

**WRONGFUL DEATH AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Benjamin M. McAdams**

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.

**Money 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[~~:(1)~~] the following surviving persons:

35 [~~(a)~~] (A) the decedent's spouse or if no spouse, the decedent's wrongful death designee  
36 as defined in Subsection (1)(b);

37 [~~(b)~~] (B) the decedent's children as provided in Section 75-2-114;

38 (C) the decedent's stepchildren who are in their minority at the time of the decedent's  
39 death and are primarily financially dependent on the decedent; and

40 [~~(c)~~] (D) the decedent's natural parents, or if the decedent was adopted, then [his] the  
41 decedent's adoptive parents[;].

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

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

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

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

48 ~~or (c)].~~  
49 (b) "Wrongful death designee" means a person who:

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

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

54 (2) In determining whether a person has been in a mutually supportive and dependent  
55 relationship with the decedent, a court of competent jurisdiction must find by clear and  
56 convincing evidence that, at the time of the decedent's death:

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

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

59           (i) retirement benefit;  
60           (ii) health insurance policy; or  
61           (iii) will or trust; and  
62           (c) the person and decedent commingled assets and shared liabilities.  
63           (3) (a) A wrongful death designee may bring an action for the death of the decedent if:  
64           (i) there are no other heirs as defined in Subsection(1)(a); or  
65           (ii) the heirs, as defined in Subsection(1)(a), have chosen not to pursue an action.  
66           (b) If any of the heirs, as defined in Subsection (1)(a), bring an action for the wrongful  
67 death of the decedent, the wrongful death designee may participate in the action only with the  
68 consent of the other participants in the action.  
69           (4) If damages are awarded or a settlement is reached as a result of a wrongful death  
70 action, satisfaction of any award of damages to or settlement in favor of plaintiff minor  
71 children, if any, shall be given priority over the satisfaction of any award of damages to or  
72 settlement in favor of other plaintiff heirs.  
73           (5) Neither a grant of standing under this section, nor anything else in this section, nor  
74 any finding by the court under this section may be construed as recognizing or treating a  
75 mutually supportive and dependent relationship as a marriage, civil union, domestic  
76 partnership, or any other legal or relationship status that intends to approximate the design,  
77 qualities, significance, or effect of marriage as defined in Section 30-1-4.1 and Utah  
78 Constitution, Article I, Section 29.

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**Legislative Review Note**  
as of 10-21-10 10:39 AM

**Office of Legislative Research and General Counsel**