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March 4, 2019

Ms. Dana Bieber
Executive Director
Liability Reform Coalition
2001 6th Avenue, Suite 2700
Seattle, WA 98121

RE: Impact Analysis of Washington's House Bill 1135 and Senate Bill 5163 on Local Government Costs

Dear Ms. Bieber:

Milliman Inc. (Milliman) has been asked by the Liability Reform Coalition (LRC) to evaluate the impact of proposed legislation in the State of Washington on the costs of wrongful death claims. This analysis has been done only for costs related to county and city governments in Washington as well as school districts and transit agencies (i.e., local government entities). Additional costs will be realized by the state government and other local government entities in Washington. Milliman was asked to primarily focus its analysis on the impact of this proposed legislation on the expected frequency of wrongful death claims. The proposed legislation is also expected to impact the average cost of wrongful death claims, so several scenarios are included reflecting different changes in the average claim cost. It is important to keep in mind that the total impact of the legislation on local government costs is the compound effect of changes to both the frequency and the severity of wrongful death claims, as well as changes in the cost of defending such actions.

Executive Summary

In our analysis of the impact of the wrongful death statutes, we relied on the house bill report for HB 1135, the senate bill report for SB 5163, and conversations with Washington attorneys who are familiar with the current wrongful death statutes and the proposed wrongful death legislation. The latest version of this proposed legislation, Substitute House Bill 1135 and Substitute Senate Bill 5163, would modify several of the wrongful death statutes by increasing the number of eligible beneficiaries under these statutes, and consequently, increasing the potential costs incurred by state and local government offices. We anticipate the following under these proposed bills:

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- We expect the overall frequency of wrongful death, survival, and child death claims to increase 55% under the proposed legislation, which we estimate will cost local government entities in Washington an additional \$7.55 million per year and increase by 9.8% each year, as explained below;
 - We expect the frequency of wrongful death and survival claims to increase 44% because the revised law allows for an increased number of parents, and siblings to become secondary beneficiaries under wrongful death actions;
 - We also expect a significant increase (+76%) in the frequency of child death claims because the proposed law allows parents and legal guardians to bring a cause of action without having to show dependence on the child;
- In the event that the average severity of wrongful death claims also increases under the proposed bill, the total impact on wrongful death costs would be greater than \$7.55 million per year. For example, if the average severity of wrongful death claims increases by 20% due to the proposed wrongful death statutes, as estimated by the Washington Attorney General’s Office, we estimate the proposed legislation will cost local government entities in Washington an additional \$11.81 million per year; and
- The data used in our analysis represents only some of the local government entities (counties, cities, school districts, and transit agencies) and does not account for state government organizations or other local government entities such as airports, irrigation agencies, port districts, or water and sewer agencies. We expect the anticipated frequency and severity changes would also apply to the wrongful death claim costs incurred by Washington’s state government organizations and other local government entities. As such, we expect the total impact on all government entities in Washington to exceed \$7.55 million per year.

In order to quantify the impact of the proposed legislation on the number of wrongful death claims, we used U.S. census data to identify the number of Washington residents whose wrongful death could potentially lead to a cause of action under the current law and proposed bill. We then measured the relationship between the number of potential decedents under the proposed bill and the number of potential decedents under the current statute in order to estimate the potential frequency impact of the proposed legislation.

Table 1 displays a summary of the potential decedents under the current and proposed statutes:

Table 1
Potential Decedents Under the Current and Proposed Statutes
(millions)

Statute	Potential Wrongful Death Decedents	Potential Child Death Decedents	Total Number of Potential Decedents
Current	3.407	1.636	5.043
SB 5163	4.888	2.882	7.770
% Change	43.5%	76.1%	54.1%

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As can be seen in the table above, our analysis indicates that the proposed wrongful death statute could lead to more than a 54% increase in the number of wrongful death claims each year. To calculate the dollar impact of the proposed wrongful death statute, we selected an overall frequency change of +55%.

In order to translate this expected frequency impact into the expected impact on total costs, we analyzed actual historical claim severity data. Specifically, we reviewed 30 years of historical claim data from the Washington Counties Risk Pool (WCRP), 33 years of historical claim data from the Washington Cities Insurance Authority (WCIA), 32 years of historical claim data from the Washington Schools Risk Management Pool (WSRMP), and 22 years of historical claim data from the Washington State Transit Insurance Pool (WSTIP). This data represents 213 incurred claims against these local government entities based on the provisions of the current wrongful death statutes.

To determine the overall impact of the expected increase in frequency on the total wrongful death claim costs, we estimated the current average claim severity and the average annual number of claims under the current statutes for each local government entity, and then projected those amounts to accident year 2019 levels. The number of projected claims for each local government entity was adjusted by the proportion of the total population of the State of Washington that is represented by the members of each entity. As such, the resulting projected annual claims represent the projected annual number of claims **statewide** for each level of local government. In this portion of our analysis of the projected costs of the proposed legislation, we assumed that the average claim severity would not change as a result of the proposed legislation.

