

Chapter 5

WRONGFUL DEATH REPRESENTATIVE

Original House Bill No. 14

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

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

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

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

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

- (i) The decedent resided;
- (ii) The decedent died;
- (iii) The claim for relief or some part of the claim for relief arose; or
- (iv) A defendant resides or may be summoned.

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

- (i) No subsequent action for appointment may be maintained; and
- (ii) If an action to appoint the wrongful death representative is

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

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

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

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

(b) In determining whether the best interests of potential beneficiaries as a whole will be served by appointment of the wrongful death representative, the court shall consider:

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

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

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

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

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

### **1-38-105. Notice.**

(a) Within thirty (30) days of the filing of an action to appoint the wrongful

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

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

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

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

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

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

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

(c) The court or jury, as the case may be, ~~in every such action~~ may award such damages, pecuniary and exemplary, as shall be deemed fair and just. Every person for whose benefit ~~such an action for wrongful death~~ is brought may prove his respective damages, and the court or jury may award such person that amount of damages to which it considers such person entitled, including damages for loss of probable future companionship, society and comfort.

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

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

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

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

Approved March 5, 2012.