in an intestate estate, of a child
18 whose death occurred on or after August 1, 1998.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency
20 measure, is necessary for the immediate preservation of the public health and safety,
21 has been passed by a ye and nay vote supported by three-fifths of all the members
22 elected to each of the two Houses of the General Assembly, and shall take effect from
23 the date it is enacted.