

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 2445 (Reyes)
Version: July 7, 2020
Hearing Date: July 30, 2020
Fiscal: No
Urgency: Yes
CK

SUBJECT

Civil actions: wrongful death

DIGEST

This bill affords the legal guardians of a decedent the right to bring a wrongful death claim as if they were the decedent's parents, as specified.

EXECUTIVE SUMMARY

California law establishes a cause of action for the death of a person caused by the wrongful act or neglect of another that may be brought by certain relatives and heirs of the decedent. The decedent's parents are authorized to bring such actions under certain circumstances, such as where they would be entitled to the property of the decedent through intestate succession or if they were dependent on the decedent before death. However, legal guardians are not afforded these same rights. This is despite the fact that California law generally affords legal guardians rights equal to those of parents.

This bill authorizes legal guardians to assert wrongful death claims as if they were the decedent's parents, where the deceased parents of the decedent would be entitled to bring such an action. It further provides that the legal guardians are eligible to bring such a claim, whether or not otherwise qualified, if they were dependent on the decedent.

This bill is author sponsored. It is supported by a number of consumer-focused groups and other interested stakeholders. The CSAC Excess Insurance Authority is in opposition to the bill. This bill includes an urgency clause.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes a cause of action for the death of a person caused by the wrongful act or neglect of another (“wrongful death action”) that may be asserted by any of the following persons or by the decedent’s personal representative on their behalf:
 - a) the decedent’s surviving spouse;
 - b) domestic partner;
 - c) children, and issue of deceased children;
 - d) if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession;
 - e) the putative spouse, children of the putative spouse, stepchildren, or parents, if they were dependent on the decedent; and
 - f) a minor, whether or not otherwise qualified, if, at the time of the decedent’s death, the minor resided for the previous 180 days in the decedent’s household and was dependent on the decedent for one-half or more of the minor’s support. (Code Civ. Proc. § 377.60.)
- 2) Provides that any part of the estate of a decedent not effectively disposed of by will passes to the decedent’s heirs as prescribed in the Probate Code. (Prob. Code § 6400 et seq.)
- 3) Provides that a cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent’s successor in interest, as provided, and an action may be commenced by the decedent’s personal representative or, if none, by the decedent’s successor in interest. (Code Civ. Proc. § 377.30.) Similarly, an action commenced by a decedent and still pending may be continued by the decedent’s personal representative or, if none, by the decedent’s successor in interest. (Code Civ. Proc. § 377.31.)

This bill:

- 1) Authorizes the legal guardians of the decedent, if any, to bring a wrongful death action as if they were the decedent’s parents, if the deceased parents of the decedent would be entitled to bring an action.
- 2) Provides that the legal guardians of the decedent may bring a wrongful death action if they were dependent on the decedent and the decedent’s parents are deceased.
- 3) Declares that it is an urgency measure going into immediate effect in order to ensure legal guardians have standing within pending statutes of limitations periods.

COMMENTS

1. Expanding the right to bring a wrongful death claim

When the death of a person is caused by the wrongful act or neglect of another, the law provides a cause of action to certain relatives and heirs of the decedent. Those authorized to bring such an action include the decedent's partner or children and others that were dependent on the decedent. The decedent's parents are authorized to bring such actions under certain circumstances, such as where they would be entitled to the property of the decedent through intestate succession or where they were dependent on the decedent. However, legal guardians are not afforded these same rights, despite the fact that California law generally affords legal guardians rights equal to those of parents.

This bill rectifies this incongruence in the wrongful death statute by providing that legal guardians are authorized to bring suit as if they were the decedent's parents, where the parents would be entitled to bring such an action and where the parents are deceased. It further provides that the legal guardians are eligible to bring such a claim, whether or not otherwise qualified, if they were dependent on the decedent.

Section 377.60, the wrongful death statute, has been amended in the past to reflect an evolving understanding of familial relationships and units. For instance, AB 25 (Migden, Ch. 893, Stats. 2001) updated the statute to include domestic partners as qualified plaintiffs in such actions. Often, the relationship between legal guardians and their wards is no different than that between parents and their children. This change in law reflects that reality.

Despite some arguments from the opposition to the contrary, legal guardians will still need to prove their cases as any parent currently would. The economic and noneconomic damages must be proven up in order to be awarded damages. The Judicial Council of California Civil Jury Instruction (CACI) 3922 lays out the available damages to a parent for the wrongful death of a minor child, including funeral and burial expenses and the loss of love, companionship, and comfort. The amount of such damages is determined by the fact finder based on the evidence provided by the parties.

2. Stakeholder positions

According to the author:

AB 2445 aims to eliminate the antiquated requirement that the "parent" of a minor who passes away due to the wrongful conduct of others must be the biological parent or have adopted the minor in order to be able to bring a lawsuit on their child's behalf. In cases where the minor is raised by legal guardians and not biological or legally adoptive parents, such

legal guardians should have the right to bring a lawsuit in connection with the death of the minor. The realities of family are not limited to biology or legal adoption, and it is important that the legislature modernize the wrongful death statute to reflect this so that the proper justice can be sought and found after the wrongful death of a child whose legal parents are also deceased. This bill will allow legal guardians to seek justice for their child with a wrongful death claim when the child's legal parents are also deceased.

The Children's Advocacy Institute writes in support: "Just as the law has adapted to recognize that, in the real-world, there are many ways to establish the bonds that qualify for legal parentage so, too, should it conform when it comes to who may be considered a parent to maintain a lawsuit when tragedy befalls a child."

In opposition, the CSAC Excess Insurance Authority write:

The enactment of AB 2445 would expand the number of individuals who could bring a lawsuit for the wrongful death of a decedent without any conditions or requirements, including evidence that a legal guardian was dependent on the decedent or had any kind of parental relationship with the decedent. Indeed, the provisions of AB 2445 could effectively provide a legal guardian with the right to bring a wrongful death lawsuit when he or she was a parent in name only. Section 377.60 of the Code of Civil Procedure is intended to provide redress to parents and other related individual who suffer or lose the support of a decedent. AB 2445 would expand that group of individuals to include those who had a limited, perhaps even dubious, relationship with the decedent.

SUPPORT

Children's Advocacy Institute
Children's Law Center of California
Consumer Attorneys of California
Consumer Federation of California
Dependency Legal Services
John Burton Advocates for Youth
National Center for Lesbian Rights

OPPOSITION

CSAC Excess Insurance Authority

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation: AB 25 (Migden, Ch. 893, Stats. 2001) *See* Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
