(134th General Assembly)
(Substitute House Bill Number 279)

AN ACT

To amend sections 2125.02, 2125.03, and 2125.04 of the Revised Code to revise the law regarding wrongful death claims.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2125.02, 2125.03, and 2125.04 of the Revised Code be amended to read as follows:

Sec. 2125.02. ~~(A)(1)~~(A) Except as provided in this division, a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death, and for the exclusive benefit of the other next of kin of the decedent. A parent who abandoned a minor child who is the decedent shall not receive a benefit in a civil action for wrongful death brought under this division.

(B) In relation to persons who died on or after the effective date of this amendment, for the purpose of determining who is an interested person entitled to notice pursuant to Rule 70 of the Rules of Superintendence for the Courts of Ohio, all of the following apply:

(1) A surviving spouse and any surviving child or parent of the decedent is an interested person.

(2) If an application to approve settlement and distribution of wrongful death and survival claims is filed with the probate court prior to or on the date that is two years after the date of the decedent's death, all other next of kin are interested persons.

(3)(a) Except as provided in division (B)(3)(b) of this section, if an application to approve settlement and distribution of wrongful death and survival claims is filed with the probate court after the date that is two years after the date of the decedent's death, no other next of kin are interested persons.

(b) A person who is among the other next of kin may remain an interested person by filing a written notice of claim with the probate court prior to or on the date that is two years from the date of the decedent's death. The notice of claim shall include the claimant's name, address, telephone number, and relation to the decedent.

(4) Divisions (B)(1) to (3) of this section do not eliminate either of the following:

(a) Any other next of kin's burden to prove damages under division (D) of this section.

(b) The presumption, established by division (A) of this section, that a decedent's surviving spouse, children, or parents suffered damages by reason of the decedent's wrongful death.

~~(2)~~ (C)(1) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division ~~(B)~~ (D) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries described in division ~~(A)(1)~~ (A) of this section by reason of the wrongful death and may award the reasonable funeral and burial expenses incurred as a

result of the wrongful death. In its verdict, the jury or court shall set forth separately the amount, if any, awarded for the reasonable funeral and burial expenses incurred as a result of the wrongful death.

~~(3)(a)~~ (2)(a) The date of the decedent's death fixes, subject to division ~~(A)(3)(b)(iii)~~ (C)(2)(b)(iii) of this section, the status of all beneficiaries of the civil action for wrongful death for purposes of determining the damages suffered by them and the amount of damages to be awarded. A person who is conceived prior to the decedent's death and who is born alive after the decedent's death is a beneficiary of the action.

(b)(i) In determining the amount of damages to be awarded, the jury or court may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death.

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in division ~~(A)(3)(b)(i)~~ (C)(2)(b)(i) of this section and, if applicable, division ~~(A)(3)(b)(iii)~~ (C)(2)(b)(iii) of this section, the jury or court may consider that evidence in determining the future damages suffered by reason of the wrongful death. If that evidence is presented, the present value in dollars of an annuity is its cost.

(iii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence that the surviving spouse of the decedent is remarried. If that evidence is presented, then, in addition to the factors described in divisions ~~(A)(3)(b)(i)~~ (C)(2)(b)(i) and (ii) of this section, the jury or court may consider that evidence in determining the damages suffered by the surviving spouse by reason of the wrongful death.

~~(B)~~ (D) Compensatory damages may be awarded in a civil action for wrongful death and may include damages for the following:

(1) Loss of support from the reasonably expected earning capacity of the decedent;

(2) Loss of services of the decedent;

(3) Loss of the society of the decedent, including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, suffered by the surviving spouse, dependent children, parents, or next of kin of the decedent;

(4) Loss of prospective inheritance to the decedent's heirs at law at the time of the decedent's death;

(5) The mental anguish incurred by the surviving spouse, dependent children, parents, or next of kin of the decedent.

~~(C)~~ (E) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

~~(D)(1)~~ (F)(1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.

(2)(a) Except as otherwise provided in divisions ~~(D)(2)(b)~~(F)(2)(b), (c), (d), (e), (f), and (g) of this section or in section 2125.04 of the Revised Code, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who

was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(b) Division ~~(D)(2)(a)~~(F)(2)(a) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(c) Division ~~(D)(2)(a)~~ (F)(2)(a) of this section does not bar a civil action for wrongful death involving a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death, has not expired in accordance with the terms of that warranty.

