

**As Passed by the Senate**

**134th General Assembly**

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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, Sobeki, Upchurch, West, White  
Senators Manning, Blessing, Cirino, Craig, Hicks-Hudson, Maharath, Thomas**

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**A BILL**

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 16  
effective date of this amendment, for the purpose of determining 17  
who is an interested person entitled to notice pursuant to Rule 18  
70 of the Rules of Superintendence for the Courts of Ohio, all 19  
of the following apply: 20

(1) A surviving spouse and any surviving child or parent 21  
of the decedent is an interested person. 22

(2) If an application to approve settlement and 23  
distribution of wrongful death and survival claims is filed with 24  
the probate court prior to or on the date that is two years 25  
after the date of the decedent's death, all other next of kin 26  
are interested persons. 27

(3) (a) Except as provided in division (B) (3) (b) of this 28  
section, if an application to approve settlement and 29  
distribution of wrongful death and survival claims is filed with 30  
the probate court after the date that is two years after the 31  
date of the decedent's death, no other next of kin are 32  
interested persons. 33

(b) A person who is among the other next of kin may remain 34  
an interested person by filing a written notice of claim with 35  
the probate court prior to or on the date that is two years from 36  
the date of the decedent's death. The notice of claim shall 37  
include the claimant's name, address, telephone number, and 38  
relation to the decedent. 39

(4) Divisions (B) (1) to (3) of this section do not 40  
eliminate either of the following: 41

(a) Any other next of kin's burden to prove damages under 42  
division (D) of this section. 43

(b) The presumption, established by division (A) of this 44

section, that a decedent's surviving spouse, children, or 45  
parents suffered damages by reason of the decedent's wrongful 46  
death. 47

~~(2)~~ (C) (1) The jury, or the court if the civil action for 48  
wrongful death is not tried to a jury, may award damages 49  
authorized by division ~~(B)~~ (D) of this section, as it determines 50  
are proportioned to the injury and loss resulting to the 51  
beneficiaries described in division ~~(A) (1)~~ (A) of this section 52  
by reason of the wrongful death and may award the reasonable 53  
funeral and burial expenses incurred as a result of the wrongful 54  
death. In its verdict, the jury or court shall set forth 55  
separately the amount, if any, awarded for the reasonable 56  
funeral and burial expenses incurred as a result of the wrongful 57  
death. 58

~~(3) (a)~~ (2) (a) The date of the decedent's death fixes, 59  
subject to division ~~(A) (3) (b) (iii)~~ (C) (2) (b) (iii) of this 60  
section, the status of all beneficiaries of the civil action for 61  
wrongful death for purposes of determining the damages suffered 62  
by them and the amount of damages to be awarded. A person who is 63  
conceived prior to the decedent's death and who is born alive 64  
after the decedent's death is a beneficiary of the action. 65

(b) (i) In determining the amount of damages to be awarded, 66  
the jury or court may consider all factors existing at the time 67  
of the decedent's death that are relevant to a determination of 68  
the damages suffered by reason of the wrongful death. 69

(ii) Consistent with the Rules of Evidence, a party to a 70  
civil action for wrongful death may present evidence of the cost 71  
of an annuity in connection with an issue of recoverable future 72  
damages. If that evidence is presented, then, in addition to the 73  
factors described in division ~~(A) (3) (b) (i)~~ (C) (2) (b) (i) of this 74

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, 103  
with the consent of the court making the appointment and at any 104  
time before or after the commencement of a civil action for 105  
wrongful death, may settle with the defendant the amount to be 106  
paid. 107

~~(D) (1)~~ (F) (1) Except as provided in division (D) (2) of 108  
this section, a civil action for wrongful death shall be 109  
commenced within two years after the decedent's death. 110

