

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 245

By: Smalley

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5  
6 AS INTRODUCED

7 An Act relating to wrongful death actions; amending  
8 12 O.S. 2011, Section 1053, which relates to  
9 limitation of actions and damages; clarifying  
applicability of certain agreement to certain  
actions; and providing an effective date.

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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 12 O.S. 2011, Section 1053, is  
14 amended to read as follows:

15 Section 1053. A. When the death of one is caused by the  
16 wrongful act or omission of another, the personal representative of  
17 the former may maintain an action therefor against the latter, or  
18 his or her personal representative if he or she is also deceased, if  
19 the former might have maintained an action, had he or she lived,  
20 against the latter, or his or her representative, for an injury for  
21 the same act or omission. The action shall be considered a  
22 derivative action subject to a valid agreement entered by or on  
23 behalf of the decedent to mediate, arbitrate or otherwise submit the  
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1 action to alternative dispute resolution. The action must be  
2 commenced within two (2) years.

3 B. The damages recoverable in actions for wrongful death as  
4 provided in this section shall include the following: Medical and  
5 burial expenses, which shall be distributed to the person or  
6 governmental agency as defined in Section 5051.1 of Title 63 of the  
7 Oklahoma Statutes who paid these expenses, or to the decedent's  
8 estate if paid by the estate.

9 The loss of consortium and the grief of the surviving spouse,  
10 which shall be distributed to the surviving spouse.

11 The mental pain and anguish suffered by the decedent, which  
12 shall be distributed to the surviving spouse and children, if any,  
13 or next of kin in the same proportion as personal property of the  
14 decedent.

15 The pecuniary loss to the survivors based upon properly  
16 admissible evidence with regard thereto including, but not limited  
17 to, the age, occupation, earning capacity, health habits, and  
18 probable duration of the decedent's life, which must inure to the  
19 exclusive benefit of the surviving spouse and children, if any, or  
20 next of kin, and shall be distributed to them according to their  
21 pecuniary loss.

22 The grief and loss of companionship of the children and parents  
23 of the decedent, which shall be distributed to them according to  
24 their grief and loss of companionship.

1 C. In proper cases, as provided by Section 9.1 of Title 23 of  
2 the Oklahoma Statutes, punitive or exemplary damages may also be  
3 recovered against the person proximately causing the wrongful death  
4 or the person's representative if such person is deceased. Such  
5 damages, if recovered, shall be distributed to the surviving spouse  
6 and children, if any, or next of kin in the same proportion as  
7 personal property of the decedent.

8 D. Where the recovery is to be distributed according to a  
9 person's pecuniary loss or loss of companionship, the judge shall  
10 determine the proper division.

11 E. The above-mentioned distributions shall be made after the  
12 payment of legal expenses and costs of the action.

13 F. 1. The provisions of this section shall also be available  
14 for the death of an unborn child as defined in Section 1-730 of  
15 Title 63 of the Oklahoma Statutes.

16 2. The provisions of this subsection shall not apply to:

17 a. acts which cause the death of an unborn child if those  
18 acts were committed during a legal abortion to which  
19 the pregnant woman consented, or

20 b. acts which are committed pursuant to the usual and  
21 customary standards of medical practice during  
22 diagnostic testing or therapeutic treatment.

23 3. Under no circumstances shall the mother of the unborn child  
24 be found liable for causing the death of the unborn child unless the

1 mother has committed a crime that caused the death of the unborn  
2 child.

3 SECTION 2. This act shall become effective November 1, 2015.  
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