

Senator Scott D. McCoy proposes the following substitute bill:

**WRONGFUL DEATH AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott D. McCoy**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill expands the definition of "heirs" to include a wrongful death designee.

**Highlighted Provisions:**

This bill:

▶ defines wrongful death designee as a person who:

• is designated as the only wrongful death heir in the decedent's will, trust, or other notarized written directive;

• has been adjudicated by a court of competent jurisdiction, by clear and convincing evidence, to have had a mutual supportive and dependent relationship with the decedent; and

• provides minor children with priority over other heirs in the event of a wrongful death settlement; and

▶ allows for the wrongful death designee to bring suit or participate in an action brought by the other heirs under certain circumstances.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78B-3-105**, as renumbered and amended by Laws of Utah 2008, Chapter 329 

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30 *Be it enacted by the Legislature of the state of Utah:*31 Section 1. Section **78B-3-105** is amended to read:32 **78B-3-105. Definition of heir.**33 (1) As used in Sections 78B-3-106 and 78B-3-107[;-"heirs"]:34 (a) (i) "Heirs" means[;-(1)] the following surviving persons:35 [~~(a)~~] (A) the decedent's spouse; or36 (B) if no spouse, the decedent's wrongful death designee as defined in Subsection37 (1)(b);38 [~~(b)~~] (C) the decedent's children as provided in Section 75-2-114;39 (D) the decedent's stepchildren who:40 (I) are in their minority at the time of the decedent's death; and41 (II) are primarily financially dependent on the decedent; and42 [~~(e)~~] (E) the decedent's natural parents, or if the decedent was adopted, then [his] the  
43 decedent's adoptive parents[;].44 [~~(d) the decedent's stepchildren who:~~45 [~~(i) are in their minority at the time of decedent's death; and]~~46 [~~(ii) are primarily financially dependent on the decedent.]~~47 [~~(2)~~] (ii) "Heirs" [means] includes any blood relative as provided [by the law of48 intestate succession if] in Title 75, Chapter 2, Intestate Succession and Wills, only when the49 decedent is not survived by [a] at least one person under [Subsections] Subsection (1)(a)[;-(b);50 or-(c)].51 (b) "Wrongful death designee" means a person who:52 (i) is designated as the sole wrongful death heir in the decedent's will, trust, or other  
53 notarized written directive; and54 (ii) has been adjudicated by a court of competent jurisdiction, by clear and convincing  
55 evidence, to have had a mutually supportive and dependent relationship with the decedent.56 (2) In determining whether a person has been in a mutually supportive and dependent

57 relationship with the decedent, a court of competent jurisdiction must find by clear and  
58 convincing evidence that, at the time of the decedent's death:

59 (a) the person shared a residence with the decedent;

60 (b) the decedent designated the person as the beneficiary of the decedent's:

61 (i) retirement benefit;

62 (ii) health insurance policy; or

63 (iii) will or trust; and

64 (c) the person and decedent commingled assets and shared liabilities.

65 (3) (a) A wrongful death designee may bring an action for the death of the decedent if:

66 (i) there are no other heirs as defined in Subsection(1)(a); or

67 (ii) the heirs, as defined in Subsection(1)(a), have chosen not to pursue an action.

68 (b) If any of the heirs, as defined in Subsection (1)(a), bring an action for the wrongful  
69 death of the decedent, the wrongful death designee may participate in the action only with the  
70 consent of the other participants in the action.

71 (4) If damages are awarded or a settlement is reached as a result of a wrongful death  
72 action, satisfaction of any award of damages to or settlement in favor of plaintiff minor  
73 children, if any, shall be given priority over the satisfaction of any award of damages to or  
74 settlement in favor of other plaintiff heirs.

75 (5) Neither a grant of standing under this section, nor anything else in this section, nor  
76 any finding by the court under this section may be construed as recognizing or treating a  
77 mutually supportive and dependent relationship as a marriage, civil union, domestic  
78 partnership, or any other legal or relationship status that intends to approximate the design,  
79 qualities, significance, or effect of marriage as defined in Section 30-1-4.1 and Article I,  
80 Section 29 of the Utah Constitution.

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**S.B. 32 1st Sub. (Green) - Wrongful Death Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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