



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 279
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Brown and Oelslager

Michael J. O'Neill, Division Chief

SUMMARY

- Caps the time within which extended family may present claims in a wrongful death action when the decedent is survived by immediate family to, generally, one year after the wrongful death.
- Provides a mechanism through which the executor or administrator of the decedent's estate may shorten this time period.
- Bars claims from extended family who do not timely present a claim.

DETAILED ANALYSIS

Wrongful death actions – overview

Under continuing law, when a person (the decedent) dies because of the wrongful act or omission of another and that act or omission would have entitled the decedent to sue the other person for damages if the decedent had not died, the other person is liable for damages caused by the wrongful act or omission in a wrongful death action.

Under continuing law, a civil action for wrongful death must be brought in the name of the decedent's personal representative (the estate's executor or administrator) for the exclusive benefit of (1) the decedent's immediate family (the decedent's surviving spouse, children, and parents) and (2) the decedent's other next of kin. While not statutorily defined for the purposes of wrongful death actions, the court cases generally define "other next of kin" in this context as a decedent's nearest relative or relatives after the immediate family. For ease of reading, this analysis uses the term "extended family" instead of the statutory term "other next of kin."

While immediate family are rebuttably presumed to have been harmed by the death, the amount of the damages still must be proven. In claims relating to extended family, both the injury and damages must be proven.

A wrongful death action generally must be commenced within two years after the decedent's death. In some instances, the personal representative settles the wrong death action; in such instances, the personal representative is required to give notice of the settlement hearing to all interested parties, which would include extended family.¹

The bill shortens the time within which extended family may present claims in a wrongful death action when the decedent is survived by immediate family.²

Extended family – time within which to present a claim

Under the bill, when the decedent is survived by immediate family, then all members of the decedent's extended family who have suffered damages by reason of the wrongful death must, after the appointment of an executor or administrator, present their claim for damages to the probate court by filing a written notice of claim. This notice of claim must include the claimant's name, address, telephone number, and relation to the decedent.

Generally, under the bill an extended family claimant has one year following the decedent's death to present the claim, and a claim that is not presented within this time is forever barred. Extended family members whose claims are so barred are deemed to not be interested persons entitled to notice of hearing.

But, an executor or administrator may accelerate the barring of claims from extended family members by giving the extended family members a written notice of acceleration containing all of the following:

- The decedent's name and date of death;
- The executor's or administrator's name and mailing address;
- Statements that:
 - The extended family member must present any claim the member may have for damages due to the wrongful death to the probate court by filing a written notice of claim not more than 30 days after the member receives the notice of acceleration.
 - The notice of claim must include the member's name, address, telephone number, and relation to the decedent.
 - Any claim not presented within 30 days after the notice of acceleration is received is forever barred.

An extended family member who receives a notice of acceleration may preserve the member's claims by delivering a written notice of claim to the probate court not more than 30 days after receiving the notice of acceleration. The notice of claim must include the same information as the general notice of claim: the member's name, address, telephone number,

¹ R.C. 2125.01 and 2125.02(A), (B), and (D) (re-lettered to be 2125.02(A), (D), and (F) in the bill); Sup.R. 70; and *In re Estate of Harrison*, 2012-Ohio-2169, ¶ 9 and *In re Estate of Payne*, 2005-Ohio-2391, ¶ 13.

² R.C. 2125.02(A) and (B), with conforming changes in R.C. 2125.04.

and relation to the decedent. Failure to deliver a written notice of claim within the 30-day period bars the member from bringing a claim.

The bill's provisions do not eliminate the burden to prove the extended family member's compensatory damages. In a wrongful death action, the damages that a claimant may be awarded include damages for the following:

1. Loss of support from the decedent's reasonably expected earning capacity;
2. Loss of the decedent's services;
3. Loss of the decedent's society, including loss of companionship, consortium, care, advice, and education;
4. Loss of prospective inheritance;
5. Mental anguish.³

HISTORY

Action	Date
Introduced	05-03-21

H0279-I-134/ks

³ R.C. 2125.02(B) and (D).