

WRONGFUL DEATH AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: _____

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

Utah Code Sections Affected:

AMENDS:



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



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[:(+)] the following surviving persons:

35 [~~(a)~~] (A) the decedent's spouse; or

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

37 (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; and

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

42 [~~(c)~~] (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 of
48 intestate succession if] in Title 75, Chapter 2, Intestate Succession and Wills, only when the
49 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; and

54 (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.

Legislative Review Note
as of 2-3-10 4:46 PM

Office of Legislative Research and General Counsel

S.B. 146 - Wrongful Death Amendments

Fiscal Note

2010 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.