Table 2 displays the results of these calculations, showing the change in total wrongful death costs due to a 55% increase in the number of wrongful death claims. As seen in the table below, the impact of this expected frequency change is an increase in the wrongful death costs of approximately \$7.55 million per year:

Table 2
Change in Annual Wrongful Death Costs
Due to a 55% Increase in Frequency – Local Governments Only*

Statute	Number of Claims	Average Claim Amount	Total Amount of Claims
Current	20.5	\$670,000	\$13,735,000
SB 5163	31.8	\$670,000	\$21,289,250
Increase	11.3	–	\$7,554,250

* In the event that the average severity of wrongful death claims also increases under the proposed bill, the total impact on wrongful death costs would be greater than \$7.6 million per year, as estimated above.

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Our analysis focused on the impact of this new bill as it related to the historical data provided by the Washington Counties Risk Pool, Washington Cities Insurance Authority, Washington Schools Risk Management Pool, and Washington State Transit Insurance Pool. This data represents exposures and claims from some local government entities and does not account for state government organizations or other local government entities such as water and sewer agencies. We would expect the relationships found in the census data, which reflect Washington’s total population and underlie the expected frequency change, to also apply to the wrongful death claim costs incurred by Washington’s state government organizations or other local government entities.

Although we focused our analysis on the impact of this proposed legislation on the expected frequency of wrongful death claims, there is also potential for an increase in the average claim amount. The proposed legislation added language related to the types of damages the beneficiary is entitled to and clearly defines both economic and non-economic damages. An increase in the average severity of wrongful death claims is not only possible, but likely under the new statutory language. While the projected change in severity cannot be directly measured with the data available, **Table 3** below displays the results of our analysis under three different severity scenarios that could result from the proposed legislation.

Table 3
Change in Annual Wrongful Death Costs
Due to a Frequency Increase & Several Severity Scenarios – Local Governments Only*

Statute	Change in Severity	Number of Claims	Average Claim Amount	Total Amount of Claims	Increase in Total Amount of Claims
Current	--	20.5	\$670,000	\$13,735,000	--
SB 5163	0%	31.8	\$670,000	\$21,289,250	\$7,554,250
SB 5163	20%	31.8	\$804,000	\$25,547,100	\$11,812,100
SB 5163	30%	31.8	\$871,000	\$27,676,025	\$13,941,025

* The dollar amounts in the tables above reflect indemnity costs only and do not include loss adjustment expenses such as the cost to defend and adjust claims. While loss adjustment expenses would potentially be impacted by any change in the expected number of claims, quantifying the impact of any change in loss adjustment expenses due to the proposed legislation was considered outside of the scope of our analysis.

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Background – Proposed Legislation

Our analysis compares the current wrongful death statutes to Substitute House Bill 1135 and Substitute Senate Bill 5163. This bill modifies the language of the general wrongful death, general survival, special survival, and wrongful death of a child actions. A summary of the changes in these actions being proposed with Substitute House Bill 1135 and Substitute Senate Bill 5163 and the potential impact on the number of claims is included in this report as **Exhibit 1**. In understanding the statutory changes contained in this bill we relied on the house bill report for HB 1135, the senate bill report for SB 5163, and discussions with Washington lawyers familiar with the legislation and Washington case law on wrongful death claims. Our analysis focuses on the change in expected frequency as well as several scenarios of potential changes in the expected severity of wrongful death claims under the new statute compared to the current statute.

Frequency – Wrongful Death and Survival

It is our understanding that the general wrongful death action, the general survival action, and the special survival action work in conjunction with each other. The general survival and special survival actions provide for situations where potential beneficiaries under the wrongful death action are no longer alive. In general, we are assuming that a wrongful death can result in a claim being brought under only one of these three statutes.

With the proposed revisions to these wrongful death and survival actions, we expect an increase in the frequency of wrongful death claims. Under the current statutes, if the decedent has a spouse or children, then there is a potential claim. If there is no spouse or children, then parents or siblings may bring a wrongful death action if they relied on the decedent for financial support and resided within the U.S. at the time of the decedent's death. Under the proposed legislation, the dependence and residency requirements are removed.

In summary, if the decedent has a spouse or children we do not expect any change in the frequency of claims under the wrongful death and survival actions. If the decedent is single, widowed, and without children, we expect an increase in the frequency of claims because parents and siblings can now bring an action under the wrongful death statutes.

Frequency – Child Death

Under the wrongful death of a child action, the new legislation will allow parents and legal guardians to bring an action regardless of the decedent's age (they only need to demonstrate significant involvement in the child's life). Under the current law, parents could only bring an action if the child was a minor, or if they could demonstrate that they were substantially dependent on an adult child for support.

The proposed legislation will increase the number of child death claims by allowing an action for decedents, regardless of age, who have living parents.

