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Sub. H. B. No. 279

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

A BILL

To amend sections 2125.02 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 and 2125.04 of the Revised Code be amended to read as follows:

Sec. 2125.02. (A) ~~(1)~~ Except as otherwise provided in this division (B) of this section, 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 who present claims for damages in accordance with division (B) of this section. 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.

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(B) (1) When the decedent is survived by a surviving spouse, any child, or either parent, then all other next of kin of the decedent who have suffered damages by reason of the wrongful death shall, after the appointment of an executor or administrator, present their claim for damages to the probate court by filing a written notice of claim. The notice of claim shall include the claimant's name, address, telephone number, and relation to the decedent.

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(2) Except when the barring of claims is accelerated as provided in division (B) (3) of this section, a claim from any other next of kin for damages suffered by reason of the decedent's wrongful death that is not presented to the probate court pursuant to division (B) (1) of this section within one year after the date of death is forever barred. All other next of kin whose claims are barred by this division are deemed to not be interested persons entitled to notice of hearing pursuant to Rule 70(B) of the Rules of Superintendence for the Courts of Ohio.

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(3) An executor or administrator may accelerate the barring of claims from any other next of kin by giving the other next of kin a written notice containing all of the following:

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(a) The decedent's name;

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(b) The date of the decedent's death;

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(c) The executor's or administrator's name and mailing address;

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(d) A statement that the other next of kin must present any claim the other next of kin may have for damages suffered by reason of the wrongful death to the probate court by filing a

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written notice of claim with the probate court not more than 46
forty-five days after the other next of kin receives the notice; 47

(e) A statement that a notice of claim presented to the 48
probate court must include the claimant's name, address, 49
telephone number, and relation to the decedent; 50

(f) A statement that any claims not presented to the 51
probate court within forty-five days after the notice is 52
received is forever barred. 53

(4) Any other next of kin who receives a notice pursuant 54
to division (B) (3) of this section may preserve the other next 55
of kin's claim for damages resulting from the wrongful death of 56
the decedent by delivering a written notice of claim to the 57
probate court not more than forty-five days after the other next 58
of kin receives the notice. The notice of claim shall include 59
the claimant's name, address, telephone number, and relation to 60
the decedent. Any other next of kin who receives such a notice 61
and does not deliver a written notice of claim to the probate 62
court within forty-five days after receiving the notice is 63
barred from bringing a claim in the same manner as if the other 64
next of kin had failed to present a notice of claim to the court 65
within a year of the decedent's death pursuant to division (B) 66
(2) of this section. 67

(5) Divisions (B) (1) to (4) of this section do not 68
eliminate either of the following: 69

(a) Any other next of kin's burden to prove damages under 70
division (D) of this section. 71

(b) The presumption, established by division (A) of this 72
section, that a decedent's surviving spouse, children, or 73
parents suffered damages by reason of the decedent's wrongful 74

death. 75

~~(2)~~ (C) (1) The jury, or the court if the civil action for 76
wrongful death is not tried to a jury, may award damages 77
authorized by division ~~(B)~~ (D) of this section, as it determines 78
are proportioned to the injury and loss resulting to the 79
beneficiaries described in ~~division (A) (1)~~ divisions (A) and (B) 80
of this section by reason of the wrongful death and may award 81
the reasonable funeral and burial expenses incurred as a result 82
of the wrongful death. In its verdict, the jury or court shall 83
set forth separately the amount, if any, awarded for the 84
reasonable funeral and burial expenses incurred as a result of 85
the wrongful death. 86

~~(3) (a)~~ (2) (a) The date of the decedent's death fixes, 87
subject to division ~~(A) (3) (b) (iii)~~ (C) (2) (b) (iii) of this 88
section, the status of all beneficiaries of the civil action for 89
wrongful death for purposes of determining the damages suffered 90
by them and the amount of damages to be awarded. A person who is 91
conceived prior to the decedent's death and who is born alive 92
after the decedent's death is a beneficiary of the action. 93

(b) (i) In determining the amount of damages to be awarded, 94
the jury or court may consider all factors existing at the time 95
of the decedent's death that are relevant to a determination of 96
the damages suffered by reason of the wrongful death. 97

(ii) Consistent with the Rules of Evidence, a party to a 98
civil action for wrongful death may present evidence of the cost 99
of an annuity in connection with an issue of recoverable future 100
damages. If that evidence is presented, then, in addition to the 101
factors described in division ~~(A) (3) (b) (i)~~ (C) (2) (b) (i) of this 102
section and, if applicable, division ~~(A) (3) (b) (iii)~~ (C) (2) (b) 103
(iii) of this section, the jury or court may consider that 104

evidence in determining the future damages suffered by reason of 105
the wrongful death. If that evidence is presented, the present 106
value in dollars of an annuity is its cost. 107

