

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Black/Herrera ORIGINAL DATE 2/10/2020
LAST UPDATED _____ HB 288
SHORT TITLE Judge Discretion in Wrongful Death Tort Claims SB _____
ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

New Mexico Attorney General(NMAG)

SUMMARY

Synopsis of Bill

House Bill 288 amends NMSA 1978, Section 41-2-3, which guides the distribution of proceeds from wrongful death actions.

The statute currently provides that wrongful death proceeds shall be distributed according to a standardized method prioritizing conventional family relationships. The amendment provides that such proceeds “shall be distributed as follows or as otherwise determined by the court entering the judgment.” with the underlined language signifying the new language added in the amendment.

HB288 also changes a reference to the “New Mexico Probate Code” to “Uniform Probate Code,” which reflects the accurate title of New Mexico’s probate code. NMSA 1978, § 45-1-101 (Short title: Chapter 45 NMSA 1978 may be cited as the “Uniform Probate Code”).

FISCAL IMPLICATIONS

Currently, Section 41-2-3 NMSA 1978 directs the proceeds of any judgment obtained under wrongful death claims to the survivors of the decedent in the following priority:

- Spouse and no child – to the surviving spouse;
- Spouse and child or grandchild – one half to the surviving spouse and the remaining one half to the children and grandchildren;
- If no spouse but a child or grandchild – then to such child and grandchild by right of representation;
- If deceased is a minor, childless and unmarried, then to father and mother, or if either of them is deceased then to the survivor;
- If no father, mother, spouse, child or grandchild, then to a surviving brother or sister ; and
- If no kindred, then disposed of in the manner authorized by law for the disposition of personal property of deceased persons.

HB288 adds a provision that the proceeds can also be distributed “as otherwise determined by the court entering the judgment”, effectively allowing more judicial discretion.

According to AOC, expanding judicial discretion would not result in any added workload to court staff.

SIGNIFICANT ISSUES

According to AOC, expanding judicial discretion would allow judges to award wrongful death settlements to kin or relatives outside of the “traditional family” structure currently outlined in the statute. For example, under the current statute a mother or father may receive proceeds from a wrongful death action even if they have had little or no contact with the decedent.

The New Mexico Attorney General (NMAG) notes that the discretion provided for in HB288 may be overly-broad, and that the “unrestrained judicial discretion in distributing proceeds from wrongful death actions possibly render the remaining language of the statute superfluous”. AOC suggested adding provisions to HB288 requiring a judge who deviates from the statutorily established distribution to produce a written order explaining the variance. This written order could provide context and record for possible appeals. It is unclear if this alteration would fully address the concerns from NMAG.

TECHNICAL ISSUES

NMAG submitted the following technical concerns:

The proposed amendment may present an internal conflict with Section 41-2-3(F), where the “manner [of distribution] authorized by law” would presumably follow the Uniform Probate Code. Under the Uniform Probate Code, if an intestate estate can pass to no takers, “the intestate estate passes to the state.” NMSA 1978, § 45-2-105.

The amendment also has the potential to conflict with court precedent entrusting decedents’ personal representatives, not judges, with distributing wrongful death proceeds. See *Spencer v. Barber*, 2013-NMSC-010, ¶¶ 8, 12 299 P.3d 388, 393. (“The personal representative has a duty to act with reasonable care regarding the interests of the statutory beneficiaries and must distribute proceeds from a wrongful death lawsuit to the statutory beneficiaries in strict accordance with the Wrongful Death Act.”) Neither

Section 41-2-3 nor relevant case law suggests that, once wrongful death proceeds are awarded to a decedent's personal representative in a wrongful death action, the judge entering the award may exert any control over how those proceeds are distributed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Judges will not have the ability to award wrongful death claims to parties outside of those prioritized in Section 41-2-3 NMSA 1978.

ADP/rl/sb