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Data Sources

2010 U.S. Census Data

We retrieved U.S. Census Data for the State of Washington by age, by sex, and by those with and without children. It should be noted that 2010 data is the most recent census data available at such a refined level of detail. By dividing the population of Washington into different segments based on the above characteristics, we were able to obtain underlying Washington demographics that would allow us to estimate the impact of the proposed legislation on the frequency of wrongful death claims. According to the 2010 U.S. Census Data, there are approximately 6.7 million residents in the State of Washington.

2008-2012 American Community Survey

To estimate demographics by marital status, we relied on population distribution information from the 2008-2012 American Community Survey, which contains population distribution information by age, sex, and marital status.

Washington Claims Data from Local Government Entities

We received claims data from the Washington Counties Risk Pool, the Washington Cities Insurance Authority, the Washington Schools Risk Management Pool, and the Washington State Transit Insurance Pool. This data from each entity included such details as the loss date, the indemnity payments made, and a brief description of the case.

Collectively, the data we received for this analysis includes 213 incurred claims with accident dates ranging from 1986 through 2017, although it should be noted that the claims history for each individual entity does not necessarily correspond to the same historical experience period. The 213 claims have individual indemnity payments ranging from \$300 to \$11.5 million and in total comprise indemnity payments of \$106.4 million. The data also included 616 reported claims with no payments; these claims have been excluded from our analysis.

Analysis – The Use of Census Data

General Use

Our general approach is to first identify those segments of the population whose wrongful death could lead to an action under the current statutes. Then we identify the additional segments of the population whose wrongful death could lead to an action under the proposed legislation. The additional segments of the population added by the proposed legislation divided by the segments of the population under the current statute provides an estimate of the frequency increase in wrongful death actions caused by the statutory changes. We have included a chart as **Exhibit 2** of this report that shows various segments of the population and the equations we used to estimate the segments of the population.

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Wrongful Death and Survival Claims

As explained in the Background section of this report, the segment of the population whose wrongful death could lead to an action under the current statutes includes people with a living spouse, people with children, and people who financially support their parents or siblings. Using the population data we can determine the segment of the population with a living spouse or with children. We must estimate the number of adults who support parents or siblings. Using the equations outlined in **Exhibit 2**, we have shown the results on **Exhibit 4**. Under the wrongful death and survival statutes we estimated the segment of the Washington population whose wrongful death could lead to an action under the current statute to be 3.4 million residents.

Under the proposed legislation, the dependency requirement for parents and siblings is removed. While parents and siblings represent only a small percentage of potential claimants under the current statutes, with these proposed revisions to the wrongful death statutes, the wrongful death of any adult with at least one living parent or sibling could now potentially result in claim. This segment of the Washington population was determined using the equation on **Exhibit 2**. We expect an additional 1.5 million residents of the State of Washington to be added to the exposure base that could potentially result in a claim. We have assumed that the additional exposure created by the removal of the U.S. residency requirement for parents and siblings is negligible. To the extent that a significant segment of the Washington population has parents or siblings that do not reside in the U.S., our estimate will understate the impact of the frequency increase.

As displayed on **Exhibit 4**, we expect the total number of potential wrongful death decedents, based on the proposed revisions to the wrongful death statutes, to be nearly 4.9 million people, or a 43.5% increase compared to the current statutes.

Child Death Claims

To estimate the potential impact of the law change on the frequency of wrongful death actions under the child death statute we followed a similar process. The underlying equations applied to the census data are shown on **Exhibit 2** and the portion of the Washington population representing potential decedents of a wrongful death of a child action under the current and proposed statutes are shown on **Exhibit 4**.

Under the child death statute we estimated the segment of the Washington population whose wrongful death could lead to an action under the current statute to be 1.6 million.

Under the proposed legislation, parents and legal guardians now only need to demonstrate that they had significant involvement in the decedent's life. With these proposed revisions to the child death statutes, the wrongful death of any adult with at least one living parent and no primary beneficiaries (i.e., spouses and children) could now potentially result in claim. As a result, we expect an additional 1.3 million residents of the State of Washington to be added to the exposure base that could potentially result in a claim.

We expect the total number of potential wrongful death decedents, based on the proposed revisions to the child death statutes, to be nearly 2.9 million people, or a 76.1% increase compared to the current statutes. Of the 6.7 million residents in the State of Washington, all of them would now be potential decedents under the proposed child death statutes except those adults with no living parents.

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Overall Impact on Frequency

To estimate the total combined change in the potential number of claims that could be brought under the revised wrongful death, survival, and wrongful death of a child actions, the above figures can simply be added together.

Under the current statutes, the total number of residents within the State of Washington whose wrongful death could potentially result in a claim equals 3.4 million under the wrongful death actions, plus 1.6 million under the wrongful death of a child action, for a total of 5.0 million residents. When this figure is compared to the total number of residents in the State of Washington of 6.7 million, this seems reasonable given that the wrongful death and survival actions tend to complement the wrongful death of a child actions in terms of the eligible beneficiaries. Those people that do not create exposure under the current statutes include those adults without a spouse, children, or a living parent or sibling.

