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Governor Kathy Hochul holds a press conference in Brooklyn, New York on October 16, 2024. Photo: Don Pollard/Office of Governor Kathy Hochul

NEWS

Amended 'Grieving Families' Bill Seeks Update to NY's 1847 Wrongful Death

Statute

The New York State Trial Lawyers Association and other proponents of the twice-amended Grieving Families Act are hopeful there are enough revisions in the latest version to convince New York Gov. Kathy Hochul not to break out her veto pen to spike the measure for a third consecutive occurrence.

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What You Need to Know

- The bill is sponsored by two influential attorneys in the Legislature, state Sen. Brad Hoylman-Sigal, D-Manhattan, and Assemblymember Helene Weinstein, D-Brooklyn.
- The update, if signed into law, would put New York in line with 48 other states.
- This is the third time the Grieving Families Act has come to the governor's desk.

The persistent Grieving Families Act, a proposed update to New York's 177-year-old wrongful death statute which would have it join 48 other states in compensating family members for emotional loss in wrongful death cases, while also broadening the categories of people who can seek money damages, advanced to Gov. Kathy Hochul's desk on Thursday.

The New York State Trial Lawyers Association and other proponents of the twice-amended Grieving Families Act are hopeful there are enough

revisions in the latest version to convince Hochul not to break out her veto pen to spike the measure for a third consecutive occurrence. The governor's prior two vetoes have cited concerns about the potentially damaging impact it would have on the healthcare industry, and vagueness about which close family members could bring claims, among others.

The bill is sponsored by two influential attorneys in the Legislature, state Sen. Brad Hoylman-Sigal, D-Manhattan, and Assemblymember Helene Weinstein, D-Brooklyn, and it continues as the New York State Trial Lawyers Association's biggest legislative priority. The New York State Bar Association took no position on the proposal.

"Victims and their families have been denied justice by this outdated and discriminatory law, which measures the value of New Yorkers' lives through the lens of an 1847 standard—that is, their worth is based solely on what they earn," NYSTLA President Victoria Wickman said in a statement on Thursday, moments after the bill reached Hochul's desk.

"This law deepens existing disparities, particularly for children, seniors, people with disabilities, families of color, and women. It fails to hold wrongdoers accountable and is fundamentally unjust," said Wickman, founder of a boutique law firm in New York City that focuses on medical malpractice.

"Furthermore, New York remains in line only with Alabama by maintaining this inadequate statute. Clear evidence disproves the exaggerated cost predictions promoted by special-interest-backed actuary reports. With new data in hand, we are hopeful the governor will see through the opposition's distorted, false narrative and recognize that signing the Grieving Families Act is in the best interest of New Yorkers."

The latest version of the Grieving Families Act, A9232-B/S8485-B, proposes to change the statute of limitations to three years from the date of the decedent's death, from the current statute of limitations of two

years. A prior version proposed expanding the statute of limitations up to three-and-a-half years.

It would also reduce the proposed retroactivity to causes of action that accrued on or after Jan. 1, 2021. Prior versions had a lookback window to July 1, 2018.

Additionally, the third effort more narrowly defines which surviving close family members—spouses, domestic partners, and parents and legal guardians of minors—can potentially recover for damages. A parent or grandparent could also sue for the wrongful death of an adult who didn't have a spouse or child.

New York's current wrongful death statute limits damages to economic or pecuniary losses of the survivors resulting from the death, the medical and funeral costs related to the final injury or illness, and the value of parental guidance, nurturing and care for surviving children.

Some of New York's most powerful labor unions endorse it, as does the NAACP, Giffords and Families for Safe Streets. Major hospitals and insurers continue to oppose it.

In an interview, Eric D. Andrew, special counsel to Hurwitz Fine in Buffalo, outlined a number of reasons why Hochul might again veto the measure.

He said the proposed lookback window to 2021 remains concerning to the insurance industry.

"You're going to have insurance companies that have written policies and people who have paid premiums and who have managed that risk with the current law in place, and now to go back and say that all of these cases that have accrued as of this date are now worth three, four and five times as much," Andrew said.

To begin to have to start magnifying the collective risk over a number of cases "could have a huge impact on the insurance industry," Andrew added.

"You've got cases that maybe aren't even on the radar because they haven't been sued yet," he said. "Plus all the ones that are already in suit that are two or three years in. You could even have some that are on the verge of settling and being done and now you've just ramped up the value, in addition to the fact that none of that additional value has been accounted for in any kind of premiums or risk assessments prior to those."

Weinstein, who has a background as a personal-injury lawyer, and has spent the past 30 years advocating for an update to the state's wrongful death statute, is retiring this month after 44 years in the Assembly. Advocates say that passage of the GFA would be a nice cap to her legislative career.

Meanwhile, Hoylman-Sigal, in noting that New York is among a two-state outlier in having what advocates consider to be the most regressive of wrongful death statute in the nation, said he's "hopeful that the governor sees the wisdom in coming to the table and recognizes the urgent need to update the outdated and discriminatory wrongful death law. The amendments to the bill reflect the changes the governor asked for in her veto messages—and show we have come to the table and are ready to get this done."

The Healthcare Association of New York State urged Hochul to use the veto pen.

"High malpractice costs, health care workforce shortages and patient access limitations already challenge New York state," it said in a statement. "Allowing for unlimited wrongful death damages would make it more difficult to recruit and retain providers, make it harder for New Yorkers to access care and exacerbate existing health inequities, all while increasing costs."

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