

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

A Bill

HOUSE BILL 2637

4
5 By: Representative Harrelson
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For An Act To Be Entitled

8
9 AN ACT TO ENSURE THAT THE FAMILY AND INTERESTS OF
10 A DECEDENT ARE ADEQUATELY PROTECTED; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13
14 MONA'S LAW.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 16-62-101(a)(1), concerning survival
20 actions, is amended to read as follows:

21 (a)(1)(A) For wrongs done to the person or property of another, an
22 action may be maintained against a wrongdoer, and the action may be brought
23 by the person injured or, after his or her death, by his or her executor, ~~or~~
24 administrator, personal representative, distributee of a small estate if the
25 estate does not exceed fifty thousand dollars (\$50,000), or the heirs at law
26 against the wrongdoer or, after the death of the wrongdoer, against the
27 executor or administrator of the wrongdoer, in the same manner and with like
28 effect in all respects as actions founded on contracts.

29 (B) As used in this section, "heir at law" or "heirs at
30 law" includes any of the following:

31 (i) If the decedent died testate, a person who takes
32 real, personal, tangible, or intangible property:

33 (a) Under the decedent's will, by right of
34 survivorship or by tenancy by the entirety; and

35 (b) Is a beneficiary under § 16-62-102;

36 (ii) If the decedent died intestate, all of the



1 persons to whom the heritable estate passes as provided under § 28-9-214; or
2 (iii) All of the beneficiaries under § 16-62-102.

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4 SECTION 2. Arkansas Code § 16-62-101, concerning survival actions, is
5 amended to add an additional subsection to read as follows:

6 (c)(1) An action under this section shall be commenced within three
7 (3) years after the death of the decedent.

8 (2) If a nonsuit or dismissal without prejudice is suffered by a
9 party bringing an action under this section, then the action shall be
10 commenced within one (1) year from the date of the nonsuit or dismissal
11 without regard to the date of the death of the decedent.

12 (3) This section shall be liberally construed in favor of the
13 party bringing the action.

14 (4) If a cause of action under this section is brought by at
15 least one (1) heir at law, then the cause of action shall be preserved for
16 the purpose of time limitations for filing the action.

17 (5)(A) Except as provided in subdivision (c)(5)(B) of this
18 section, if an action filed under this section fails to comply with a
19 requirement of this section, then:

20 (i) The party bringing the action shall be allowed
21 to amend the pleadings to conform with this section, and the amended
22 pleadings shall relate back to the date when the action was originally filed;
23 and

24 (ii) A complaint alleging a claim under this section
25 shall not be nullified because of noncompliance with this section.

26 (B) If the party bringing the action fails to amend the
27 complaint within one (1) year after a motion to dismiss alleging
28 noncompliance with this section has been filed, then the action may be
29 dismissed.

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31 SECTION 3. Arkansas Code § 16-62-102(b), concerning wrongful death
32 actions, is amended to read as follows:

33 (b)(1) Every action shall be brought by and in the name of the
34 personal representative of the deceased person.

35 (2)(A) If there is no personal representative, then the action
36 shall may be brought by the heirs at law of the deceased person.

1 (B) As used in this section, "heir at law" or "heirs at
 2 law" includes any of the following:

3 (i) If the decedent died testate, a person who takes
 4 real, personal, tangible, or intangible property:

5 (a) Under the decedent's will, by right of
 6 survivorship or by tenancy by the entirety; and

7 (b) Is a beneficiary under § 16-62-102;

8 (ii) If the decedent died intestate, all of the
 9 persons to whom the heritable estate passes as provided under § 28-9-214; or

10 (iii) All of the beneficiaries under § 16-62-102.

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 12 SECTION 4. Arkansas Code § 16-62-102(c), concerning wrongful death
 13 actions, is amended to read as follows:

14 (c)(1) Every action authorized by this section shall be commenced
 15 within three (3) years after the death of the person alleged to have been
 16 wrongfully killed.

17 (2) If a nonsuit or dismissal without prejudice is suffered, the
 18 action shall be brought within one (1) year from the date of the nonsuit or
 19 dismissal without regard to the date of the death of the person alleged to
 20 have been wrongfully killed.

21 (3) This section shall be liberally construed in favor of the
 22 party bringing the action.

23 (4) If a cause of action under this section is brought by at
 24 least one (1) heir at law, then the cause of action shall be preserved for
 25 the purpose of time limitations for filing the action.

26 (5)(A) Except as provided in subdivision (c)(5)(B) of this
 27 section, if an action filed under this section fails to comply with a
 28 requirement of this section, then:

29 (i) The party bringing the action shall be allowed
 30 to amend the pleadings to conform with this section, and the amended
 31 pleadings shall relate back to the date when the action was originally filed;
 32 and

33 (ii) A complaint alleging a claim under this section
 34 shall not be nullified because of noncompliance with this section.

35 (B) If the party bringing the action fails to amend the
 36 complaint within one (1) year after a motion to dismiss alleging

1 noncompliance with this section has been filed, then the action may be
 2 dismissed.

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 4 SECTION 5. Arkansas Code § 16-62-102(d), concerning wrongful death
 5 actions, is amended to read as follows:

6 (d) The party bringing an action under this section may pursue a claim
 7 on behalf of the following beneficiaries, regardless of whether the
 8 beneficiaries are parties to the action of the action created in this section
 9 are:

10 (1) The surviving spouse, children, father, mother, brothers,
 11 and sisters of the deceased person;

12 (2) Persons, regardless of age, standing in loco parentis to the
 13 deceased person; and

14 (3) Persons, regardless of age, to whom the deceased stood in
 15 loco parentis at any time during the life of the deceased.

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 17 SECTION 6. This act shall apply to any of the following causes of
 18 action:

19 (1) All pending actions in this state as of the effective date
 20 of this act;

21 (2) Actions that have not yet been filed and are not time-barred
 22 as of the effective date of this act; and

23 (3) Actions that have not yet accrued as of the effective date
 24 of this act.

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 26 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
 27 General Assembly of the State of Arkansas that the courts have misinterpreted
 28 the survival and wrongful death law to the detriment of the beneficiaries of
 29 decedents' estates; that the actions are being dismissed with prejudice,
 30 amended pleadings to correct technical probate errors are not being allowed,
 31 and complaints are being declared a nullity, all of which is against the
 32 public policy of this state to provide every person his or her day in court,
 33 especially when it involves the death of a loved one; that this act is
 34 intended to clarify existing law; and that this act is immediately necessary
 35 to prevent further injustice to the loved ones of a decedent. Therefore, an
 36 emergency is declared to exist and this act being immediately necessary for

1 the preservation of the public peace, health, and safety shall become
2 effective on:

3 (1) The date of its approval by the Governor;

4 (2) If the act is neither approved nor vetoed by the Governor,
5 the expiration of the period of time during which the Governor may veto the
6 bill; or

7 (3) If the act is vetoed by the Governor and the veto is
8 overridden, the date the last house overrides the veto.

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