

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**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**

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**A BILL**

To amend sections 2125.02 and 2125.04 of the 1  
Revised Code to revise the law regarding 2  
wrongful death claims. 3

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2125.02 and 2125.04 of the 4  
Revised Code be amended to read as follows: 5

**Sec. 2125.02.** (A) ~~(1)~~ Except as otherwise provided in ~~this~~ 6  
division (B) of this section, a civil action for wrongful death 7  
shall be brought in the name of the personal representative of 8  
the decedent for the exclusive benefit of the surviving spouse, 9  
the children, and the parents of the decedent, all of whom are 10  
rebuttably presumed to have suffered damages by reason of the 11  
wrongful death, and for the exclusive benefit of the other next 12  
of kin of the decedent who present claims for damages in 13  
accordance with division (B) of this section. A parent who 14  
abandoned a minor child who is the decedent shall not receive a 15  
benefit in a civil action for wrongful death brought under this 16  
division. 17

(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. 18  
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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. 26  
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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: 36  
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(a) The decedent's name; 39

(b) The date of the decedent's death; 40

(c) The executor's or administrator's name and mailing address; 41  
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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 written notice of claim with the probate court not more than 43  
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thirty 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 thirty days after the notice is received is 52  
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 thirty days after the other next of 58  
kin receives the notice. The notice of claim shall include the 59  
claimant's name, address, telephone number, and relation to the 60  
decedent. Any other next of kin who receives such a notice and 61  
does not deliver a written notice of claim to the probate court 62  
within thirty days after receiving the notice is barred from 63  
bringing a claim in the same manner as if the other next of kin 64  
had failed to present a notice of claim to the court within a 65  
year of the decedent's death pursuant to division (B) (2) of this 66  
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 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)~~ divisions (A) and (B) 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 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 223



order finding that the parent abandoned the minor and is not 224  
entitled to recover damages in the action based on the death of 225  
the minor. 226

(2) The movant who files a motion described in division 227  
~~(E)(1)~~(G)(1) of this section shall name the parent who 228  
abandoned the deceased minor and, whether or not that parent is 229  
a resident of this state, the parent shall be served with a 230  
summons and a copy of the motion in accordance with the Rules of 231  
Civil Procedure. Upon the filing of the motion, the court shall 232  
conduct a hearing. In the hearing on the motion, the movant has 233  
the burden of proving, by a preponderance of the evidence, that 234  
the parent abandoned the minor. If, at the hearing, the court 235  
finds that the movant has sustained that burden of proof, the 236  
court shall issue an order that includes its findings that the 237  
parent abandoned the minor and that, because of the prohibition 238  
set forth in division ~~(A)(1)~~(A) of this section, the parent is 239  
not entitled to recover damages in the action based on the death 240  
of the minor. 241

(3) A motion requesting a court to issue an order finding 242  
that a specified parent abandoned a minor child and is not 243  
entitled to recover damages in a civil action for wrongful death 244  
based on the death of the minor may be filed at any time during 245  
the pendency of the action. 246

~~(F)~~(H) This section does not create a new cause of action 247  
or substantive legal right against any person involving a 248  
product liability claim. 249

~~(G)~~(I) As used in this section: 250

(1) "Annuity" means an annuity that would be purchased 251  
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)~~ (I) 261  
(1) (b) (ii) 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)~~ (I) (1) (b) (i) 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

~~(H)~~ (J) Divisions ~~(D)~~, ~~(G) (5)~~, and ~~(G) (6)~~ (F), (I) (5), and 294  
(I) (6) of this section shall be considered to be purely remedial 295  
in operation and shall be applied in a remedial manner in any 296  
civil action commenced on or after ~~the effective date of this~~ 297  
~~amendment~~ April 7, 2005, in which those divisions are relevant, 298  
regardless of when the cause of action accrued and 299  
notwithstanding any other section of the Revised Code or prior 300  
rule of law of this state, but shall not be construed to apply 301  
to any civil action pending prior to ~~the effective date of this~~ 302  
~~amendment~~ April 7, 2005. 303

**Sec. 2125.04.** In every civil action for wrongful death 304  
that is commenced or attempted to be commenced within the time 305  
specified by division ~~(D) (1)~~ (F) (1) or ~~(D) (2) (e)~~ (F) (2) (c), (d), 306  
(e), (f), or (g) of section 2125.02 of the Revised Code, if a 307  
judgment for the plaintiff is reversed or the plaintiff fails 308  
otherwise than upon the merits, the plaintiff or, if the 309  
plaintiff dies and the cause of action survives, the personal 310  
representative of the plaintiff may commence a new civil action 311

for wrongful death within one year after the date of the 312  
reversal of the judgment or the plaintiff's failure otherwise 313  
than upon the merits or within the period specified by any of 314  
those divisions, whichever occurs later. 315

**Section 2.** That existing sections 2125.02 and 2125.04 of 316  
the Revised Code are hereby repealed. 317