

2010 -- S 2046

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE IN PARTICULAR
ACTIONS

Introduced By: Senators Tassoni, McBurney, and Doyle

Date Introduced: January 13, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 10-7-2 of the General Laws in Chapter 10-7 entitled "Death By
2 Wrongful Act" is hereby amended to read as follows:

3 **10-7-2. Persons who may bring actions -- Limitation of actions -- Minimum recovery**
4 **period.** -- Every action under this chapter, other than one brought under section 10-7-1.2, shall be
5 brought by and in the name of the executor or administrator of the deceased person, whether
6 appointed or qualified within or without the state, and of the amount recovered in every action
7 under this chapter one-half (1/2) shall go to the husband or widow, and one-half (1/2) shall go to
8 the children of the deceased, and if there are no children, the whole shall go to the husband or
9 widow, and, if there is no husband or widow, to the next of kin, in the proportion provided by law
10 in relation to the distribution of personal property left by persons dying intestate; except that no
11 person who is adjudged to be in willful contempt of being in excess of six (6) months in arrears of
12 an order to pay child support for the deceased individual shall be allowed recovery pursuant to
13 this chapter and a person so adjudged shall be deemed to have predeceased the child for the
14 purpose of determining distribution under the intestacy statute and for cases in which the parents
15 of a deceased child are divorced, separated, living apart, or never were married, a motion may be
16 filed by either parent in the court where any wrongful death action is then pending prior to trial or
17 the settlement of any case, requesting the judge to apportion fairly any amount awarded or to be
18 awarded in the case. Where such a motion is filed, a judgment or settlement shall not be

1 automatically divided. A hearing shall be conducted by the judge at which each parent shall have
2 the opportunity to be heard and to produce evidence regarding that parent's relationship with the
3 deceased child. The judge shall fairly determine the percentage of the judgment to be awarded to
4 each parent. In making such a determination, the judge shall consider each parent's relationship
5 with the deceased child, including, but not limited to, custody, control, and support, as well as any
6 other factors found to be relevant by the court. The judge's decision on the apportionment of any
7 award or settlement shall not be disturbed absent an abuse of discretion. Every action brought
8 under section 10-7-1.2 shall be brought by and in the name of the person or persons sustaining the
9 loss of society, companionship and/or consortium and the amount recovered shall go to the
10 person or persons who sustained the loss. Except as otherwise provided, every action brought
11 pursuant to this chapter shall be commenced within three (3) years after the death of the person.
12 With respect to any death caused by any wrongful act, neglect or default which is not known at
13 the time of death, the action shall be commenced within three (3) years of the time that the
14 wrongful act, neglect or default is discovered or, in the exercise of reasonable diligence, should
15 have been discovered. Whenever any person or corporation is found liable under sections 10-7-1 -
16 - 10-7-4 he or she or it shall be liable in damages in the sum of not less than two hundred fifty
17 thousand dollars (\$250,000).

18 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would permit parents of a deceased child who are divorced, separated, living
- 2 apart or never married to file a motion requesting the judge to apportion fairly any amount
- 3 awarded in a wrongful death action.
- 4 This act would take effect upon passage.

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