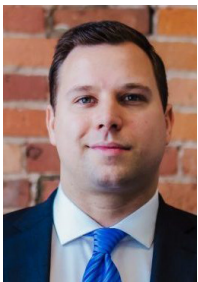


## Insurance and Injury Corner: Grieving Families Act and impact on New York wrongful death claims

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SENATE BILL S74A, also known as the Grieving Families Act, passed the New York Senate Assembly, on June 2, 2022. The legislation is expected to be signed by Gov. Kathy Hochul. It revises New York's wrongful death statute

— Estates, Powers and Trusts Law § 5-4.1 (EPTL 5-4.1). The new law will greatly expand compensable damages in wrongful death actions to include emotional losses for grief and anguish, as well as other unquantifiable injuries including loss of love and nurture. It also extends the statute of limitations and expands the class of family members who may bring a claim to include spouses, domestic partners, children, parents, grandparents, stepparents, siblings, and “close family members.” The following examines the current state of EPTL § 5-4.1 and specific changes under the Grieving Families Act.

Traditionally, relief under EPTL § 5-4.1 is “steadfastly restricted to pecuniary injuries or injuries measurable by money” without a cognizable claim for “grief, loss of society, affection, conjugal fellowship and consortium” (*Gonzalez v New York City Hous. Auth.*, 77 NY2d 663, 668 [1991]). In *Gonzalez*, the Court of Appeals clarifies that “[l]oss of support, voluntary assistance and possible inheritance, as well as medical and funeral expenses incidental to death, are injuries for which damages may be recovered” (id). However, the Grieving Families Act multiplies the categories of compensable harm to include nebulous concepts such

as loss of love, society, protection, comfort, companionship, consortium, nurture, guidance, counsel, advise, training, and education (Proposed Legislation to amend Estates, Powers and Trusts Law § 5-4.1, S74A, § 2 [a] [iv], [vi]). It also provides that family members may commence causes of action for “grief or anguish caused by the decedent’s death, and for any disorder caused by such grief or anguish” which arguably allows grieving family members to recover for emotional and physical damages, as well as aggravation of pre-existing conditions such as depression or anxiety, allegedly resulting from the loss of their close family member. (Proposed Legislation to amend Estates, Powers and Trusts Law § 5-4.1, S74A, § 2 [a] [iii]).

Under EPTL § 5-4.1, a wrongful death action is commenced by an estate representative on behalf of statutorily defined “distributees” (EPTL 5-4.1 [1]). New York courts strictly construe qualified “distributees” as spouses and blood relatives based on the statute (EPTL 4-1.1; see also *Langan v St. Vincent’s Hosp. of N.Y.*, 25 AD3d 90, 92 [2d Dept 2005] [person bringing claim did not qualify as distributee despite same-sex civil union under Vermont law]). The Grieving Families Act replaces “distributees” with “surviving close family members, which may include, but are not limited to, spouse or domestic partner, issue, parents, grandparents, step-parents and siblings” (Proposed Legislation to amend Estates, Powers and Trusts Law § 5-4.1, S74A, § 3 [a]). Further, it defers to the finder of fact to “determine which persons are close family members of the decedent under this section based upon the specific circum-

stances relating to the person’s relationship with the decedent” (id).

The Grieving Families Act also extends the time to bring a claim. Presently, wrongful death claims are subject to a two-year statute of limitations measured from the date of the decedent’s death (EPTL 5-4.1 [1]; see also *Baez v New York City Health & Hosps. Corp.*, 80 NY2d 571, 576 [1992]). The proposed legislation extends the time to bring wrongful death claims to three years and six months from the date of the decedent’s death (Proposed Legislation to amend Estates, Powers and Trusts Law § 5-4.1, S74A, § 1). Significantly, as currently written, it will apply to all pending actions once law (Proposed Legislation to amend Estates, Powers and Trusts Law § 5-4.1, S74A, § 5).

If the Grieving Families Act is signed by the governor and becomes law, New York courts must grapple with interpreting its various provisions. Examples include defining “close family member;” developing standards for evaluating loss of love, society, protection, comfort, companionship, consortium, nurture, guidance, counsel advise, training, and education; and the breadth of recoverable injuries. The changes within the Grieving Families Act will likely increase New York State insurers’ costs, which would flow to the consumer. Other effects on the local economy resulting from new or expanding claims are yet to be seen.

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