(d) If the decedent's death occurs during the ten-year period described in division ~~(D)(2)(a)~~ (F)(2)(a) of this section but less than two years prior to the expiration of that period, a civil action for wrongful death involving a product liability claim may be commenced within two years after the decedent's death.

(e) If the decedent's death occurs during the ten-year period described in division ~~(D)(2)(a)~~ (F)(2)(a) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

(f)(i) Division ~~(D)(2)(a)~~ (F)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(1), (2), (3), or (4) of section 2305.10 of the Revised Code and the decedent's death resulted from exposure to the product during the ten-year period described in division (D)(2)(a) of this section.

(ii) If division ~~(D)(2)(f)(i)~~ (F)(2)(f)(i) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division ~~(D)(2)(f)(i)~~ (F)(2)(f)(i) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(g) Division ~~(D)(2)(a)~~ (F)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(5) of section 2315.10 of the Revised Code. If division ~~(D)(2)(g)~~ (F)(2)(g) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division ~~(D)(2)(g)~~ (F)(2)(g) of this section shall be commenced within two years after the cause of action accrues and shall

not be commenced more than two years after the cause of action accrues.

~~(E)(1)~~ (G)(1) If the personal representative of a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from a civil action for wrongful death or if any person listed in division ~~(A)(1)~~ (A) of this section who is permitted to benefit from a civil action for wrongful death commenced in relation to a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from the action, the personal representative or the person may file a motion in the court in which the action is commenced requesting the court to issue an order finding that the parent abandoned the minor and is not entitled to recover damages in the action based on the death of the minor.

(2) The movant who files a motion described in division ~~(E)(1)~~ (G)(1) of this section shall name the parent who abandoned the deceased minor and, whether or not that parent is a resident of this state, the parent shall be served with a summons and a copy of the motion in accordance with the Rules of Civil Procedure. Upon the filing of the motion, the court shall conduct a hearing. In the hearing on the motion, the movant has the burden of proving, by a preponderance of the evidence, that the parent abandoned the minor. If, at the hearing, the court finds that the movant has sustained that burden of proof, the court shall issue an order that includes its findings that the parent abandoned the minor and that, because of the prohibition set forth in division ~~(A)(1)~~ (A) of this section, the parent is not entitled to recover damages in the action based on the death of the minor.

(3) A motion requesting a court to issue an order finding that a specified parent abandoned a minor child and is not entitled to recover damages in a civil action for wrongful death based on the death of the minor may be filed at any time during the pendency of the action.

~~(F)~~ (H) This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

~~(G)~~ (I) As used in this section:

(1) "Annuity" means an annuity that would be purchased from either of the following types of insurance companies:

(a) An insurance company that the A. M. Best Company, in its most recently published rating guide of life insurance companies, has rated A or better and has rated XII or higher as to financial size or strength;

(b)(i) An insurance company that the superintendent of insurance, under rules adopted pursuant to Chapter 119. of the Revised Code for purposes of implementing this division, determines is licensed to do business in this state and, considering the factors described in division ~~(G)(1)(b)(ii)~~ (I)(1)(b)(ii) of this section, is a stable insurance company that issues annuities that are safe and desirable.

(ii) In making determinations as described in division ~~(G)(1)(b)(i)~~ (I)(1)(b)(i) of this section, the superintendent shall be guided by the principle that the jury or court in a civil action for wrongful death should be presented only with evidence as to the cost of annuities that are safe and desirable for the beneficiaries of the action who are awarded compensatory damages under this section. In making the determinations, the superintendent shall consider the financial condition, general standing, operating results, profitability, leverage, liquidity, amount and soundness of reinsurance, adequacy of reserves, and the management of a particular insurance company involved and also may consider

ratings, grades, and classifications of any nationally recognized rating services of insurance companies and any other factors relevant to the making of the determinations.

(2) "Future damages" means damages that result from the wrongful death and that will accrue after the verdict or determination of liability by the jury or court is rendered in the civil action for wrongful death.

(3) "Abandoned" means that a parent of a minor failed without justifiable cause to communicate with the minor, care for the minor, and provide for the maintenance or support of the minor as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(4) "Minor" means a person who is less than eighteen years of age.

