

WRONGFUL DEATH AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: _____

LONG TITLE

Committee Note:

The Judiciary Interim Committee recommended this bill.

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; and
- 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.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



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

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 78B-3-105 is amended to read:

78B-3-105. Definition of heir.

(1) As used in Sections 78B-3-106 and 78B-3-107[, "heirs"]:

(a) (i) "Heirs" means[: (1)] the following surviving persons:

(A) the decedent's spouse; or

(B) if no spouse, the decedent's wrongful death designee as defined in Subsection

(1)(b);

(C) the decedent's children as provided in Section 75-2-114;

(D) the decedent's stepchildren who:

(I) are in their minority at the time of the decedent's death; and

(II) are primarily financially dependent on the decedent; and

(E) the decedent's natural parents, or if the decedent was adopted, then [his] the decedent's adoptive parents[;].

~~[(d) the decedent's stepchildren who:]~~

~~[(i) are in their minority at the time of decedent's death; and]~~

~~[(ii) are primarily financially dependent on the decedent.]~~

(2) (ii) "Heirs" [means] includes any blood relative as provided [by the law of intestate succession if] in Title 75, Chapter 2, Intestate Succession and Wills, only when the decedent is not survived by [a] at least one person under [Subsections] Subsection (1)(a)[, (b); or (c)].

(b) "Wrongful death designee" means a person who:

(i) is designated as the sole wrongful death heir in the decedent's will, trust, or other notarized written directive; and

(ii) has been adjudicated by a court of competent jurisdiction, by clear and convincing evidence, to have had a mutually supportive and dependent relationship with the decedent.

(2) In determining whether a person has been in a mutually supportive and dependent relationship with the decedent, a court of competent jurisdiction must find by clear and 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 comingled assets and shared liabilities.

65 (3) If damages are awarded or a settlement is reached as a result of a wrongful death
66 action, satisfaction of any award of damages to or settlement in favor of plaintiff minor
67 children, if any, shall be given priority over the satisfaction of any award of damages to or
68 settlement in favor of other plaintiff heirs.

69 (4) Neither a grant of standing under this section, nor anything else in this section, nor
70 any finding by the court under this section may be construed as recognizing or treating a
71 mutually supportive and dependent relationship as a marriage, civil union, domestic
72 partnership, or any other legal or relationship status that intends to approximate the design,
73 qualities, significance, or effect of marriage as defined in Article I, Section 29 of the Utah
74 Constitution.

Legislative Review Note
as of 11-20-08 10:20 AM

Office of Legislative Research and General Counsel

S.B. 32 - Wrongful Death Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
