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H.B. 279
134th General Assembly

Final Analysis

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Primary Sponsors: Reps. Brown and Oelslager

Effective date: April 4, 2023

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UPDATED VERSION*

SUMMARY

- Generally limits the time within which the extended family of a deceased person are entitled to notice of a settlement hearing for a wrongful death action to two years following the alleged wrongful death.
- Allows extended family members to preserve their claim beyond the general, two-year period by filing a notice of claim with the probate court.
- Clarifies that immediate family (i.e., the surviving spouse, children, and parents) are entitled to notice of any such settlement hearing, regardless of when it occurs.
- Specifies that the changes apply only with respect to deaths after the act's effective date.

DETAILED ANALYSIS

Wrongful death actions – overview

Under continuing law, a person is liable for damages in a wrongful death action when:

- An individual dies because of the person's wrongful act or omission;
- The decedent (the individual who died) would have been entitled to sue for damages arising from the act or omission if the decedent had not died.

A civil action for wrongful death must be brought in the name of the decedent's personal representative (the estate's executor or administrator) for the exclusive benefit of:

- The decedent's immediate family (surviving spouse, children, and parents); and

* This version updates the effective date.

- The decedent’s extended family (**other next of kin**, which the act defines as the nearest surviving relatives to the decedent after accounting for the parents, children, or spouse).

A wrongful death action (other than certain claims involving product liability) generally must be commenced within two years after the decedent’s death. However, settlement of timely filed claims may, and often do occur much later. To settle a wrongful death claim, the Rules of Superintendence for the Courts of Ohio require the decedent’s personal representative to file an Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims with the probate court and give notice of the settlement hearing to all “interested parties.”¹

Extended family – time within which to present a claim

The act identifies who is considered an interested party for the purposes of a wrongful death claim and, in effect, limits the time within which extended family are entitled to assert a claim. Under the act, the decedent’s immediate family are considered interested parties regardless of when the settlement application is filed with the probate court. If the settlement application is filed two years or less after the decedent’s death, the decedent’s extended family are also considered interested parties and are, therefore, entitled to notice of the settlement hearing. If the representative files the settlement application more than two years after the decedent’s death, only extended family members who have filed a written notice of claim with the probate court are considered interested parties.²

The act allows any member of the decedent’s extended family who has suffered damages by reason of the wrongful death to preserve their claim by filing a written notice of claim with the probate court within two years following the decedent’s death. This notice of claim must include the claimant’s name, address, telephone number, and relation to the decedent. Unlike members of a decedent’s immediate family who, under continuing law, are rebuttably presumed to have suffered damages from the decedent’s death, extended family members must prove that they have, in fact, incurred damages. Filing a notice of claim does not, in itself, satisfy that burden of proof.³

Under continuing law, both immediate and extended family members must prove the amount of damages incurred, which may include damages for the following:

1. Loss of support from the decedent’s reasonably expected earning capacity;
2. Loss of the decedent’s services;
3. Loss of the decedent’s society, including loss of companionship, consortium, care, advice, and education;

¹ R.C. 2125.01, not in the act, and 2125.02(A), (D), (F), and (I)(7); Sup.R. 70.

² R.C. 2125.02(B)(1), (2), and (3).

³ R.C. 2125.02(B)(3)(b).

4. Loss of prospective inheritance;
5. Mental anguish.

The act specifies that the changes to wrongful death claims apply only to deaths that occur on or after April 4, 2023, the act's effective date.⁴

HISTORY

Action	Date
Introduced	05-03-21
Reported, H. Civil Justice	06-23-21
Passed House (90-0)	06-25-21
Reported, S. Judiciary	06-01-22
Passed Senate (31-0)	12-14-22
House concurred in Senate Amendments (89-0)	12-14-22

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⁴ R.C. 2125.02(B) and (D).