

CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES OCCURRING OUT OF
STATE

SUBCHAPTER A. WRONGFUL DEATH

Sec. 71.001. DEFINITIONS. In this subchapter:

(1) "Corporation" means a municipal, private, public, or quasi-public corporation other than a county or a common or independent school district.

(2) "Person" means an individual, association of individuals, joint-stock company, or corporation or a trustee or receiver of an individual, association of individuals, joint-stock company, or corporation.

(3) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(4) "Individual" includes an unborn child at every stage of gestation from fertilization until birth.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 822, Sec. 1.01, eff. Sept. 1, 2003.

Sec. 71.002. CAUSE OF ACTION. (a) An action for actual damages arising from an injury that causes an individual's death may be brought if liability exists under this section.

(b) A person is liable for damages arising from an injury that causes an individual's death if the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness, unskillfulness, or default.

(c) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a proprietor, owner, charterer, or hirer of an industrial or public utility plant or of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers; and

(2) the injury was caused by the person's or his agent's or servant's wrongful act, neglect, carelessness,

unskillfulness, or default.

(d) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a receiver, trustee, or other person in charge of or in control of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the injury was caused by:

(A) the person's wrongful act, neglect, carelessness, unskillfulness, or default;

(B) the person's servant's or agent's wrongful act, neglect, carelessness, unfitness, unskillfulness, or default;
or

(C) a bad or unsafe condition of the railroad, street railway, or other machinery under the person's control or operation.

(e) A person is liable for damages arising from an injury that causes an individual's death if:

(1) the person is a receiver, trustee, or other person in charge of or in control of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery; and

(2) the action could have been brought against the owner of the railroad, street railway, or other machinery if he had been acting as operator.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.003. APPLICATION; CERTAIN CONDUCT EXCEPTED. (a) This subchapter applies only if the individual injured would have been entitled to bring an action for the injury if the individual had lived or had been born alive.

(b) This subchapter applies whether the injury occurs inside or outside this state.

(c) This subchapter does not apply to a claim for the death of an individual who is an unborn child that is brought against:

(1) the mother of the unborn child;

(2) a physician or other licensed health care provider, if the death is the intended result of a lawful medical procedure performed by the physician or health care provider with the requisite consent;

(3) a person who dispenses or administers a drug in accordance with law, if the death is the result of the dispensation or administration of the drug; or

(4) a physician or other health care provider licensed in this state, if the death directly or indirectly is caused by, associated with, arises out of, or relates to a lawful medical or health care practice or procedure of the physician or the health care provider.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 822, Sec. 1.02, eff. Sept. 1, 2003.

Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION. (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.

(b) The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all.

(c) If none of the individuals entitled to bring an action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.005. EVIDENCE RELATING TO MARITAL STATUS. In an action under this subchapter, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if it is true, but the defense is prohibited from directly or indirectly mentioning or alluding to a common-law marriage, an extramarital relationship, or the marital prospects of the surviving spouse.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.0055. EVIDENCE OF PREGNANCY. In an action under this subchapter for the death of an individual who is an unborn child, the plaintiff shall provide medical or other evidence that the mother of the individual was pregnant at the time of the individual's death.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 1.03, eff. Sept. 1, 2003.

Sec. 71.006. EFFECT OF FELONIOUS ACT. An action under this subchapter is not precluded because the death is caused by a felonious act or because there may be a criminal proceeding in relation to the felony.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.007. INEFFECTIVE AGREEMENT. An agreement between the owner of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery and an individual, corporation, trustee, receiver, lessee, joint-stock association, or other entity in control of or operating the vehicle, plant, or other machinery does not release the owner or the entity controlling or operating the vehicle, plant, or other machinery from liability provided by this subchapter.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.008. DEATH OF DEFENDANT. (a) If a defendant dies while an action under this subchapter is pending or if the individual against whom the action may have been instituted dies before the action is begun, the executor or administrator of the estate may be made a defendant, and the action may be prosecuted as though the defendant or individual were alive.

(b) A judgment in favor of the plaintiff shall be paid in due course of administration.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.009. EXEMPLARY DAMAGES. When the death is caused by

the wilful act or omission or gross negligence of the defendant, exemplary as well as actual damages may be recovered.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.010. AWARD AND APPORTIONMENT OF DAMAGES. (a) The jury may award damages in an amount proportionate to the injury resulting from the death.

(b) The damages awarded shall be divided, in shares as found by the jury in its verdict, among the individuals who are entitled to recover and who are alive at that time.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS. Damages recovered in an action under this subchapter are not subject to the debts of the deceased.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.012. QUALIFICATION OF FOREIGN PERSONAL REPRESENTATIVE. If the executor or administrator of the estate of a nonresident individual is the plaintiff in an action under this subchapter, the foreign personal representative of the estate who has complied with the requirements of Section 95, Texas Probate Code, for the probate of a foreign will is not required to apply for ancillary letters testamentary under Section 105, Texas Probate Code, to bring and prosecute the action.

Added by Acts 1999, 76th Leg., ch. 382, Sec. 1, eff. May 29, 1999.