Under the proposed statutes, the total number of residents within the State of Washington whose wrongful death could potentially result in a claim equals 4.9 million under the proposed wrongful death actions, plus 2.9 million under the proposed wrongful death of a child action, for a total of 7.8 million residents. This figure represents an overall 54.1% increase in the potential number of claims that could be brought under the revised wrongful death, survival, and wrongful death of a child actions.

Analysis – Economic Impact on Local Government Costs

So far we have estimated the impact of the legislation on the frequency of wrongful death claims using only the census data. In order to determine the financial impact on local government entities we also need to estimate the current costs of wrongful death claims. This was done using actual data from the Washington Counties Risk Pool, Washington Cities Insurance Authority, Washington Schools Risk Management Pool, and Washington State Transit Insurance Pool.

For all of these local government entities combined, we projected the average number of claims expected per year at the 2019 exposure level under the current wrongful death statutes. We then allocated this projected number of claims to each government organization based on historical average annual claims for each government organization. Because the local government entities included in our analysis only represent a portion of the overall statewide population, we adjusted the expected number of annual claims for each entity by the estimated membership, expressed as a percentage of the total population of Washington, in order to estimate the total number of annual claims expected statewide for each type of local government. As shown in **Exhibit 3**, the projected statewide average annual claims for each government organization under the current wrongful death statutes are 10.5, 5.7, 3.5, and 0.8 for counties, cities, school districts, and transit agencies, respectively, or 20.5 across these local government entities.

In order to quantify the overall impact of a frequency increase on total claim costs we used the claim severity underlying the 213 claims provided by the local government entities. The claim amounts were adjusted to the cost level expected to prevail during the 2019 accident year.

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Combining the projected number of claims with the projected average claim amount gives us a total expected amount of claims in Accident Year 2019, based on the current statutes, of \$13,735,000. This figure will serve as the baseline against which we will compare the expected costs under the proposed statutes. These calculations are displayed on **Exhibit 5**.

Exhibit 5 also shows the expected state-level costs under the proposed wrongful death statutes. First, the selected frequency change of +55% is applied to the projected claims under the current statutes to derive an expected number of annual claims, based on the proposed legislation, of 31.78. This means that under the new law, we expect, on average, more than 11 (= 31.78 - 20.50) additional wrongful death claims to be paid each year by these local government organizations. We expect these 11 additional claims to result in an additional \$7.6 million in paid indemnity losses, assuming no change in the average severity of a claim.

Although we focused our analysis on the impact of this proposed legislation on the expected frequency of wrongful death claims, there is also potential for an increase in the average claim amount. The proposed legislation added language on the types of damages the beneficiary is entitled to and clearly defines both economic and non-economic damages. An increase in the average severity of wrongful death claims is not only possible, but likely under the new statutory language. In the event that the average severity of wrongful death claims also increases under the proposed bill, the total impact on wrongful death costs would be greater than \$7.6 million per year, as estimated above.

To demonstrate the potential financial impact that a change in severity could have on the total paid indemnity losses, we calculated the increase in the total amount of wrongful death claims (indemnity losses only) using several severity scenarios. As shown in **Exhibit 6**, the first scenario assumes the proposed legislation will have no impact on the average severity. As described above, this scenario results in a projected \$7.6 million per year increase in wrongful death costs. The second scenario assumes that changes in the proposed wrongful death legislation will increase the average severity by 20%. Under this scenario, the projected wrongful death costs would increase by \$11.8 million per year. The third scenario assumes the average severity would increase by 30% as a result of the proposed wrongful death legislation. This scenario corresponds to an estimated increase in wrongful death costs of \$13.9 million per year.

Our analysis focused on the impact of this new bill as it related to the historical data provided by the Washington Counties Risk Pool, Washington Cities Insurance Authority, Washington Schools Risk Management Pool, and Washington State Transit Insurance Pool. This data represents exposures and claims from some local government entities and does not account for state government organizations or other local government entities such as water and sewer agencies. We would expect the relationships found in the census data, which reflect Washington's total population and underlie the expected frequency change, to also apply to the claim costs under wrongful death statutes incurred by Washington's state organizations.

Finally, our analysis only considers the increase in indemnity costs as a result of the proposed legislation and does not consider the potential affects that the proposed legislation could have on loss adjustment expenses such as the cost to defend and adjust claims. While loss adjustment expenses would potentially be impacted by any change in the expected number of claims, quantifying the impact of any change in loss adjustment expenses due to the proposed legislation was considered outside of the scope of our analysis.

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Assumptions

In order to apply our calculations to the data that we retrieved or that was provided to us, we made the following assumptions in completing our analysis.

