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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
Senators Manning, Blessing, Cirino, Craig, Hicks-Hudson, Maharath, Thomas**

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