



State of Tennessee
PUBLIC CHAPTER NO. 366

HOUSE BILL NO. 789

By Representative Kevin Brooks

Substituted for: Senate Bill No. 520

By Senator Bell

AN ACT to amend Tennessee Code Annotated, Title 20, Chapter 5, relative to the survival of certain rights of actions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 20-5-106 is amended by designating the following language as subsection (c) and by relettering present subsection (c) accordingly:

(c)

(1) Notwithstanding any other law to the contrary, the right to institute and the right to collect any proceeds from a wrongful death action granted by this section to a surviving spouse shall be waived, if the children or next of kin establish the surviving spouse has abandoned the deceased spouse as described in § 36-4-101(a)(13) or otherwise willfully withdrawn for a period of two (2) years.

(2) If the period of two (2) years has passed since the time of abandonment or willful withdrawal, then there is created a rebuttable presumption that the surviving spouse abandoned the deceased spouse for purposes of this section.

(3) In an action under this section, the child or next of kin shall serve the surviving spouse with process as provided in the rules of civil procedure or by constructive service as may otherwise be provided by law.

SECTION 2. Tennessee Code Annotated Section 20-5-107 is amended by adding the following subsection (e):

(e)

(1) notwithstanding any other law to the contrary, the right to institute and the right to collect any proceeds from a wrongful death action granted by this section to a surviving spouse shall be waived, if the children or next of kin establish the surviving spouse has abandoned the deceased spouse as described in § 36-4-101(a)(13) or otherwise willfully withdrawn for a period of two (2) years.

(2) If the period of two (2) years has passed since the time of abandonment or willful withdrawal then there is created a rebuttable presumption that the surviving spouse abandoned the deceased spouse for purposes of this section.

(3) In an action under this section, the child or next of kin shall serve the surviving spouse with process as provided in the rules of civil procedure or by constructive service as may otherwise be provided by law.

(4) In no event shall any action for wrongful death abate, or the statute of limitations bar, an action solely as a result of a finding the surviving spouse's rights are waived. Instead the court shall substitute the proper party.

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SECTION 3. Tennessee Code Annotated Section 20-5-110 is amended by adding the following new subsection (c):

(c)

(1) Notwithstanding any other law to the contrary, the right to institute and the right to collect any proceeds from a wrongful death action granted by this section to a surviving spouse shall be waived, if the children or next of kin establish the surviving spouse has abandoned the deceased spouse as described in § 36-4-101(a)(13) or otherwise willfully withdrawn for a period of two (2) years.

(2) If the period of two (2) years has passed since the time of abandonment or willful withdrawal then there is created a rebuttable presumption that the surviving spouse abandoned the deceased spouse for purposes of this section.

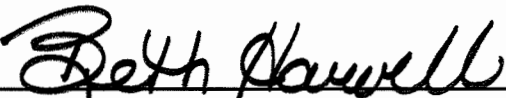
(3) In an action under this section, the child or next of kin shall serve the surviving spouse with process as provided in the rules of civil procedure or by constructive service as may otherwise be provided by law.

(4) A release entered into pursuant to this section by the surviving spouse shall be binding as provided in section (b), unless a copy of an order finding waiver of rights pursuant to this section was served or delivered to the released parties prior to the execution of the release or distribution of funds, whichever occurs first. However, a court of competent jurisdiction, upon motion of the children or next of kin, may grant injunctive relief after notice to the released parties and to the surviving spouse. The party or parties seeking the release shall not be required to answer or otherwise defend any such action.

SECTION 4. This act shall take effect upon becoming a law the public welfare requiring it .

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PASSED: May 19, 2011


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 30th day of May 2011


BILL HASLAM, GOVERNOR