1. In using the U.S. Census Data to measure the impact on the expected frequency, we assumed that the distribution of the general population in the State of Washington is reflective of the probability distribution of potential decedents under all wrongful death and survival actions. That is, we assumed that all individuals in the State of Washington had an equivalent likelihood of being involved in an event that could bring a cause of action under the wrongful death statutes.
2. In developing the expected frequency we made several assumptions about segments of the population not readily available from the census data. Under the current and proposed statutes, we assumed that 5% of all adults had a parent or sibling that was financially dependent on them and that 3% of all adults had at least one parent that was financially dependent on them. We did sensitivity testing using different values for these assumptions and observed that the overall frequency impact varied up or down by approximately 5%. We concluded that our assumptions are reasonable and variations in the assumptions do not have a significant impact on the overall expected 55% increase in frequency.
3. In comparing the expected frequency under the current and proposed statutes, we also assumed that 70% of all adults have at least one living parent, and that 85% of all adults have at least one living parent or sibling. This assumption is based on census data and the fact that about 68% of all adults in the State of Washington are younger than 55-years old (implying that their parents would be younger than about 80 years old). Although some parents may still be alive in their 80's and 90's, some adults lose both of their parents before the age of 55. We assumed that these segments of the population offset each other and therefore, we selected 70% as the percentage of adults with at least one living parent. Knowing that the number had to be greater than 70%, we selected 85% as the percentage of adults with at least one living parent or sibling. We also ran several scenarios varying these assumptions and observed that the overall frequency impact ranged from about a 50% increase to a 60% increase, thus supporting our selection of 55%.
4. In comparing the expected frequency under the current and proposed statutes, we assumed that 60% of all married, separated, divorced, and widowed adults have at least one child. Using the census data, we determined that 31% of adults in households containing two or more people have at least one child under the age of 18. Based on judgment, we increased that percentage by a factor of 1.8 (to account for children older than 18) and selected 60% as the percentage of all married, separated, divorced, and widowed adults that have at least one child.
5. The claim severity in the local-level data was adjusted to current cost levels. We fit an exponential curve to the 26 most recent years of historical data (since the data was even more sparse prior to 1992) to calculate the trend in the average claim amounts. We then extrapolated the data by trending the average claim amount to Accident Year 2019 based on an annual severity trend of 9.8%. This extrapolation resulted in an expected average claim amount in Accident Year 2019 of \$670,000.

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6. There is inherent volatility in the cost of wrongful death claims from year to year. For example, the annual cost of wrongful death claims in the underlying data ranged from \$0.4 million to \$24.3 million. Under the new statute we would also expect significant variation from year to year. Our analysis projects a long-term average.
7. Our analysis assumes that claim severity is not dependent on the number of claimants.
8. We projected a statewide average annual number of wrongful death claims from these local government organizations to be 20.5, which reflects an extrapolation from the historical average of 7.0 claims per year observed in the data we evaluated. This extrapolation accounts for a nominal increase in the population of the State of Washington as well as the fact that the 7.0 historical claims correspond to only a portion of the total statewide exposure.

To the extent actual distributions and actual trends differ from our assumptions, we anticipate the following impact on our analysis:

- If the actual % of adults with a parent or sibling that is financially dependent on them is less than we assumed, then the estimate of the overall increase in the potential number of wrongful death claims will be slightly more than the 54.1% estimated herein (and vice versa);
- If the actual % of adults that do not have at least one living parent or sibling is less than we assumed, then the estimate of the overall increase in the potential number of wrongful death claims will be slightly more than the 54.1% estimated herein (and vice versa);
- If the actual % of all married, separated, divorced, and widowed adults with at least one child is less than we assumed, then the estimate of the overall increase in the potential number of wrongful death claims will be slightly more than the 54.1% estimated herein (and vice versa);
- If the actual severity trend is less than we assumed, then our estimate of the overall impact on wrongful death costs will be slightly less than the \$7.55 million per year estimated herein (and vice versa); and
- Our analysis assumed that wrongful death actions could be brought under multiple statutes for the same event. If there are cases where parents are the only potential beneficiaries to a wrongful death action, and if those parents are likely to bring an action under only one of the wrongful death statutes, then our estimate of the overall increase in the potential number of wrongful death claims will be slightly less than the 54.1% estimated herein.

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Qualification and Limitations

Data Reliance:

In performing this analysis, we relied on data and other information provided to us by the Washington Counties Risk Pool, Washington Cities Insurance Authority, Washington Schools Risk Management Pool, and Washington State Transit Insurance Pool and publicly available reports summarizing 2010 U.S. Census Data and 2008-2012 American Community Survey. We did not audit or independently verify this data and information for accuracy. Such a review is beyond the scope of our assignment. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. In that event, the results of our analysis may not be suitable for the intended purpose.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency. We did not find material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or relationships that are materially inconsistent. Such a detailed review was beyond the scope of our assignment.

