

2974

2009-2010 Regular Sessions

I N A S S E M B L Y

January 22, 2009

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law, in relation to wrongful death actions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative purpose and findings. The legislature finds and
2 declares that when the wrongful act of another causes the death of a
3 person, the wrongdoer incurs liability. It is an important and compelling
4 state interest to safeguard the rights of the family of an unborn
5 child fatally injured while in utero and to allow them some measure of
6 recovery. The legislature further finds that all states, including New
7 York, currently allow recovery for prenatal injuries if a child is
8 subsequently born alive, and that thirty-six states allow recovery for
9 the wrongful death of a child who dies in the womb.
10 S 2. Section 5-4.1 of the estates, powers and trusts law, as amended
11 by chapter 95 of the laws of 1983 and paragraph 1 as amended by chapter
12 114 of the laws of 2003, is amended to read as follows:
13 S 5-4.1 Action by personal representative for wrongful act, neglect or
14 default causing death of decedent
15 1. The personal representative, duly appointed in this state or any
16 other jurisdiction, of a decedent who is survived by distributees may
17 maintain an action to recover damages for a wrongful act, neglect or
18 default which caused the decedent's death against a person who would
19 have been liable to the decedent by reason of such wrongful conduct if
20 death had not ensued. Such an action must be commenced within two years
21 after the decedent's death; provided, however, that an action on behalf
22 of a decedent whose death was caused by the terrorist attacks on September
23 eleventh, two thousand one, other than a decedent identified by the
24 attorney general of the United States as a participant or conspirator in
25 such attacks, must be commenced within two years and six months after

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 the decedent's death. When the distributees do not participate in the
2 administration of the decedent's estate under a will appointing an exec-
3 utor who refuses to bring such action, the distributees are entitled to
4 have an administrator appointed to prosecute the action for their bene-
5 fit.

6 2. Whenever it is shown that a criminal action has been commenced
7 against the same defendant with respect to the event or occurrence from
8 which a claim under this section arises, the personal representative of
9 the decedent shall have at least one year from the termination of the
10 criminal action as defined in section 1.20 of the criminal procedure law
11 in which to maintain an action, notwithstanding that the time in which
12 to commence such action has already expired or has less than a year
13 remaining.

14 3. FOR PURPOSES OF THIS SECTION, THE WORD "DECEDENT" SHALL HAVE THE
15 SAME MEANING AS PROVIDED IN SUBDIVISION TWO OF SECTION FORTY-THREE
16 HUNDRED OF THE PUBLIC HEALTH LAW WHICH INCLUDES A FETUS.

17 S 3. This act shall take effect immediately and shall apply to actions
18 for wrongful death occurring on or after such effective date.