(2) (a) Except as otherwise provided in divisions ~~(D) (2) (b)~~ 111  
(F) (2) (b), (c), (d), (e), (f), and (g) of this section or in 112  
section 2125.04 of the Revised Code, no cause of action for 113  
wrongful death involving a product liability claim shall accrue 114  
against the manufacturer or supplier of a product later than ten 115  
years from the date that the product was delivered to its first 116  
purchaser or first lessee who was not engaged in a business in 117  
which the product was used as a component in the production, 118  
construction, creation, assembly, or rebuilding of another 119  
product. 120

(b) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does not 121  
apply if the manufacturer or supplier of a product engaged in 122  
fraud in regard to information about the product and the fraud 123  
contributed to the harm that is alleged in a product liability 124  
claim involving that product. 125

(c) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does not 126  
bar a civil action for wrongful death involving a product 127  
liability claim against a manufacturer or supplier of a product 128  
who made an express, written warranty as to the safety of the 129  
product that was for a period longer than ten years and that, at 130  
the time of the decedent's death, has not expired in accordance 131  
with the terms of that warranty. 132

(d) If the decedent's death occurs during the ten-year 133  
period described in division ~~(D) (2) (a)~~ (F) (2) (a) of this section 134  
but less than two years prior to the expiration of that period, 135  
a civil action for wrongful death involving a product liability 136  
claim may be commenced within two years after the decedent's 137  
death. 138

(e) If the decedent's death occurs during the ten-year 139  
period described in division ~~(D) (2) (a)~~ (F) (2) (a) of this section 140  
and the claimant cannot commence an action during that period 141  
due to a disability described in section 2305.16 of the Revised 142  
Code, a civil action for wrongful death involving a product 143  
liability claim may be commenced within two years after the 144  
disability is removed. 145

(f) (i) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does 146  
not bar a civil action for wrongful death based on a product 147  
liability claim against a manufacturer or supplier of a product 148  
if the product involved is a substance or device described in 149  
division (B) (1), (2), (3), or (4) of section 2305.10 of the 150  
Revised Code and the decedent's death resulted from exposure to 151  
the product during the ten-year period described in division (D) 152  
(2) (a) of this section. 153

(ii) If division ~~(D) (2) (f) (i)~~ (F) (2) (f) (i) of this section 154  
applies regarding a civil action for wrongful death, the cause 155  
of action that is the basis of the action accrues upon the date 156  
on which the claimant is informed by competent medical authority 157  
that the decedent's death was related to the exposure to the 158  
product or upon the date on which by the exercise of reasonable 159  
diligence the claimant should have known that the decedent's 160  
death was related to the exposure to the product, whichever date 161  
occurs first. A civil action for wrongful death based on a cause 162

of action described in division ~~(D) (2) (f) (i)~~ (F) (2) (f) (i) of 163  
this section shall be commenced within two years after the cause 164  
of action accrues and shall not be commenced more than two years 165  
after the cause of action accrues. 166

(g) Division ~~(D) (2) (a)~~ (F) (2) (a) of this section does not 167  
bar a civil action for wrongful death based on a product 168  
liability claim against a manufacturer or supplier of a product 169  
if the product involved is a substance or device described in 170  
division (B) (5) of section 2315.10 of the Revised Code. If 171  
division ~~(D) (2) (g)~~ (F) (2) (g) of this section applies regarding a 172  
civil action for wrongful death, the cause of action that is the 173  
basis of the action accrues upon the date on which the claimant 174  
is informed by competent medical authority that the decedent's 175  
death was related to the exposure to the product or upon the 176  
date on which by the exercise of reasonable diligence the 177  
claimant should have known that the decedent's death was related 178  
to the exposure to the product, whichever date occurs first. A 179  
civil action for wrongful death based on a cause of action 180  
described in division ~~(D) (2) (g)~~ (F) (2) (g) of this section shall 181  
be commenced within two years after the cause of action accrues 182  
and shall not be commenced more than two years after the cause 183  
of action accrues. 184