(iii) Consistent with the Rules of Evidence, a party to a 108
civil action for wrongful death may present evidence that the 109
surviving spouse of the decedent is remarried. If that evidence 110
is presented, then, in addition to the factors described in 111
divisions ~~(A) (3) (b) (i)~~ (C) (2) (b) (i) and (ii) of this section, 112
the jury or court may consider that evidence in determining the 113
damages suffered by the surviving spouse by reason of the 114
wrongful death. 115

~~(B)~~ (D) Compensatory damages may be awarded in a civil 116
action for wrongful death and may include damages for the 117
following: 118

(1) Loss of support from the reasonably expected earning 119
capacity of the decedent; 120

(2) Loss of services of the decedent; 121

(3) Loss of the society of the decedent, including loss of 122
companionship, consortium, care, assistance, attention, 123
protection, advice, guidance, counsel, instruction, training, 124
and education, suffered by the surviving spouse, dependent 125
children, parents, or next of kin of the decedent; 126

(4) Loss of prospective inheritance to the decedent's 127
heirs at law at the time of the decedent's death; 128

(5) The mental anguish incurred by the surviving spouse, 129
dependent children, parents, or next of kin of the decedent. 130

~~(C)~~ (E) A personal representative appointed in this state, 131
with the consent of the court making the appointment and at any 132

time before or after the commencement of a civil action for 133
wrongful death, may settle with the defendant the amount to be 134
paid. 135

~~(D)(1)~~ (F)(1) Except as provided in division (D)(2) of 136
this section, a civil action for wrongful death shall be 137
commenced within two years after the decedent's death. 138

(2) (a) Except as otherwise provided in divisions ~~(D)(2)(b)~~ 139
(F)(2)(b), (c), (d), (e), (f), and (g) of this section or in 140
section 2125.04 of the Revised Code, no cause of action for 141
wrongful death involving a product liability claim shall accrue 142
against the manufacturer or supplier of a product later than ten 143
years from the date that the product was delivered to its first 144
purchaser or first lessee who was not engaged in a business in 145
which the product was used as a component in the production, 146
construction, creation, assembly, or rebuilding of another 147
product. 148

(b) Division ~~(D)(2)(a)~~ (F)(2)(a) of this section does not 149
apply if the manufacturer or supplier of a product engaged in 150
fraud in regard to information about the product and the fraud 151
contributed to the harm that is alleged in a product liability 152
claim involving that product. 153

(c) Division ~~(D)(2)(a)~~ (F)(2)(a) of this section does not 154
bar a civil action for wrongful death involving a product 155
liability claim against a manufacturer or supplier of a product 156
who made an express, written warranty as to the safety of the 157
product that was for a period longer than ten years and that, at 158
the time of the decedent's death, has not expired in accordance 159
with the terms of that warranty. 160

(d) If the decedent's death occurs during the ten-year 161

period described in division ~~(D) (2) (a)~~ (F) (2) (a) of this section 162
but less than two years prior to the expiration of that period, 163
a civil action for wrongful death involving a product liability 164
claim may be commenced within two years after the decedent's 165
death. 166

(e) If the decedent's death occurs during the ten-year 167
period described in division ~~(D) (2) (a)~~ (F) (2) (a) of this section 168
and the claimant cannot commence an action during that period 169
due to a disability described in section 2305.16 of the Revised 170
Code, a civil action for wrongful death involving a product 171
liability claim may be commenced within two years after the 172
disability is removed. 173

(f) (i) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does 174
not bar a civil action for wrongful death based on a product 175
liability claim against a manufacturer or supplier of a product 176
if the product involved is a substance or device described in 177
division (B) (1), (2), (3), or (4) of section 2305.10 of the 178
Revised Code and the decedent's death resulted from exposure to 179
the product during the ten-year period described in division (D) 180
(2) (a) of this section. 181

(ii) If division ~~(D) (2) (f) (i)~~ (F) (2) (f) (i) of this section 182
applies regarding a civil action for wrongful death, the cause 183
of action that is the basis of the action accrues upon the date 184
on which the claimant is informed by competent medical authority 185
that the decedent's death was related to the exposure to the 186
product or upon the date on which by the exercise of reasonable 187
diligence the claimant should have known that the decedent's 188
death was related to the exposure to the product, whichever date 189
occurs first. A civil action for wrongful death based on a cause 190
of action described in division ~~(D) (2) (f) (i)~~ (F) (2) (f) (i) of 191

this section shall be commenced within two years after the cause 192
of action accrues and shall not be commenced more than two years 193
after the cause of action accrues. 194

