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H.B. 279*
134th General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsors: Reps. Brown and Oelslager

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SUMMARY

- Limits the time within which extended family may present claims in a wrongful death action when the decedent is survived by immediate family to 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, unchanged by the bill, a person is liable for damages in a wrongful death action when:

- An individual dies because of the person's wrongful act or omission;
- The decedent (the individual who died) would have been entitled to sue for damages arising from the act or omission if the decedent had not died.

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:

- The decedent's immediate family (the decedent's surviving spouse, children, and parents); and

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- The decedent's extended family (**other next of kin**, which the bill defines as the nearest surviving relatives to the decedent after accounting for the parents, children, or spouse).

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 those instances, the personal representative is required to give notice of the settlement hearing to all interested parties, including 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 for the decedent's estate, 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.

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.

The bill also allows an executor or administrator to accelerate the barring of claims from extended family members, shortening it to 45 days after the extended family receives a notice described in the bill. That notice must be written and contain all of the following:

- The decedent's name and date of death.
- The executor's or administrator's name and mailing address.
- A statement that the extended family member must present any claim for damages due to the wrongful death to the probate court by filing a written notice of claim not more than 45 days after the member receives the notice of acceleration.
- A statement that any notice of claim must include the member's name, address, telephone number, and relation to the decedent.
- A statement that any claim not presented within 45 days after the notice of acceleration is received is forever barred.

¹ R.C. 2125.01 and 2125.02(A), (B), (D), and (G)(7) (re-lettered to be 2125.02(A), (D), (F), and (G)(7) in the bill); Sup.R. 70.

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

The bill does not change the law's provisions for damages. Under that continuing law, members of a decedent's immediate family are all rebuttably presumed to have suffered damages from the decedent's death. The amount of damages, however, must be proven. Extended family members must prove both the fact and amount of 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

The bill specifies that the changes to wrongful death claims made by the bill apply only to deaths that occur on or after the bill's effective date.

HISTORY

Action	Date
Introduced	05-03-21
Reported, H. Civil Justice	06-23-21
Passed House (90-0)	06-25-21
Reported, S. Judiciary	---

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³ R.C. 2125.02(B) and (D).