

Representatives Brown and Oelslager ***HB 279 Sponsor Testimony***

May 18th, 2021

Chairman Manning, Vice-Chair McColley, and Ranking Member Thomas, thank you for allowing us to provide sponsor testimony before the Senate Judiciary Committee today in support of H.B. 279.

H.B. 279 makes needed changes to Ohio's Wrongful Death Statute, R.C. 2125.02, to bring clarity to the law. When a claim for wrongful death is presented to a probate court for approval, the Ohio Rules of Civil Procedure and the Ohio Rules of Superintendence, together with local probate court rules, set forth notice requirements, but the issue of *who* should receive such notice remains unclear under current law, causing difficulties for practitioners and probate courts around the state.

Presently, R.C. 2125.02 provides that a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of two classes of parties: 1) *the surviving spouse, children, and parents of the decedent*, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death of the decedent; and, 2) "*other next of kin*," of the decedent, who must demonstrate entitlement to any damages as a result of the wrongful death.

The class of potential beneficiaries described as "other next of kin" has been defined and interpreted in different ways by various probate courts around Ohio. Disputes have arisen as to precisely who should be included in the "other next of kin" class, which in turn leads to problems of who should receive required probate court notifications. There is currently no uniformity among Ohio's probate courts as to notification of "other next of kin;" therefore, there is no uniformity as to who should receive notice of a potential wrongful death settlement.

Precisely who should receive notice of a wrongful death settlement depends heavily on local practice and local rules, which vary from probate jurisdiction to probate jurisdiction. Because of this uncertainty and lack of uniformity, the wrongful death settlement approval process is often delayed, inconveniencing parties, beneficiaries, and courts, and exposing attorneys to malpractice claims.

Committees:

*Infrastructure and Rural Development,
Ranking Member
Civil Justice
Armed Services & Veteran's Affairs
Rules & Reference*

www.ohiohouse.gov
77 S High Street 14th Floor Columbus Ohio 43215-6111

Contact Information:

Office: 614-644-6002
Email: Rep20@ohiohouse.gov
FAX: 614-719-6959

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H.B. 279 will eliminate confusion as to the application of the notice requirements to the Wrongful Death Statute and rectify inconsistent practices. H.B. 279 will accomplish this by: 1) establishing a requirement that “other next of kin” *shall* file with the probate court a written notice of claim for damages within one year of the date of death of the decedent in order to be potentially eligible to receive damages upon sufficient proof; and, 2) eliminating the notice requirement to such “other next of kin,” who fail to present a timely claim under the proposed new law. This will allow attorneys to obtain wrongful death settlement approvals in probate court more efficiently and eliminate or reduce malpractice claims arising from the failure to notify certain relatives of the proposed settlement. Any “other next of kin” who does not file a timely written notice of claim in the probate court shall be forever barred from receipt or entitlement to any damages as a result of the decedent’s wrongful death and would not be entitled to notice of a settlement hearing regarding approval of the proposed wrongful death settlement.

The executor or administrator of the decedent’s estate may accelerate this bar against damage claims of “other next of kin “ to sooner than one year after the decedent’s date of death, by giving written notice to a potential claimant that identifies the decedent by name, states the date of death of the decedent, identifies the executor or administrator by name and mailing address, and informs the potential claimant that any claims for damages suffered by reason of the wrongful death of the decedent are required to be presented to the executor or administrator in writing within 30 days after receipt of the notice by the potential claimant. If the potential claimant is so notified, but does not give the written notice to the executor or administrator within 30 days after the claimant’s receipt of the notice, the potential claimant is forever barred from entitlement to any wrongful death damages and would not be entitled to notice of the settlement hearing.

The changes set forth in H.B. 279 are supported by the Ohio State Bar Association and its Negligence Law Committee. Chairman Manning, Vice-Chair McColley, and Ranking Member Thomas, thank you for allowing us to testify today in support of H.B. 279. I would now be happy to take any questions concerning the proposed legislation.

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