~~(E) (1)~~ (G) (1) If the personal representative of a deceased 185  
minor has actual knowledge or reasonable cause to believe that 186  
the minor was abandoned by a parent seeking to benefit from a 187  
civil action for wrongful death or if any person listed in 188  
division ~~(A) (1)~~ (A) of this section who is permitted to benefit 189  
from a civil action for wrongful death commenced in relation to 190  
a deceased minor has actual knowledge or reasonable cause to 191  
believe that the minor was abandoned by a parent seeking to 192  
benefit from the action, the personal representative or the 193

person may file a motion in the court in which the action is 194  
commenced requesting the court to issue an order finding that 195  
the parent abandoned the minor and is not entitled to recover 196  
damages in the action based on the death of the minor. 197

(2) The movant who files a motion described in division 198  
~~(E) (1)~~ (G) (1) of this section shall name the parent who 199  
abandoned the deceased minor and, whether or not that parent is 200  
a resident of this state, the parent shall be served with a 201  
summons and a copy of the motion in accordance with the Rules of 202  
Civil Procedure. Upon the filing of the motion, the court shall 203  
conduct a hearing. In the hearing on the motion, the movant has 204  
the burden of proving, by a preponderance of the evidence, that 205  
the parent abandoned the minor. If, at the hearing, the court 206  
finds that the movant has sustained that burden of proof, the 207  
court shall issue an order that includes its findings that the 208  
parent abandoned the minor and that, because of the prohibition 209  
set forth in division ~~(A) (1)~~ (A) of this section, the parent is 210  
not entitled to recover damages in the action based on the death 211  
of the minor. 212

(3) A motion requesting a court to issue an order finding 213  
that a specified parent abandoned a minor child and is not 214  
entitled to recover damages in a civil action for wrongful death 215  
based on the death of the minor may be filed at any time during 216  
the pendency of the action. 217

~~(F)~~ (H) This section does not create a new cause of action 218  
or substantive legal right against any person involving a 219  
product liability claim. 220

~~(G)~~ (I) As used in this section: 221

(1) "Annuity" means an annuity that would be purchased 222

from either of the following types of insurance companies: 223

(a) An insurance company that the A. M. Best Company, in 224  
its most recently published rating guide of life insurance 225  
companies, has rated A or better and has rated XII or higher as 226  
to financial size or strength; 227

(b) (i) An insurance company that the superintendent of 228  
insurance, under rules adopted pursuant to Chapter 119. of the 229  
Revised Code for purposes of implementing this division, 230  
determines is licensed to do business in this state and, 231  
considering the factors described in division ~~(G) (1) (b) (ii)~~ (I) 232  
(1) (b) (ii) of this section, is a stable insurance company that 233  
issues annuities that are safe and desirable. 234

(ii) In making determinations as described in division ~~(G)~~ 235  
~~(1) (b) (i)~~ (I) (1) (b) (i) of this section, the superintendent shall 236  
be guided by the principle that the jury or court in a civil 237  
action for wrongful death should be presented only with evidence 238  
as to the cost of annuities that are safe and desirable for the 239  
beneficiaries of the action who are awarded compensatory damages 240  
under this section. In making the determinations, the 241  
superintendent shall consider the financial condition, general 242  
standing, operating results, profitability, leverage, liquidity, 243  
amount and soundness of reinsurance, adequacy of reserves, and 244  
the management of a particular insurance company involved and 245  
also may consider ratings, grades, and classifications of any 246  
nationally recognized rating services of insurance companies and 247  
any other factors relevant to the making of the determinations. 248

(2) "Future damages" means damages that result from the 249  
wrongful death and that will accrue after the verdict or 250  
determination of liability by the jury or court is rendered in 251  
the civil action for wrongful death. 252

(3) "Abandoned" means that a parent of a minor failed 253  
without justifiable cause to communicate with the minor, care 254  
for the minor, and provide for the maintenance or support of the 255  
minor as required by law or judicial decree for a period of at 256  
least one year immediately prior to the date of the death of the 257  
minor. 258

(4) "Minor" means a person who is less than eighteen years 259  
of age. 260

(5) "Harm" means death. 261

(6) "Manufacturer," "product," "product liability claim," 262  
and "supplier" have the same meanings as in section 2307.71 of 263  
the Revised Code. 264

