



## Ohio Revised Code

### Section 2125.02 Parties - damages.

Effective: April 7, 2005

Legislation: Senate Bill 80 - 125th General Assembly

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(A)(1) 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.

(2) The jury, or the court if the civil action for wrongful death is not tried to a jury, may award damages authorized by division (B) of this section, as it determines are proportioned to the injury and loss resulting to the beneficiaries described in division (A)(1) of this section by reason of the wrongful death and may award the reasonable funeral and burial expenses incurred as a result of the wrongful death. In its verdict, the jury or court shall set forth separately the amount, if any, awarded for the reasonable funeral and burial expenses incurred as a result of the wrongful death.

(3)(a) The date of the decedent's death fixes, subject to division (A)(3)(b)(iii) of this section, the status of all beneficiaries of the civil action for wrongful death for purposes of determining the damages suffered by them and the amount of damages to be awarded. A person who is conceived prior to the decedent's death and who is born alive after the decedent's death is a beneficiary of the action.

(b)(i) In determining the amount of damages to be awarded, the jury or court may consider all factors existing at the time of the decedent's death that are relevant to a determination of the damages suffered by reason of the wrongful death.

(ii) Consistent with the Rules of Evidence, a party to a civil action for wrongful death may present evidence of the cost of an annuity in connection with an issue of recoverable future damages. If that evidence is presented, then, in addition to the factors described in division (A)(3)(b)(i) of this section and, if applicable, division (A)(3)(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) 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) 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) A personal representative appointed in this state, with the consent of the court making the appointment and at any time before or after the commencement of a civil action for wrongful death, may settle with the defendant the amount to be paid.

(D)(1) Except as provided in division (D)(2) of this section, a civil action for wrongful death shall be commenced within two years after the decedent's death.

(2)(a) Except as otherwise provided in divisions (D)(2)(b), (c), (d), (e), (f), and (g) of this section or



in section 2125.04 of the Revised Code, no cause of action for wrongful death involving a product liability claim shall accrue against the manufacturer or supplier of a product later than ten years from the date that the product was delivered to its first purchaser or first lessee who was not engaged in a business in which the product was used as a component in the production, construction, creation, assembly, or rebuilding of another product.

(b) Division (D)(2)(a) of this section does not apply if the manufacturer or supplier of a product engaged in fraud in regard to information about the product and the fraud contributed to the harm that is alleged in a product liability claim involving that product.

(c) Division (D)(2)(a) of this section does not bar a civil action for wrongful death involving a product liability claim against a manufacturer or supplier of a product who made an express, written warranty as to the safety of the product that was for a period longer than ten years and that, at the time of the decedent's death, has not expired in accordance with the terms of that warranty.

(d) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section but less than two years prior to the expiration of that period, a civil action for wrongful death involving a product liability claim may be commenced within two years after the decedent's death.

(e) If the decedent's death occurs during the ten-year period described in division (D)(2)(a) of this section and the claimant cannot commence an action during that period due to a disability described in section 2305.16 of the Revised Code, a civil action for wrongful death involving a product liability claim may be commenced within two years after the disability is removed.

(f)(i) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(1), (2), (3), or (4) of section 2305.10 of the Revised Code and the decedent's death resulted from exposure to the product during the ten-year period described in division (D)(2)(a) of this section.

(ii) If division (D)(2)(f)(i) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product



or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(f)(i) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(g) Division (D)(2)(a) of this section does not bar a civil action for wrongful death based on a product liability claim against a manufacturer or supplier of a product if the product involved is a substance or device described in division (B)(5) of section 2315.10 of the Revised Code. If division (D)(2)(g) of this section applies regarding a civil action for wrongful death, the cause of action that is the basis of the action accrues upon the date on which the claimant is informed by competent medical authority that the decedent's death was related to the exposure to the product or upon the date on which by the exercise of reasonable diligence the claimant should have known that the decedent's death was related to the exposure to the product, whichever date occurs first. A civil action for wrongful death based on a cause of action described in division (D)(2)(g) of this section shall be commenced within two years after the cause of action accrues and shall not be commenced more than two years after the cause of action accrues.

(E)(1) If the personal representative of a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from a civil action for wrongful death or if any person listed in division (A)(1) of this section who is permitted to benefit from a civil action for wrongful death commenced in relation to a deceased minor has actual knowledge or reasonable cause to believe that the minor was abandoned by a parent seeking to benefit from the action, the personal representative or the person may file a motion in the court in which the action is commenced requesting the court to issue an order finding that the parent abandoned the minor and is not entitled to recover damages in the action based on the death of the minor.

(2) The movant who files a motion described in division (E)(1) of this section shall name the parent who abandoned the deceased minor and, whether or not that parent is a resident of this state, the parent shall be served with a summons and a copy of the motion in accordance with the Rules of Civil Procedure. Upon the filing of the motion, the court shall conduct a hearing. In the hearing on the motion, the movant has the burden of proving, by a preponderance of the evidence, that the parent abandoned the minor. If, at the hearing, the court finds that the movant has sustained that



burden of proof, the court shall issue an order that includes its findings that the parent abandoned the minor and that, because of the prohibition set forth in division (A)(1) of this section, the parent is not entitled to recover damages in the action based on the death of the minor.

(3) A motion requesting a court to issue an order finding that a specified parent abandoned a minor child and is not entitled to recover damages in a civil action for wrongful death based on the death of the minor may be filed at any time during the pendency of the action.

(F) This section does not create a new cause of action or substantive legal right against any person involving a product liability claim.

(G) As used in this section:

(1) "Annuity" means an annuity that would be purchased from either of the following types of insurance companies:

(a) An insurance company that the A. M. Best Company, in its most recently published rating guide of life insurance companies, has rated A or better and has rated XII or higher as to financial size or strength;

(b)(i) An insurance company that the superintendent of insurance, under rules adopted pursuant to Chapter 119. of the Revised Code for purposes of implementing this division, determines is licensed to do business in this state and, considering the factors described in division (G)(1)(b)(ii) of this section, is a stable insurance company that issues annuities that are safe and desirable.

(ii) In making determinations as described in division (G)(1)(b)(i) of this section, the superintendent shall be guided by the principle that the jury or court in a civil action for wrongful death should be presented only with evidence as to the cost of annuities that are safe and desirable for the beneficiaries of the action who are awarded compensatory damages under this section. In making the determinations, the superintendent shall consider the financial condition, general standing, operating results, profitability, leverage, liquidity, amount and soundness of reinsurance, adequacy of reserves, and the management of a particular insurance company involved and also may consider ratings, grades, and classifications of any nationally recognized rating services of insurance



companies and any other factors relevant to the making of the determinations.

(2) "Future damages" means damages that result from the wrongful death and that will accrue after the verdict or determination of liability by the jury or court is rendered in the civil action for wrongful death.

(3) "Abandoned" means that a parent of a minor failed without justifiable cause to communicate with the minor, care for the minor, and provide for the maintenance or support of the minor as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

(4) "Minor" means a person who is less than eighteen years of age.

(5) "Harm" means death.

(6) "Manufacturer," "product," "product liability claim," and "supplier" have the same meanings as in section 2307.71 of the Revised Code.

(H) Divisions (D), (G)(5), and (G)(6) of this section shall be considered to be purely remedial in operation and shall be applied in a remedial manner in any civil action commenced on or after the effective date of this amendment, in which those divisions are relevant, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state, but shall not be construed to apply to any civil action pending prior to the effective date of this amendment.