Uncertainty:

We based our results on generally accepted actuarial procedures, the information available to us, and our professional judgment. Our results reflect the use of a limited amount of data with inherent volatility. Due to the uncertainty associated with the variable nature of this data, the estimation of several underlying assumptions, and the effect of other factors such as political and legislative issues, actual results will not develop exactly as projected and may, in fact, significantly vary from the projections.



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Ms. Dana Bieber
March 4, 2019
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It has been our pleasure to assist the Liability Reform Coalition with this analysis. If you have any questions about our analysis or this executive summary, please call us to discuss. We would be glad to assist you with any further analysis.

Sincerely,



Paul D. Anderson, FCAS, CSPA, MAAA
Principal and Consulting Actuary



Eric P. Krafcheck, FCAS, CSPA, MAAA
Consulting Actuary

PDA/EPK/klr

cc: Brekk Hayward

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**LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON**

Summary of Current Statutes and Proposed Changes

Action	BENEFICIARIES under Wrongful Death & Survival Statutes		
	Current Provisions	2019 Change in Provisions	Implications of New Law
General Wrongful Death Action	The current statute creates two tiers of beneficiaries. The primary beneficiaries are the decedent's spouse and children; they are automatically entitled to recovery.	The dependence and residency requirements for secondary beneficiaries (parents and siblings) are removed.	These new provisions will allow a greater number of parents and siblings to qualify as secondary beneficiaries
	The secondary beneficiaries are the decedent's parents and siblings; they are entitled to recovery only if there are no primary beneficiaries, if they are dependent on the decedent for support, and they resided within the US at the time of the decedent's death.		
General Survival Action	The current statute allows the decedent's personal representative to bring a cause of action that the decedent could have brought prior to death. There are two tiers of beneficiaries, as in the wrongful death statute.	The same expansion to the definition of secondary beneficiaries under the wrongful death statute applies to this statute.	The same implications for secondary beneficiaries under the wrongful death statute applies to this statute.
Special Survival Action	The current statute allows the executor or administrator of the decedent's estate to bring a cause of action for personal injuries that resulted in the decedent's death. There are two tiers of beneficiaries, as in the wrongful death statute.	The same expansion to the definition of secondary beneficiaries under the wrongful death statute applies to this statute. In addition, the personal representative is designated as entitled to bring the action, rather than the executor or administrator.	The same implications for secondary beneficiaries under the wrongful death statute applies to this statute.
Wrongful Death of a Child Action	The current statute allows a parent to recover for the wrongful injury or death of a minor child (under 18) if the parent regularly contributed to the child's support.	The definition of beneficiary is expanded to include parents and legal guardians who had significant involvement in the life of an adult child (demonstrated support of an emotional, psychological, or financial nature at or near the time of death or incident causing death), without showing dependence on child.	These new provisions will allow a greater number of parents and legal guardians to qualify as beneficiaries.
	The current statute allows a parent to recover for the wrongful injury or death of an adult child if the parent was substantially dependent on the adult child for support.		
	Action may be brought by either or both parents; if the parents are separated or not married, damages may be awarded to each parent separately.	The statute is amended to provide that each parent is entitled to a separate recovery regardless of marital status.	This language is a clarification of the current statute and we do not expect this to have a material impact on the number of child death awards.

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**LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON**

Summary of Current Statutes and Proposed Changes

DAMAGES AWARDED under Wrongful Death & Survival Statutes			
Action	Current Provisions	2019 Change in Provisions	Implications of New Law
General Wrongful Death Action	The current statute does not specify the types of damages that are recoverable, but case law has established that pecuniary and non-pecuniary losses may be recovered. Pecuniary losses are monetary losses and non-pecuniary losses include intangible losses such as the loss of the decedent's support, services, and love.	Amended to specifically state that both economic and non-economic damages may be recovered.	The change in statutory language may impact the average payment for wrongful death claims
General Survival Action	The current statute does not specify the types of damages that are recoverable, but case law has established that recoverable damages include pecuniary losses to the estate, including loss of earnings, medical expenses, and funeral expenses. Also, the personal representative may recover, on behalf of the same beneficiaries listed under the wrongful death statute, damages for pain & suffering, anxiety, emotional distress, and humiliation suffered by the decedent.	Amended to specifically state that economic losses may be recovered on behalf of the decedent's estate.	The change in statutory language may impact the average payment for wrongful death claims
Special Survival Action	The current statute does not specify the types of damages that are recoverable, but case law has established that recoverable damages include the decedent's lost earnings, medical & funeral expenses, pain & suffering, anxiety, emotional distress, and humiliation suffered by the decedent.	Amended to specifically state that economic damages personal to and suffered by decedent may be recovered, as well as damages for the decedent's pain & suffering, anxiety, emotional distress, or humiliation.	The change in statutory language may impact the average payment for wrongful death claims
Wrongful Death of a Child Action	The current statute allows for the recovery of medical, hospital, and medication expenses; loss of the child's services and support; loss of the child's love and companionship; and injury to or destruction of the parent-child relationship (which includes pain & suffering).	Amended to specifically include other economic losses beyond those listed, as well as loss of child's emotional support.	The change in statutory language may impact the average payment for wrongful death claims

