

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 4251

STATE OF NEW JERSEY

DATED: JANUARY 6, 2022

The Senate Judiciary Committee reports favorably Senate Bill No. 4251.

This bill would allow certain persons to pursue a lawsuit on behalf of a deceased's heirs for their damages due to the wrongful death of a person, or on behalf of an estate for injuries suffered by the deceased before his or her death.

Pursuant to current law, civil actions for damages involving a deceased person may be brought under two separate statutes:

(1) Under the "wrongful death act," N.J.S.2A:31-1 et seq., economic damages, such as hospital and funeral expenses, as well as financial or other support previously provided by a decedent to his or her heirs may be awarded to those heirs entitled to the deceased's property under the intestacy laws; and

(2) Under the "survivor's act," N.J.S.2A:15-3, damages for the decedent's pain and suffering, medical expenses, and lost wages occurring after an injury but before the decedent passed away may be awarded to the decedent's estate.

When a person dies without a will, the county surrogate will appoint a general administrator of the estate who, among other duties, is authorized to file any civil actions on behalf of the estate under the survivor's act; when there is a will, the designated executor may file on behalf of the estate under the survivor's act. Under current law, only a surrogate appointed administrator ad prosequendum, a nominal representative of the decedent's intestate heirs (not the estate) may file any civil actions under the wrongful death act.

In an unpublished decision, Chandler v. Kasper, Docket No. A-2143-20 (decided October 7, 2021), the Appellate Division held that the decedent's daughter did not have standing to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

This bill is intended to address the above issue by providing that the court may appoint a person as a general administrator or administrator ad prosequendum even if the person was not yet appointed as such at the time the person filed a lawsuit under the wrongful death act or survivor's act. The bill provides that the court could allow the person filing suit to be designated administrator ad prosequendum, executor, or administrator with the will annexed, as the case may be, and to allow the plaintiff to amend any pleadings relating back to the plaintiff's first filed pleading to reflect the designation.

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