



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF HOUSE BILL 279**

Before the Ohio House of Representatives Civil Justice Committee
Representative Brett Hillyer, Chair
May 25, 2021

Chairman Hillyer, Vice-Chair Grendell, Ranking Member Galonski, and members of the Ohio House Civil Justice: On behalf of the Ohio State Bar Association, We are pleased to offer proponent testimony in support of House Bill 279.

My name is Susan Richlak and along with my colleague Amy Papesh, we present this proposed change to the wrongful death statute. Amy and I each have over 20 years experience in the area of wrongful death probate administrations. We have practiced in all the 88 counties in Ohio. We have been drafting a proposed revision for over 4 years as we have been acutely aware of this problem for well over 20 years.

House Bill 279 is a result of months of hard work by the Negligence Law Committee and the Ohio State Bar Association Council of Delegates. The proposal was unanimously approved by both bodies.

PROBLEM: When a claim for wrongful death is presented to probate court for approval, the Ohio Rules of Civil Procedure and the Ohio Rules of Superintendence, along with local probate rules set forth notice requirements. However, who should receive notice remains unclear and the current statute requires practitioners to notify all extended “other next of kin,” regardless of whether they have an actual loss and damages to present. It is typically these extended “other next of kin” who had no significant relationship with the decedent and thus have no claim for damages, that present notice challenges and delays, often by months if publication is required, impacting those family members that have truly suffered the loss. It should not be incumbent upon the estate to notify all the extended “other next of kin,” particularly when they have no damages. It should be the responsibility of those “other next of kin” who have suffered a loss and want to claim damages to come forward and present a claim of damages.

CURRENT LAW: Section 2125.02 defines two classes of parties damaged by the wrongful death of the decedent—the first class being 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 and the second class being “other next of kin” of the decedent. The term “other next of kin” is not defined in the statute and thus, the “other next of kin” provision of 2125.02 is subject to wide and varying interpretations among the 88 Probate Courts.

PROBLEM WITH APPLYING CURRENT LAW: Under the current law, difficulties arise for practitioners during the settlement approval process when applying the notice requirements under Sup.R.70 (B) with respect to “other next of kin”. Currently, the requirements for notifying the “other next of kin” depend heavily on local practice and/or local probate court rule, if any. Although various courts have attempted to clarify this statute by way of case law, there is no

uniformity as to the application of the notice requirements among the various Probate Courts in Ohio and the matter has not been addressed by the Ohio Supreme Court.

As a result, practitioners are often failing to notice the proper "other next of kin" or are unnecessarily noticing a larger group of "other next of kin" than needed. This uncertain notice requirement is often tedious, expensive and unnecessarily delays the approval process of the claim and exposes attorneys to potential malpractice claims.

However, just defining the term "other next of kin" within the statute does not solve the problem. It is the notice requirement, not merely the definition that poses the problem. The challenge is often in finding and notifying those who meet the criteria of "other next of kin" but in reality have no relationship or damage as a result of the decedent's death. If an individual did not even know that the decedent died because they are so far removed in consanguinity or relationship, they would likely not be able to meet the requirements for proving damages under the wrongful death statute.

PURPOSE: The purpose of HB 279 would be to eliminate confusion as to the application of the notice requirements to the Wrongful Death statute and to rectify inconsistent practices. HB 279 would accomplish this by:

- 1) establish a requirement that "other next of kin" *shall* present a claim of damages in writing to the probate court within one year of the date of death in order to be eligible to receive damages upon sufficient proof;
- 2) and eliminate the notice requirement to such "other next of kin" who fail to do so under this proposed new law
- 3) any "other next of kin" who fail to present their claim in probate court shall be forever barred from receipt or entitlement to any damages as a result of the wrongful death and would not be entitled to notice of the wrongful death settlement

The fiduciary may accelerate the presenting of the claim period by giving written notice to the "other next of kin" of the name of the decedent, the date of death, the name of the fiduciary and would require that a written claim be presented to the probate court within 30 days of receipt of the notice by the potential claimant. If the potential claimant does not give such notice to the probate court, then their claims are forever barred.

SOLUTION: This proposal would, in general, require the "other next of kin" to present their claim for damages to the probate court within one year of the decedent's date of death. This proposal does not apply to the surviving spouse, parents or children of the decedent. Any claim of "other next of kin" not presented within that one year period would be forever barred and thus, such "other next of kin" would not be entitled to notice of the settlement hearing. This would effectively unify the notice requirement among the 88 counties, reduce potential malpractice claims, increase settlement approval efficiency and grant more expedited closure for distraught family members.

Thank you for the opportunity to present testimony on this bill. We would be happy to address any questions the Committee may have.