

GOVERNOR HOCHUL VETOES GRIEVING FAMILIES ACT IN THE 11TH HOUR

Hodgson Russ Product Liability & Complex Tort Client Alert
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Intense efforts by the Legislature to modernize New York’s wrongful death laws came to a screeching halt last night. Just before the deadline, Governor Kathy Hochul vetoed the long-anticipated [Grieving Families Act](#)—legislation that would have overhauled state law related to wrongful death claims. Though her veto message expressed support for the *intent* of the Bill ([A.6770 / S.74A](#)), Hochul claimed that the Legislature passed it without sufficiently evaluating the Bill’s potential economic impacts on New York residents and businesses.

If passed, the Bill would have changed the nature of wrongful death claims in New York in three primary ways. First, it would have expanded the category of persons entitled to seek damages due to a wrongful death to any “surviving close family member,” as determined by a jury.

Second, no longer would the compensable damages for wrongful death be limited to pecuniary losses. Instead, those “surviving close family members” would have been able to recover damages for emotional grief or anguish, loss of love, society, protection, comfort, companionship, and consortium, and loss of nurture, guidance, counsel, advice, training, and education. Third, the Bill would have extended the current two-year statute of limitations for wrongful death lawsuits to three years and six months.

While the Bill had strong bipartisan support, business, insurance, and healthcare associations alike went to great lengths to lobby Governor Hochul and her staff against its passage. Their lobbying efforts appear to have paid off for now. The Governor’s veto message states that the Bill “may have significant unintended consequences.” Specifically, she acknowledges 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.” And “[t]he increased costs would be particularly challenging for struggling hospitals in underserved communities.” Hochul is not wrong. According to an actuarial analysis by Milliman, Inc., expanding damages under the Bill would have increased general and automobile liability insurance premiums by 11% (an estimated \$2.14 billion) for New York residents and businesses, and medical professional liability costs by nearly 40%.

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Hochul was further concerned that the Bill's indefinite class of beneficiaries will pose difficult questions of fact regarding "closeness" of family members, and that the "broad and perhaps overlapping categories of damages may result in confusion for judges, juries and litigants." Further, Hochul states that "[b]ecause the Bill applies to pending cases, claimants and courts may be forced to grapple with new competing claims, [. . .] protracted discovery, and increased litigation costs."

The Legislature now has to go back to the drawing board and repass the Bill. To get it past the Governor's desk, the Bill will need several amendments to address her concerns outlined above. These amendments are already under discussion and could ultimately include caps on certain categories of damages for certain types of beneficiaries, scaling back retroactivity of pending actions, shortening the proposed statute of limitations, and better defining "close family members." It is not a question of whether this Bill will eventually become law, but rather when and in what form. We know that the Governor recognized that this form of S74A was, on balance, overly harmful to the State's business communities, some of which are already struggling mightily. Any future version of the Bill should be more considerate of the overall well-being of the economy and communities across the State. Only time will tell. If you have questions, please contact [Ryan J. Lucinski](#) (716.848.1343), [Christian J. Soller](#) (518.433.2445), or any other member of our [Product Liability & Complex Tort Practice](#).