

HOUSE BILL NO. HB0014

Wrongful death representative.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to civil procedure; generally modifying
2 provisions relating to wrongful death actions; providing
3 for appointment of a wrongful death representative;
4 specifying factors for determining a wrongful death
5 representative; specifying on whose behalf a wrongful death
6 action is brought; providing for notice; providing for
7 applicability of the act; and providing for an effective
8 date.

9

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

11

12 **Section 1.** W.S. 1-38-103 through 1-38-105 are created
13 to read:

14

15 **1-38-103. Appointment of wrongful death**
16 **representative.**

17

1 (a) The wrongful death representative may be
2 appointed by the district court in the county in which:

3
4 (i) The decedent resided;

5
6 (ii) The decedent died;

7
8 (iii) The claim for relief or some part of the
9 claim for relief arose; or

10
11 (iv) A defendant resides or may be summoned.

12
13 (b) The district court may appoint the wrongful death
14 representative at any time after the decedent's death. The
15 appointment shall be made in a separate action brought
16 solely for appointing the wrongful death representative. In
17 any action in which appointment of the wrongful death
18 representative is sought, any person claiming to qualify
19 under W.S. 1-38-104(a) may intervene as a matter of right.
20 After an action to appoint the wrongful death
21 representative is filed:

22
23 (i) No subsequent action for appointment may be
24 maintained; and

1

2 (ii) If an action to appoint the wrongful death
3 representative is properly filed, the limitation period
4 under W.S. 1-38-102(d) shall be tolled from the time the
5 action is filed until thirty (30) days after an order
6 appointing the wrongful death representative is entered.

7

8 (c) The appointment of the wrongful death
9 representative is a procedural device intended to provide a
10 representative to investigate and bring an action under
11 W.S. 1-38-101. Irregularities in the manner or method of
12 appointment are not jurisdictional.

13

14 **1-38-104. Factors for determining wrongful death**
15 **representative.**

16

17 (a) In appointing the wrongful death representative,
18 the court shall determine the person who will best
19 represent the interests of the potential beneficiaries of
20 the action as a whole.

21

22 (b) In determining whether the best interests of
23 potential beneficiaries as a whole will be served by

1 appointment of the wrongful death representative, the court
2 shall consider:

3

4 (i) The familial or other relationship of the
5 person making application to the decedent;

6

7 (ii) The interests of the person making
8 application in relation to the interests of other potential
9 beneficiaries as a whole;

10

11 (iii) Actions taken to secure appointment as the
12 wrongful death representative and to protect the interests
13 of all potential beneficiaries;

14

15 (iv) Such other factors as the court deems
16 relevant.

17

18 (c) No appeal shall be allowed from an order
19 appointing the wrongful death representative. The court,
20 however, may entertain a motion to reconsider an
21 appointment of the wrongful death representative.

22

23 **1-38-105. Notice.**

24

1 (a) Within thirty (30) days of the filing of an
2 action to appoint the wrongful death representative, the
3 plaintiff shall cause to be published once a week for three
4 (3) consecutive weeks in a daily or weekly newspaper of
5 general circulation in the county in which the decedent
6 resided at the time of death, a notice that an action to
7 appoint the wrongful death representative has been
8 instituted and that any person claiming to qualify under
9 W.S. 1-38-104(a) may intervene as a matter of right.

10
11 (b) Within sixty (60) days after appointment, the
12 wrongful death representative shall file with the court a
13 report listing all reasonably ascertainable beneficiaries.
14 The report shall set forth all reasonable efforts made by
15 the wrongful death representative to notify such
16 beneficiaries of the wrongful death representative's
17 appointment.

18
19 (c) Irregularities in the manner or method of giving
20 notice under this section are not jurisdictional.

21
22 **Section 2.** W.S. 1-38-102 is amended by to read:
23

1 1-38-102. Action to be brought by wrongful death
2 representative; recovery exempt from debts; measure and
3 element of damages; limitation of action.

4
5 (a) Every ~~such~~ wrongful death action under W.S.
6 1-38-101 shall be brought by and in the name of the
7 ~~personal~~ decedent's wrongful death representative ~~of the~~
8 ~~deceased person~~ for the exclusive benefit of beneficiaries
9 who have sustained damage.

10
11 (b) If the ~~deceased~~ decedent left a husband, wife,
12 child, father or mother, no debt of the ~~deceased~~ decedent
13 may be satisfied out of the proceeds of any judgment
14 obtained in any action ~~brought under the provisions of this~~
15 ~~section~~ for wrongful death or out of the proceeds of any
16 settlement of a wrongful death claim.

17
18 (c) The court or jury, as the case may be, ~~in every~~
19 ~~such action~~ may award such damages, pecuniary and
20 exemplary, as shall be deemed fair and just. Every person
21 for whose benefit ~~such~~ an action for wrongful death is
22 brought may prove his respective damages, and the court or
23 jury may award such person that amount of damages to which

1 it considers such person entitled, including damages for
2 loss of probable future companionship, society and comfort.

3
4 (d) ~~Every such~~ An action for wrongful death shall be
5 commenced within two (2) years after the death of the
6 ~~deceased person~~ decendent. If the decedent's death involved
7 medical malpractice this limitation period shall be tolled
8 as provided in W.S. 9-2-1518 upon receipt by the director
9 of the medical review panel of a malpractice claim.

10
11 (e) The court appointing the wrongful death
12 representative may approve a settlement of a wrongful death
13 action or a wrongful death claim and resolve disputes
14 relating to the allocation of settlement proceeds.

15
16 **Section 3.** The provisions of this act shall apply to
17 all actions for wrongful death filed on or after July 1,
18 2012. Nothing in this act shall affect the validity of an
19 appointment of a wrongful death personal representative
20 made prior to the effective date of this act.

21
22 **Section 4.** This act is effective July 1, 2012.

23
24 (END)