

HOUSE BILL NO. HB0056

Plaintiffs in wrongful death actions.

Sponsored by: Representative(s) Greear and Lubnau

A BILL

for

1 AN ACT relating to civil procedure; amending and clarifying
2 who may initiate a wrongful death action and who may
3 benefit from such action; specifying procedures for
4 establishing potential beneficiaries in wrongful death
5 actions; providing for applicability of the act; and
6 providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 1-38-102 is amended to read:

11

12 **1-38-102. Action to be brought by personal**
13 **representative; determination of person who may benefit;**
14 **recovery exempt from debts; measure and element of damages;**
15 **limitation of action.**

16

1 (a) Every ~~such~~ action under W.S. 1-38-101 shall be
2 brought by and in the name of the decedent's personal
3 representative ~~of the deceased person~~ or administrator,
4 appointed by the probate court having appropriate
5 jurisdiction. The personal representative or administrator
6 for the estate of the deceased person shall obtain
7 authority from the probate court to settle or compromise
8 any such action prior to trial.

9
10 (b) The persons who may benefit from an action under
11 this section shall be established by an order issued by the
12 probate court determined in accordance with the following:

13
14 (i) The personal representative or administrator
15 shall mail a notice of a right to file a claim to
16 participate in an action under this section by first class
17 United States mail to the decedent's heirs, devisees and
18 any person who is a named beneficiary in the decedent's
19 revocable trust. In addition, the personal representative
20 or administrator shall cause to be published notice of such
21 right once a week for three (3) consecutive weeks in a
22 daily or weekly newspaper of general circulation in the
23 county in which probate is pending. The publication may be
24 combined with publication required under W.S. 2-7-201. Any

1 person making a claim pursuant to this subsection shall
2 file his claim with the probate court within three (3)
3 months after the date of first publication of the notice in
4 the newspaper, or before the expiration of thirty (30) days
5 after the mailing, whichever date is later, and any claim
6 not so filed is barred forever. The clerk of the probate
7 court shall forthwith transmit to the personal
8 representative or administrator one (1) copy of each claim
9 when and as filed;

10
11 (ii) Every claim filed under this subsection
12 shall contain a sworn statement setting forth the
13 relationship with the decedent. The personal
14 representative or administrator may also require
15 satisfactory evidence to be produced in support of the
16 claim asserted;

17
18 (iii) For every claim filed under this
19 subsection, when accompanied by the sworn statement
20 required under paragraph (ii) of this subsection:

21
22 (A) The personal representative or
23 administrator shall allow or reject the claim, and his
24 allowance or rejection shall be in writing and filed with

1 the clerk within thirty (30) days after the expiration of
2 the time for filing claims;

3
4 (B) Every claim allowed by the personal
5 representative or administrator shall be included and
6 ranked among the acknowledged beneficiaries of a wrongful
7 death action filed under this section;

8
9 (C) When a claim has been filed with the
10 clerk and is rejected, the personal representative or
11 administrator shall immediately upon rejection notify the
12 claimant by certified mail.

13
14 (iv) If a claim is rejected by the personal
15 representative or administrator under this subsection, the
16 person whose claim was rejected may petition the probate
17 court to rule upon whether the person should be allowed to
18 benefit from the wrongful death action. Any petition filed
19 under this paragraph shall not prevent the personal
20 representative or administrator from prosecuting or
21 settling the wrongful death action.

22
23 ~~(b)~~(c) If the ~~deceased~~decedent left a husband, wife,
24 child, father or mother, no debt of the ~~deceased~~decedent

1 may be satisfied out of the proceeds of any judgment or
2 settlement obtained in any action brought under the
3 provisions of this section.

4
5 ~~(e)~~(d) The court or jury, as the case may be, in
6 every such action may award such damages, pecuniary and
7 exemplary, as shall be deemed fair and just. Every person
8 for whose benefit such action is brought as provided in
9 subsection (b) of this section may prove his respective
10 damages, and the court or jury may award such person that
11 amount of damages to which it considers such person
12 entitled, including damages for loss of probable future
13 companionship, society and comfort. For any such action
14 that is settled or compromised prior to trial, any dispute
15 between the persons for whose benefit the action is brought
16 under subsection (b) of this section shall be resolved in
17 the probate court.

18
19 ~~(d)~~(e) Every such action shall be commenced within
20 two (2) years after the death of the ~~deceased person~~
21 decedent; provided however, if such action involves medical
22 malpractice this limitation period shall be tolled upon
23 receipt of the claim by the director of the medical review
24 panel as provided in W.S. 9-2-1518(a).

1

2 **Section 2.** The provisions of W.S. 1-38-102, as
3 amended by this act, shall be effective for any wrongful
4 death action commenced under W.S. 1-38-102 on or after July
5 1, 2011.

6

7 **Section 3.** This act is effective July 1, 2011.

8

9

(END)