

SENATE, No. 4251

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 9, 2021

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Allows certain persons not yet appointed as administrator of estate to pursue lawsuit for damages for wrongful death on behalf of deceased's survivors.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain actions for wrongful death and
2 amending N.J.S.2A:15-3 and N.J.S.2A:31-2.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. N.J.S.2A:15-3 is amended to read as follows:

8 2A:15-3. a. (1) Executors **【and】**, administrators, and
9 administrators ad prosequendum may have an action for any
10 trespass done to the person or property, real or personal, of their
11 testator or intestate against the trespasser, and recover their
12 damages as their testator or intestate would have had if he was
13 living. In those actions based upon the wrongful act, neglect, or
14 default of another, where death resulted from injuries for which the
15 deceased would have had a cause of action if he had lived, the
16 executor **【or】**, administrator, or administrator ad prosequendum
17 may recover all reasonable funeral and burial expenses in addition
18 to damages accrued during the lifetime of the deceased.

19 (2) In the case of a plaintiff qualified for appointment as
20 administrator who was not yet appointed administrator at the time
21 the plaintiff commenced an action under this section, the court may
22 allow the plaintiff to be designated administrator for the purposes of
23 this section and to allow the plaintiff to amend pleadings nunc pro
24 tunc relating back to the plaintiff's first filed pleading to reflect the
25 designation.

26 b. Every action brought under this chapter shall be commenced
27 within two years after the death of the decedent, and not thereafter,
28 provided, however, that if the death resulted from murder,
29 aggravated manslaughter or manslaughter for which the defendant
30 has been convicted, found not guilty by reason of insanity or
31 adjudicated delinquent, the action may be brought at any time.

32 (cf: P.L.2009, c.266)

33

34 2. N.J.S.2A:31-2 is amended to read as follows:

35 2A:31-2. a. Every action commenced under this chapter shall be
36 brought in the name of an administrator ad prosequendum or
37 administrator of the decedent for whose death damages are sought,
38 except where decedent dies testate and his will is probated, in which
39 event the executor named in the will and qualifying, or the
40 administrator with the will annexed, as the case may be, shall bring
41 the action.

42 b. In the case of a plaintiff who is qualified for appointment as
43 administrator ad prosequendum, executor, or administrator with the
44 will annexed, as the case may be, but who was not yet appointed as
45 such at the time the plaintiff commenced an action under this

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 chapter, the court may allow the plaintiff to be designated
2 administrator ad prosequendum, executor, or administrator with the
3 will annexed, as the case may be, and to allow the plaintiff to
4 amend pleadings nunc pro tunc relating back to the plaintiff's first
5 filed pleading to reflect the designation.

6 (cf: P.L.1951, c.344)

7
8 3. This act shall take effect immediately and shall apply to any
9 action commenced on or after the effective date and to any action
10 commenced prior to the effective date and not yet dismissed or
11 finally adjudicated as of the effective date.

12 13 14 STATEMENT

15
16 This bill would allow certain persons to pursue a lawsuit for
17 damages for wrongful death on behalf of the deceased's survivors.

18 Pursuant to current law, civil actions for damages arising from a
19 person's wrongful death may be brought under two separate
20 statutes: (1) Under the "wrongful death act," N.J.S.2A:31-1 et seq.,
21 economic damages may be awarded to persons who would be
22 entitled to the deceased's property under the intestacy laws; and

23 (2) Under the "survivor's act," N.J.S.2A:15-3, damages for the
24 decedent's pain and suffering from the time of the injury until death
25 may be awarded to the decedent's estate.

26 When a person dies without a will, the county surrogate will
27 appoint a general administrator of the estate who, among other
28 duties, is authorized to file any civil actions under the survivor's
29 act. The surrogate will appoint an administrator ad prosequendum
30 (generally the same person who is appointed general administrator)
31 to file any civil actions under the wrongful death act.

32 In an unpublished decision, Chandler v. Kasper, Docket No. A-
33 2143-20 (decided October 7, 2021) the Appellate Division held that
34 the decedent's daughter did not have standing to file a lawsuit under
35 the survivor's act because she had not yet been appointed general
36 administrator of her father's estate; she had been appointed only as
37 administrator ad prosequendum, which entitled her to file suit under
38 the wrongful death act (but not under the survivor's act). According
39 to the daughter, the county surrogate had advised that it was
40 necessary for her only to be appointed as administrator ad
41 prosequendum in order to file the lawsuit, and disagreements with
42 her siblings had led to a delay in her being able to seek appointment
43 as general administrator.

44 In the view of the sponsor, the Chandler decision can lead to
45 many cases brought under the wrongful death act or the survivor's
46 act being dismissed on a technicality.

47 This bill is intended to address the issue by providing that the
48 court may appoint a person as an administrator or administrator ad

1 prosequendum even if the person was not yet appointed as such at
2 the time the person filed a lawsuit under the wrongful death act or
3 survivor's act. The bill provides that the court could allow the
4 person filing suit to be designated administrator ad prosequendum,
5 executor, or administrator with the will annexed, as the case may
6 be, and to allow the plaintiff to amend any pleadings relating back
7 to the plaintiff's first filed pleading to reflect the designation.

8 The bill would take effect immediately. It would apply to any
9 action commenced on or after the effective date and to any action
10 commenced prior to the effective date and not yet dismissed or
11 finally adjudicated as of the effective date.