(g) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does not 195
bar a civil action for wrongful death based on a product 196
liability claim against a manufacturer or supplier of a product 197
if the product involved is a substance or device described in 198
division (B) (5) of section 2315.10 of the Revised Code. If 199
division ~~(D) (2) (g)~~ (F) (2) (g) of this section applies regarding a 200
civil action for wrongful death, the cause of action that is the 201
basis of the action accrues upon the date on which the claimant 202
is informed by competent medical authority that the decedent's 203
death was related to the exposure to the product or upon the 204
date on which by the exercise of reasonable diligence the 205
claimant should have known that the decedent's death was related 206
to the exposure to the product, whichever date occurs first. A 207
civil action for wrongful death based on a cause of action 208
described in division ~~(D) (2) (g)~~ (F) (2) (g) of this section shall 209
be commenced within two years after the cause of action accrues 210
and shall not be commenced more than two years after the cause 211
of action accrues. 212

~~(E) (1)~~ (G) (1) If the personal representative of a deceased 213
minor has actual knowledge or reasonable cause to believe that 214
the minor was abandoned by a parent seeking to benefit from a 215
civil action for wrongful death or if any person listed in 216
~~division (A) (1)~~ divisions (A) and (B) of this section who is 217
permitted to benefit from a civil action for wrongful death 218
commenced in relation to a deceased minor has actual knowledge 219
or reasonable cause to believe that the minor was abandoned by a 220
parent seeking to benefit from the action, the personal 221
representative or the person may file a motion in the court in 222

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:	252
(a) An insurance company that the A. M. Best Company, in	253
its most recently published rating guide of life insurance	254
companies, has rated A or better and has rated XII or higher as	255
to financial size or strength;	256
(b) (i) An insurance company that the superintendent of	257
insurance, under rules adopted pursuant to Chapter 119. of the	258
Revised Code for purposes of implementing this division,	259
determines is licensed to do business in this state and,	260
considering the factors described in division (G) (1) (b) (ii) <u>(I)</u>	261
<u>(1) (b) (ii)</u> of this section, is a stable insurance company that	262
issues annuities that are safe and desirable.	263
(ii) In making determinations as described in division (G)	264
(1) (b) (i) <u>(I) (1) (b) (i)</u> of this section, the superintendent shall	265
be guided by the principle that the jury or court in a civil	266
action for wrongful death should be presented only with evidence	267
as to the cost of annuities that are safe and desirable for the	268
beneficiaries of the action who are awarded compensatory damages	269
under this section. In making the determinations, the	270
superintendent shall consider the financial condition, general	271
standing, operating results, profitability, leverage, liquidity,	272
amount and soundness of reinsurance, adequacy of reserves, and	273
the management of a particular insurance company involved and	274
also may consider ratings, grades, and classifications of any	275
nationally recognized rating services of insurance companies and	276
any other factors relevant to the making of the determinations.	277
(2) "Future damages" means damages that result from the	278
wrongful death and that will accrue after the verdict or	279
determination of liability by the jury or court is rendered in	280
the civil action for wrongful death.	281

(3) "Abandoned" means that a parent of a minor failed 282
without justifiable cause to communicate with the minor, care 283
for the minor, and provide for the maintenance or support of the 284
minor as required by law or judicial decree for a period of at 285
least one year immediately prior to the date of the death of the 286
minor. 287

(4) "Minor" means a person who is less than eighteen years 288
of age. 289

(5) "Harm" means death. 290

(6) "Manufacturer," "product," "product liability claim," 291
and "supplier" have the same meanings as in section 2307.71 of 292
the Revised Code. 293

(7) "Next of kin" means the nearest surviving relatives to 294
the decedent after accounting for the parents, children, or 295
spouse. 296

~~(H)-(J) Divisions (D), (G) (5), and (G) (6) (F), (I) (5), and~~ 297
~~(I) (6)~~ of this section shall be considered to be purely remedial 298
in operation and shall be applied in a remedial manner in any 299
civil action commenced on or after ~~the effective date of this~~ 300
~~amendment April 7, 2005~~, in which those divisions are relevant, 301
regardless of when the cause of action accrued and 302
notwithstanding any other section of the Revised Code or prior 303
rule of law of this state, but shall not be construed to apply 304
to any civil action pending prior to ~~the effective date of this~~ 305
~~amendment April 7, 2005~~. 306

Sec. 2125.04. In every civil action for wrongful death 307
that is commenced or attempted to be commenced within the time 308
specified by division ~~(D) (1) (F) (1)~~ or ~~(D) (2) (e) (F) (2) (c)~~, (d), 309
(e), (f), or (g) of section 2125.02 of the Revised Code, if a 310

judgment for the plaintiff is reversed or the plaintiff fails 311
otherwise than upon the merits, the plaintiff or, if the 312
plaintiff dies and the cause of action survives, the personal 313
representative of the plaintiff may commence a new civil action 314
for wrongful death within one year after the date of the 315
reversal of the judgment or the plaintiff's failure otherwise 316
than upon the merits or within the period specified by any of 317
those divisions, whichever occurs later. 318

Section 2. That existing sections 2125.02 and 2125.04 of 319
the Revised Code are hereby repealed. 320