

## **Statement**

### **Insurance Association of Connecticut**

#### **Judiciary Committee**

**February 26, 2007**

#### **SB 1268, An Act Concerning Loss Of Life Or Permanent Injury Of A Family Member**

The Insurance Association of Connecticut is opposed to SB 1268, An Act Concerning Loss Of Life Or Permanent Injury Of A Family Member.

SB 1268 seeks to undue numerous long-standing Connecticut court decisions by expanding consortium claims beyond the marital relationship. Consortium has been traditionally defined as the intimate relationship flowing from the formal bond of marriage. The Connecticut Appellate Court has specifically ruled that consortium does not extend to the parent-child relationship. Mahoney v. Lensink, 17 Conn. App. 141 (1988). In the matter of Mendillo v. East Haddam Board of Education, 246 Conn. 456 (1998), the Connecticut Supreme Court refused to extend consortium claims beyond the marital relationship. The court held that extending consortium claims beyond the marital relationship would significantly increase the risk of double recovery while placing an unjustifiable economic burden on society. The court further acknowledged that any extension would be the result of arbitrary line drawing without yielding any significant social benefits.

What will be the measure of damages for a claim brought as a result of SB 1268? Currently in a spousal claim for consortium damages are quantified based upon the extent of the couple's sexual relations, their social interactions and resulting alterations in their domestic relationship. The spousal claim is based upon the marital relationship and the right to bring such a claim is extinguished when the relationship ends.

SB 1268 is more speculative than a spousal claim for consortium. Pursuant to SB 1268, a parent can bring a claim for a child and vice versa. There are no parameters defining the relationship. Would a stepparent be able to bring a claim for a stepchild? Would a parent subject to a restraining order be able to bring a claim? Would a parent whose child has moved out and is living on their own be able to bring a claim? Would a foster parent be able to bring a claim? Would a child be able to bring a claim for a grandparent who raised them? SB 1268 would open the floodgates for consortium claims based on other interpersonal relationships.

SB 1268 would also result in placing unnecessary burdens on the family relationship in the cause of action itself and in the establishment of damages. What would happen to the family relationship when a child is killed in an auto accident when one of the parents is the operator of the motor vehicle? In defining the value of the consortium claim, the relationship of the parent and child would be looked at extremely closely. The parents and others would be required to testify to the most intimate details of their relationships. Private

records, like school, medical and governmental agencies records, will be sought and revealed. What impact will that have on the family?

As the Connecticut Supreme Court recognized in RK Constructors, Inc. v. Fusco Corp., 231 Conn. 381, 385-6 (1994), "While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. Every injury has ramifying consequences, like the ripples of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results." Most jurisdictions view that a parent may not recover from a third party, as an element of damages for injury to his child, for loss of the child's society and companionship attributable to the injury. The proponents of SB 1268 have failed to demonstrate any justifiable reason to change the law beyond the traditional bounds of recovery.

The Insurance Association of Connecticut respectfully requests you reject SB 1268.