(5) "Harm" means death.

(6) "Manufacturer," "product," "product liability claim," and "supplier" have the same meanings as in section 2307.71 of the Revised Code.

(7) In relation to persons who died on or after the effective date of this amendment, "other next of kin" means the nearest surviving relatives to the decedent after accounting for the parents, children, or spouse.

~~(H)~~ (J) Divisions ~~(D), (G)(5), and (G)(6)~~ (F), (I)(5), and (I)(6) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after ~~the effective date of this amendment~~ April 7, 2005, in which those divisions are relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to ~~the effective date of this amendment~~ April 7, 2005.

Sec. 2125.03. (A)(1) The amount received by a personal representative in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code, whether by settlement or otherwise, shall be distributed to the beneficiaries or any one or more of them. The court that appointed the personal representative, except when all of the beneficiaries are on an equal degree of consanguinity to the deceased person, shall adjust the share of each beneficiary in a manner that is equitable, having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries. If all of the beneficiaries are on an equal degree of consanguinity to the deceased person, the beneficiaries may adjust the share of each beneficiary among themselves. If the beneficiaries do not adjust their shares among themselves, the court shall adjust the share of each beneficiary in the same manner as the court adjusts the shares of beneficiaries who are not on an equal degree of consanguinity to the deceased person.

(2) The court may create a trust for any beneficiary who is under twenty-five years of age by ordering that the portion of the amount received by the personal representative for that beneficiary be deposited in trust for the benefit of that beneficiary, until the beneficiary reaches twenty-five years of age, and order the distribution of the amount in accordance with the provisions of the trust. Prior to appointment as a trustee of a trust created pursuant to this section, the person to be appointed shall be approved by each adult beneficiary and by the guardian of each minor beneficiary of the trust.

(3) The personal representative shall not distribute any amount received in an action for wrongful death under sections 2125.01 and 2125.02 of the Revised Code to any person in relation to whom the court has entered an order pursuant to division ~~(E)(2)~~ (G)(2) of section 2125.02 of the

Revised Code.

(B) The court shall distribute the amount of funeral and burial expenses awarded, or received by settlement, by reason of the death to the personal representative of the decedent, to be expended by the personal representative for the payment, or as reimbursement for the payment, of the expenses.

Sec. 2125.04. In every civil action for wrongful death that is commenced or attempted to be commenced within the time specified by division ~~(D)(1)~~ (F)(1) or ~~(D)(2)(e)~~(F)(2)(c), (d), (e), (f), or (g) of section 2125.02 of the Revised Code, if a judgment for the plaintiff is reversed or the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the personal representative of the plaintiff may commence a new civil action for wrongful death within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period specified by any of those divisions, whichever occurs later.

SECTION 2. That existing sections 2125.02, 2125.03, and 2125.04 of the Revised Code are hereby repealed.

Robert R. Cupp

Speaker _____ *of the House of Representatives.*

Matthew C. Huffman

President _____ *of the Senate.*

Passed December 14, 2022

Approved JANUARY 3, 2023

Mike DeWine

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 3RD day of JANUARY, A. D. 2023.

Secretary of State.

File No. 159 Effective Date 4/4/2023

(134th General Assembly)
(Substitute House Bill Number 279)

AN ACT

To amend sections 2125.02, 2125.03, and 2125.04 of the Revised Code to revise the law regarding wrongful death claims.

Introduced by

Representatives Brown, Oelslager

Cosponsors: Representatives Miranda, Sheehy, Patton, Young, T., Lightbody, Miller, J., Miller, A., Hillyer, Seitz, Weinstein, Skindell, Galonski, Leland, Crossman, Blackshear, Carruthers, Denson, Hicks-Hudson, Ingram, Jarrells, Lanese, Lepore-Hagan, O'Brien, Roemer, Russo, Sobecki, Upchurch, West, White
Senators Manning, Blessing, Cirino, Craig, Hicks-Hudson, Maharath, Thomas

---

Passed by the House of Representatives,

June 25, 20 21

Passed by the Senate,

December 14, 20 22

Filed in the office of the Secretary of State at Columbus, Ohio, on the

3RD *day of* JANUARY, *A. D.* 2023

Secretary of State.

Concurred in Senate amendments, December 14, 2022.