



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

VETO #192

January 30, 2023

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 74-A, entitled:

“AN ACT to amend the estates, powers and trusts law, in relation to the payment and distribution of damages in wrongful death actions”

NOT APPROVED

This bill would substantially change the nature of wrongful death claims in New York by expanding the class of persons entitled to seek damages as well as the categories of recoverable damages and by extending the statute of limitations. The bill would broaden the class of beneficiaries who may recover damages in survival actions for wrongful death from statutorily defined “distributees” to “surviving close family members,” as determined by a jury. Compensable damages would no longer be limited to pecuniary losses and instead would include compensation for the following: grief or anguish caused by the decedent’s death; disorders caused by such grief or anguish; loss of love, society, protection, comfort, companionship and consortium; as well as funeral and medical expenses; loss of nurture, guidance, counsel, advice, training and education and pecuniary injuries. Additionally, the bill would extend the statute of limitations for wrongful death actions from two years to three years and six months and for September 11 victims, the statute of limitations would be extended to four years. The bill would be effective immediately and would apply to any actions pending as of the effective date or commenced thereafter.

New York’s wrongful death statute was first enacted in 1847 and has not undergone significant changes for over a century and a half. As a parent, I know how precious our children are to us, and I know how devastating it must be for a family to learn that under State law, the life of their child is less valuable than someone older who earns a salary. I also recognize that the law as it currently stands, valuing lives based on earning potential, contributes to unfairness in our legal system. I support the intent of the bill to change and to update the law to account for the grief of families who deserve justice. The bill as drafted, while well-intentioned, represents an extraordinary departure from New York’s wrongful death jurisprudence and may result in significant unintended consequences. The indefinite class of beneficiaries will pose difficult questions of fact regarding “closeness” in every case. The broad and perhaps overlapping, categories of damages may result in confusion for judges, juries and litigants. Because the bill applies to pending cases, claimants and courts may be forced to grapple with new competing claims asserted by “close family members” as well as protracted discovery and increased litigation costs, potentially upending cases far along in the judicial process. Moreover, it is reasonable to expect that the bill as drafted, would increase already-high insurance burdens on families and small businesses and further strain already-distressed healthcare workers and institutions. The increased costs would be particularly challenging for struggling hospitals in underserved communities.

This bill passed without a serious evaluation of the impact of these massive changes on the economy, small businesses, individuals, and the State’s complex health care system. I believe that grieving families should be able to turn to the courts for justice, accountability and meaningful compensation for their loss. Although the Legislature has declined to join me in taking a purposeful step forward by granting parents the right to seek emotional damages for the heart-wrenching loss of a young child, I remain steadfast in my commitment to delivering justice for New Yorkers. I believe we must fully understand the impacts of potential changes to the wrongful death framework on families, small businesses, struggling hospitals, and the different facets of the economy, and I will continue to engage with stakeholders and interested parties to do the hard work necessary to find equitable solutions.

I am constrained to veto this bill.

The bill is disapproved.

Kathy Hochul