

1 HOUSE BILL 288

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TORT CLAIMS; PROVIDING JUDICIAL DISCRETION WITH
12 RESPECT TO THE DISTRIBUTION OF PROCEEDS IN A WRONGFUL DEATH
13 ACTION.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 41-2-3 NMSA 1978 (being Laws 1882,
17 Chapter 61, Section 3, as amended) is amended to read:

18 "41-2-3. PERSONAL REPRESENTATIVE TO BRING ACTION--
19 DAMAGES--DISTRIBUTION OF PROCEEDS.--Every action mentioned in
20 Section 41-2-1 NMSA 1978 shall be brought by and in the name of
21 the personal representative of the deceased person, and the
22 jury in every such action may give such damages, compensatory
23 and exemplary, as they deem fair and just, taking into
24 consideration the pecuniary injury resulting from the death to
25 the surviving party entitled to the judgment, or any interest

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1 in the judgment, recovered in such action and also having
2 regard to the mitigating or aggravating circumstances attending
3 the wrongful act, neglect or default. The proceeds of any
4 judgment obtained in any such action shall not be liable for
5 any debt of the deceased; provided the decedent has left a
6 spouse, child, father, mother, brother, sister or child or
7 children of the deceased child, as defined in the [~~New Mexico~~]
8 Uniform Probate Code, but shall be distributed as follows or as
9 otherwise determined by the court entering the judgment:

10 A. if there is a surviving spouse and no child,
11 then to the spouse;

12 B. if there is a surviving spouse and a child or
13 grandchild, then one-half to the surviving spouse and the
14 remaining one-half to the children and grandchildren,
15 the grandchildren taking by right of representation;

16 C. if there is no husband or wife, but a child or
17 grandchild, then to such child and grandchild by right of
18 representation;

19 D. if the deceased is a minor, childless and
20 unmarried, then to the father and mother who shall have an
21 equal interest in the judgment, or if either of them is dead,
22 then to the survivor;

23 E. if there is no father, mother, husband, wife,
24 child or grandchild, then to a surviving brother or sister if
25 there are any; and

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underscoring material = new
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F. if there is no kindred as named in Subsections A through E of this section, then the proceeds of the judgment shall be disposed of in the manner authorized by law for the disposition of the personal property of deceased persons."