

This bill amends certain provisions of the wrongful death act to clarify that changes made by P.L.2004, c.132 to the intestacy provisions of the probate code were not intended to impede recovery by children in wrongful death actions.

N.J.S. 2A:31-4 currently provides that the amount recovered in wrongful death proceedings shall be for the exclusive benefit of the persons entitled to take any intestate personal property of the decedent, and in the proportions in which they are entitled to take the same. P.L.2004, c.132 changes the statutes governing intestacy to make the entire estate pass to the surviving spouse of the decedent if there is a surviving spouse. The unintended consequence of that change is that in wrongful death cases where there is a spouse and children the children are not "persons entitled to take any intestate personal property of the decedent." This bill provides that if there is a surviving spouse of the decedent and one or more surviving descendants of the decedent they shall be entitled to equal proportions for purposes of recovery under wrongful death actions notwithstanding the provisions of Title 3B of the New Jersey Statutes (the probate code).

The bill leaves intact the applicability of intestate share proportions for other situations such as if there is no surviving spouse in which case the estate passes to the decedent's descendants by representation. (See subsection a. of N.J.S.A.3B:5-4)

The bill takes effect immediately but is made retroactive to the date the provisions of P.L.2004, c.132 took effect.

Kenneth Vercammen is the 2008 Municipal Court Attorney of the

Year by the Middlesex County Bar Association. He was selected one of only three attorneys as a Super Lawyer 2008 in NJ Monthly in the Criminal – DWI category. Kenneth Vercammen was the NJ State Bar Municipal Court Attorney of the Year and past president of the Middlesex County Municipal Prosecutor's Association. □ □ He is the past chair of the NJ State Bar Association Municipal Court Section. He is the Deputy chair of the ABA Criminal Law committee, GP Division.

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