SUBCHAPTER B. SURVIVAL

Sec. 71.021. SURVIVAL OF CAUSE OF ACTION. (a) A cause of action for personal injury to the health, reputation, or person of an injured person does not abate because of the death of the injured person or because of the death of a person liable for the injury.

(b) A personal injury action survives to and in favor of the heirs, legal representatives, and estate of the injured person. The action survives against the liable person and the person's legal representatives.

(c) The suit may be instituted and prosecuted as if the liable person were alive.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 71.022. QUALIFICATION OF FOREIGN PERSONAL REPRESENTATIVE. If the executor or administrator of the estate of a nonresident individual is the plaintiff in an action under this subchapter, the foreign personal representative of the estate who has complied with the requirements of Section 95, Texas Probate Code, for the probate of a foreign will is not required to apply for ancillary letters testamentary under Section 105, Texas Probate Code, to bring and prosecute the action.

Added by Acts 1999, 76th Leg., ch. 382, Sec. 2, eff. May 29, 1999.

SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION OUT OF STATE

Sec. 71.031. ACT OR OMISSION OUT OF STATE. (a) An action for damages for the death or personal injury of a citizen of this state, of the United States, or of a foreign country may be enforced in the courts of this state, although the wrongful act, neglect, or default causing the death or injury takes place in a foreign state or country, if:

(1) a law of the foreign state or country or of this state gives a right to maintain an action for damages for the death or injury;

(2) the action is begun in this state within the time provided by the laws of this state for beginning the action;

(3) for a resident of a foreign state or country, the action is begun in this state within the time provided by the laws of the foreign state or country in which the wrongful act, neglect, or default took place; and

(4) in the case of a citizen of a foreign country, the country has equal treaty rights with the United States on behalf of its citizens.

(b) Except as provided by Subsection (a), all matters pertaining to procedure in the prosecution or maintenance of the action in the courts of this state are governed by the law of this

state.

(c) The court shall apply the rules of substantive law that are appropriate under the facts of the case.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 424, Sec. 3, eff. May 29, 1997.

SUBCHAPTER D. FORUM NON CONVENIENS

Sec. 71.051. FORUM NON CONVENIENS. (a) Repealed by Acts 2003, 78th Leg., ch. 204, Sec. 3.09.

(b) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties a claim or action to which this section applies would be more properly heard in a forum outside this state, the court shall decline to exercise jurisdiction under the doctrine of forum non conveniens and shall stay or dismiss the claim or action. In determining whether to grant a motion to stay or dismiss an action under the doctrine of forum non conveniens, the court shall consider whether:

(1) an alternate forum exists in which the claim or action may be tried;

(2) the alternate forum provides an adequate remedy;

(3) maintenance of the claim or action in the courts of this state would work a substantial injustice to the moving party;

(4) the alternate forum, as a result of the submission of the parties or otherwise, can exercise jurisdiction over all the defendants properly joined to the plaintiff's claim;

(5) the balance of the private interests of the parties and the public interest of the state predominate in favor of the claim or action being brought in an alternate forum, which shall include consideration of the extent to which an injury or death resulted from acts or omissions that occurred in this state; and

(6) the stay or dismissal would not result in unreasonable duplication or proliferation of litigation.

(c) The court may set terms and conditions for staying or dismissing a claim or action under this section as the interests of justice may require, giving due regard to the rights of the parties

to the claim or action. If a moving party violates a term or condition of a stay or dismissal, the court shall withdraw the order staying or dismissing the claim or action and proceed as if the order had never been issued. Notwithstanding any other law, the court shall have continuing jurisdiction for purposes of this subsection.

(d) A request for stay or dismissal under this section is timely if it is filed not later than 180 days after the time required for filing a motion to transfer venue of the claim or action. The court may rule on a motion filed under this section only after a hearing with notice to all parties not less than 21 days before the date specified for the hearing. The court shall afford all of the parties ample opportunity to obtain discovery of information relevant to the motion prior to a hearing on a motion under this section. The moving party shall have the responsibility to request and obtain a hearing on such motion at a reasonable time prior to commencement of the trial, and in no case shall the hearing be held less than 30 days prior to trial.

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court may not stay or dismiss the action under Subsection (b) if the plaintiffs who are legal residents of this state are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state.

(f) A court that grants a motion to stay or dismiss an action under the doctrine of forum non conveniens shall set forth specific findings of fact and conclusions of law.

(g) Any time limit established by this section may be extended by the court at the request of any party for good cause shown.

(h) In this section:

(1) "Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section.

(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death. In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery. The term does not include a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section.

(i) This section applies to actions for personal injury or wrongful death. This section shall govern the courts of this state in determining issues under the doctrine of forum non conveniens in the actions to which it applies, notwithstanding Section 71.031(a) or any other law.

Added by Acts 1993, 73rd Leg., ch. 4, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 424, Sec. 1, eff. May 29, 1997; Acts 2003, 78th Leg., ch. 204, Sec. 3.04, 3.09, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. [248](#), Sec. 1, eff. September 1, 2005.