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**LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON**

Table Demonstrating Proposed Legislation's Impact on the Number of Potential Decedents

Age of Decedent	Married/Separated		Widowed/Divorced		Single	
	Children	No Children	Children	No Children	Children	No Children
0-17	A	C	E	G	I	K
18+	B	D	F	H	J	L

Wrongful Death decedents:

Current Statute = Decedents with (Spouses + Children + Dependent Parents or Siblings)
 Current Statutes = (A+B+C+D) + (E+F+I+J) + (H+L)*X%

Additional Potential decedents:

Proposed Statutes = Non-Married & Childless Adults with living parents or siblings
 Proposed Statutes = (H+L)*(1-X%)*XX%

X% = % of adults who support parents or siblings
 XX% = % of adults with at least one living parent or sibling

Child Death decedents:

Current Statutes = All Minor Children + Any Adults who support parents
 Current Statutes = (A+C+E+G+I+K) + (H+L)*Y%

Additional Potential decedents:

Proposed Statutes = Any Adult with living parents or legal guardians
 Proposed Statutes = (H+L)*(1-Y%)*YY%

Y% = % of adults who support parents
 YY% = % of adults with at least one living parent or legal guardian

Total decedents = Wrongful Death decedents + Child Death decedents

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**LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON**

Summary of Historical Wrongful Death Claims for Local Government Entities

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Historical Claims						
Government Organization	Accident Years	Entity	Estimated Membership (% of Statewide Population)	Number of Incurred Claims	Average # of Claims per Year	Projected Average Annual Claims	Projected Statewide Average Annual Claims
County	1988-2017	WCRP	35%	96	3.20	3.69	10.5
City	1985-2017	WCIA	43%	70	2.12	2.45	5.7
School Districts	1986-2017	WSRMP	32%	31	0.97	1.12	3.5
Transit Agencies	1996-2017	WSTIP	100%	16	0.73	0.84	0.8
Total				213	7.02	8.10	20.5

	(8)	(9)	(10)	(11)	(12) = (11) / (4)	(13)
	Historical Claims					
Government Organization	Accident Years	Entity	Estimated Membership (% of Statewide Population)	Historical (Untrended) Paid Indemnity	Average Claim Amount	Projected Average Claim Amount
County	1988-2017	WCRP	35%	\$40,783,567	\$424,829	\$670,000
City	1985-2017	WCIA	43%	38,298,669	547,124	670,000
School Districts	1986-2017	WSRMP	32%	19,297,324	622,494	670,000
Transit Agencies	1996-2017	WSTIP	100%	7,997,213	499,826	670,000
Total				\$106,376,772	\$499,421	\$670,000

(2), (9) The following is a brief description of the state, county, & city entities considered:

County: Washington Counties Risk Pool (WCRP), which includes 26 out of the 39 counties in Washington and corresponds to 35% of Washington's population

City: Washington Cities Insurance Authority (WCIA), which includes over 150 members out of 282 cities & towns in Washington and corresponds to an estimated 43% of Washington's population

School Districts: Washington Schools Risk Management Pool (WSRMP), which includes 93 of the 294 school districts in Washington

Transit Agencies: Washington State Transit Insurance Pool (WSTIP), which includes 25 transit agencies

(3), (10) WCRP & WCIA estimated membership based on the population of member counties/cities relative to the population of Washington

Estimated membership for WSRMP & WSTIP based on the number of entity members relative to all government organizations eligible for membership

(5) = (4) / Number of Accident Years in (1)

(6) = (5) / (5) Total x 8.1, where 8.1 corresponds to the number of projected incurred claims in 2019 for WCRP, WCIA, WSRMP, and WSTIP based on a fitted trend rate from 1992-2017 of 0.9%

(7) = (6) / (3)

(13) Projected to 2019 based on the trended average paid severity for WCRP, WCIA, WSRMP, and WSTIP combined; trended at a fitted rate (from 1992-2017) of 9.8%

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**LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON**

Summary of Proposed Legislation's Impact on the Number of Potential Decedents

Population Distribution of Washington State:

Age	Single		Married/Separated		Widowed/Divorced	
	Children	No Children	Children	No Children	Children	No Children
0-14	0	1,307,767	0	0	0	0
15-17	2,698	267,098	2,275	1,516	0	0
18-19	5,578	180,350	1,568	1,045	0	0
20-34	39,332	747,317	325,595	217,064	26,394	39,591
35-44	8,372	159,063	367,505	245,004	51,345	77,017
45-54	5,879	111,692	401,913	267,942	80,312	120,468
55-64	3,057	58,089	343,906	229,271	80,336	120,505
65+	1,344	25,531	285,734	190,489	129,832	194,748
Total:	66,260	2,856,907	1,728,496	1,152,331	368,219	552,328

Source: Based on 2010 U.S. Census Data and 2008-2012 American Community Survey data for Washington State
Assumes the general population in Washington State is reflective of the potential decedents under all wrongful death and survival statutes.