(7) In relation to persons who died on or after the 265  
effective date of this amendment, "other next of kin" means the 266  
nearest surviving relatives to the decedent after accounting for 267  
the parents, children, or spouse. 268

~~(H) (J) Divisions (D), (G) (5), and (G) (6) (F), (I) (5), and~~ 269  
~~(I) (6)~~ of this section shall be considered to be purely remedial 270  
in operation and shall be applied in a remedial manner in any 271  
civil action commenced on or after ~~the effective date of this~~ 272  
~~amendment~~ April 7, 2005, in which those divisions are relevant, 273  
regardless of when the cause of action accrued and 274  
notwithstanding any other section of the Revised Code or prior 275  
rule of law of this state, but shall not be construed to apply 276  
to any civil action pending prior to ~~the effective date of this~~ 277  
~~amendment~~ April 7, 2005. 278

**Sec. 2125.03.** (A) (1) The amount received by a personal 279  
representative in an action for wrongful death under sections 280  
2125.01 and 2125.02 of the Revised Code, whether by settlement 281

or otherwise, shall be distributed to the beneficiaries or any 282  
one or more of them. The court that appointed the personal 283  
representative, except when all of the beneficiaries are on an 284  
equal degree of consanguinity to the deceased person, shall 285  
adjust the share of each beneficiary in a manner that is 286  
equitable, having due regard for the injury and loss to each 287  
beneficiary resulting from the death and for the age and 288  
condition of the beneficiaries. If all of the beneficiaries are 289  
on an equal degree of consanguinity to the deceased person, the 290  
beneficiaries may adjust the share of each beneficiary among 291  
themselves. If the beneficiaries do not adjust their shares 292  
among themselves, the court shall adjust the share of each 293  
beneficiary in the same manner as the court adjusts the shares 294  
of beneficiaries who are not on an equal degree of consanguinity 295  
to the deceased person. 296

(2) The court may create a trust for any beneficiary who 297  
is under twenty-five years of age by ordering that the portion 298  
of the amount received by the personal representative for that 299  
beneficiary be deposited in trust for the benefit of that 300  
beneficiary, until the beneficiary reaches twenty-five years of 301  
age, and order the distribution of the amount in accordance with 302  
the provisions of the trust. Prior to appointment as a trustee 303  
of a trust created pursuant to this section, the person to be 304  
appointed shall be approved by each adult beneficiary and by the 305  
guardian of each minor beneficiary of the trust. 306

(3) The personal representative shall not distribute any 307  
amount received in an action for wrongful death under sections 308  
2125.01 and 2125.02 of the Revised Code to any person in 309  
relation to whom the court has entered an order pursuant to 310  
division ~~(E) (2)~~ (G) (2) of section 2125.02 of the Revised Code. 311

(B) The court shall distribute the amount of funeral and 312  
burial expenses awarded, or received by settlement, by reason of 313  
the death to the personal representative of the decedent, to be 314  
expended by the personal representative for the payment, or as 315  
reimbursement for the payment, of the expenses. 316

**Sec. 2125.04.** In every civil action for wrongful death 317  
that is commenced or attempted to be commenced within the time 318  
specified by division ~~(D) (1)~~ (F) (1) or ~~(D) (2) (e)~~ (F) (2) (c), (d), 319  
(e), (f), or (g) of section 2125.02 of the Revised Code, if a 320  
judgment for the plaintiff is reversed or the plaintiff fails 321  
otherwise than upon the merits, the plaintiff or, if the 322  
plaintiff dies and the cause of action survives, the personal 323  
representative of the plaintiff may commence a new civil action 324  
for wrongful death within one year after the date of the 325  
reversal of the judgment or the plaintiff's failure otherwise 326  
than upon the merits or within the period specified by any of 327  
those divisions, whichever occurs later. 328

**Section 2.** That existing sections 2125.02, 2125.03, and 329  
2125.04 of the Revised Code are hereby repealed. 330