

LITIGATION INFORMATION MEMO

MAY 31, 2023

Amended Version of the Grieving Families Act Introduced to New York State Legislature

On May 2, 2023, a revised version of the Grieving Families Act (the Act) was introduced to the New York State legislature. The original version of the Act was passed by both the New York State Senate and Assembly in 2022 but was vetoed by Gov. Hochul on Jan. 31, 2023.

The intent of the original version of the Act was to expand both the class of individuals who can recover under New York State's wrongful death law and the categories and scope of damages that can be recovered through such a lawsuit.

New York State's current wrongful death law limits those who can bring a wrongful death claim to "distributees" as defined under New York's Trust and Estates Law. The current law also restricts recovery to pecuniary damages, generally encompassing medical expenses, funeral costs and loss of services (e.g. loss of earning potential) related to the deceased individual.

The original version of the Act proposed expanding the class of individuals who could recover under a wrongful death claim to "close family members," and also to allow for recovery of emotional and non-economic damages, for example, damages to compensate for grief or emotional anguish or loss of love and companionship. The original version of the Act also sought to expand the statute of limitations of New York's wrongful death law from two years to three and a half years.

While Gov. Hochul generally expressed support for the Act as proposed in January 2023, she vetoed the Act because of concerns regarding its potential unintended economic impacts and because she perceived ambiguities as to whether the Act would have retroactive effect, and as to the definition of a "close family member."

The newly revised version of the Act attempts to address Gov. Hochul's concerns in several ways. First, it specifically defines a "close family member" as a decedent's spouse or domestic partner, issue (children), foster-children, stepchildren, step-grandchildren, parents, grandparents, step-parents, step-grandparents, siblings or any person standing "in loco parentis" to a decedent. Under the revised Act, it would be for the "finder of fact" (the jury, or judge if a non-jury trial), to determine if a "close family member" is entitled to recover based upon "the specific circumstances relating to the person's relationship with the decedent."

Second, the revised Act identifies the types of damages that can be recovered through a wrongful death lawsuit may be recoverable, including:

- reasonable funeral expenses of the decedent;
- reasonable medical expenses for medical care incident to the injury causing death;
- grief or anguish caused by the decedent's death;
- loss of love, society, protection, comfort, companionship and consortium relating from the decedent's death;

- pecuniary injuries, including loss of services, support, or loss or diminishment of inheritance resulting from the decedent's death; and
- loss of nurture, guidance, advice, training and education resulting from the decedent's death.

Finally, the revised version of the Act seeks to increase the statute of limitations for a wrongful death claim from two years to three years (a reduction of six months from the original proposal) and clarifies that the Act has a retroactive effect applying to all causes of action that accrued on or after July 1, 2018, regardless of filing date.

It remains to be seen if these revisions satisfy Gov. Hochul's concerns and will result in passage of the Act. At the time of this article, the revised version of the Act is still pending approval by the New York State Senate and Assembly.

If you have any questions, please contact [Travis Talerico](#), any attorney in Bond's [litigation practice](#) or the Bond attorney whom you are regularly in contact with.