Potential Wrongful Death & Survival Decedents

Current Statutes: 3,407,024
Proposed Statutes: 4,888,277
% Increase: 43.5%

Assumed % of adults who support parents or siblings: 5.0%

Assumed % of adults with at least one living parent or sibling: 85.0%

Assumptions based on 2010 U.S. Census Data for Washington State

Potential Child Death Decedents

Current Statutes: 1,636,385
Proposed Statutes: 2,881,922
% Increase: 76.1%

Assumed % of adults who support parents: 3.0%

Assumed % of adults with at least one living parent: 70.0%

Assumptions based on 2010 U.S. Census Data for Washington State

Potential Decedents under all Wrongful Death & Survival Statutes

Current Statutes: 5,043,409
Proposed Statutes: 7,770,200
% Increase: 54.1%

Selected Increase: 55.0%

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LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON

Impact of Increased Claim Frequency on Local Government Costs

<u>Statute</u>	<u>Number of Annual Claims⁽¹⁾</u>	<u>Average Claim Amount⁽²⁾</u>	<u>Total Amount of Claims</u>
Current	20.50	\$670,000	\$13,735,000
Proposed (SB 5163)	31.78	\$670,000	\$21,289,250
Increase ⁽³⁾	11.28	-	\$7,554,250

(1) Number of annual claims based on current statute from Exhibit 3; Number of annual claims based on proposed statute (SB 5163) supported by Exhibit 4

(2) The projected average claim amount of \$670,000 reflects the extrapolation of a fitted curve to the average severities from 1992-2017. We used an exponential trend of 9.8% and projected the average claim amount to Accident Year 2019.

(3) See Exhibit 4 for support for the expected increase in the number of claims.

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LIABILITY REFORM COALITION
IMPACT ANALYSIS OF REVISED WRONGFUL DEATH STATUTES IN WASHINGTON

Summary of Combined Frequency and Severity Impact on Local Government Costs

Expected Costs (in 2019) under CURRENT Statutes:

Government Organization	Number of Claims ⁽¹⁾	Average Claim Amount ⁽¹⁾	Total Amount of Claims
County	10.50	\$670,000	\$7,035,000
City	5.70	670,000	3,819,000
School Districts	3.50	670,000	2,345,000
Transit Agencies	0.80	670,000	536,000
Total	20.50		\$13,735,000

Expected Costs (in 2019) under PROPOSED Statutes:

Scenario A: Change in Average Severity = 0%

Government Organization	Number of Claims ⁽²⁾	Average Claim Amount ⁽²⁾	Total Amount of Claims	Increase in Total Amount of Claims (\$)	Increase in Total Amount of Claims (%)
County	16.28	\$670,000	\$10,904,250	\$3,869,250	55.0%
City	8.84	670,000	5,919,450	2,100,450	55.0%
School Districts	5.43	670,000	3,634,750	1,289,750	55.0%
Transit Agencies	1.24	670,000	830,800	294,800	55.0%
Total	31.78		\$21,289,250	\$7,554,250	55.0%

Scenario B: Change in Average Severity = 20%

Government Organization	Number of Claims ⁽²⁾	Average Claim Amount ⁽²⁾	Total Amount of Claims	Increase in Total Amount of Claims (\$)	Increase in Total Amount of Claims (%)
County	16.28	\$804,000	\$13,085,100	6,050,100	86.0%
City	8.84	804,000	7,103,340	3,284,340	86.0%
School Districts	5.43	804,000	4,361,700	2,016,700	86.0%
Transit Agencies	1.24	804,000	996,960	460,960	86.0%
Total	31.78		\$25,547,100	\$11,812,100	86.0%

Scenario C: Change in Average Severity = 30%

Government Organization	Number of Claims ⁽²⁾	Average Claim Amount ⁽²⁾	Total Amount of Claims	Increase in Total Amount of Claims (\$)	Increase in Total Amount of Claims (%)
County	16.28	\$871,000	\$14,175,525	\$7,140,525	101.5%
City	8.84	871,000	7,695,285	3,876,285	101.5%
School Districts	5.43	871,000	4,725,175	2,380,175	101.5%
Transit Agencies	1.24	871,000	1,080,040	544,040	101.5%
Total	31.78		\$27,676,025	\$13,941,025	101.5%

(1) See Exhibit 3 for support for the number of claims and the average claim amount under the current statute.

(2) See Exhibit 4 for support for the expected number of claims under the proposed statute (SB 5163); the expected average claim amounts under different severity scenarios were selected to show various potential impacts of the proposed statute.

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