

# STATE OF NEW YORK

S. 6636

A. 6698

2023-2024 Regular Sessions

## SENATE - ASSEMBLY

May 2, 2023

IN SENATE -- Introduced by Sens. HOYLMAN-SIGAL, ADDABBO, BAILEY, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GALLIVAN, GIANARIS, GOUNARDES, GRIFFO, HARCKHAM, HELMING, HINCHEY, JACKSON, KAVANAGH, KENNEDY, KRUEGER, LANZA, LIU, MANNION, MATTERA, MAY, MAYER, MYRIE, ORTT, PALUMBO, PARKER, PERSAUD, RAMOS, RIVERA, RYAN, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, TEDISCO, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. WEINSTEIN, PEOPLES-STOKES, DINOWITZ, ZEBROWSKI, LAVINE, GLICK, L. ROSENTHAL, AUBRY, PAULIN, COLTON, HYNDMAN, WEPRIN, JOYNER, SANTABARBARA, TAYLOR, CARROLL, SAYEGH, JACOBSON, BURKE, STECK, SIMON, DILAN, FALL, JEAN-PIERRE, DICKENS, DARLING, SOLAGES, WALLACE, CRUZ, COOK, RAJKUMAR, BENEDETTO, BURGOS, STERN, MITAYNES, LUNSFORD, HUNTER, SILLITTI, HEVESI, MAMDANI, STIRPE, GIBBS, McMAHON, EPSTEIN, SEAWRIGHT, BURDICK, MAGNARELLI, KIM, MEEKS, ANDERSON, TAPIA -- Multi-Sponsored by -- M. of A. BICHOTTE HERMELYN, BRAUNSTEIN, CLARK, GONZALEZ-ROJAS, LUPARDO, RIVERA, WILLIAMS -- read once and referred to the Committee on Judiciary

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph 1 of section 5-4.1 of the estates, powers and  
2 trusts law, as amended by chapter 114 of the laws of 2003, is amended to  
3 read as follows:

4 1. The personal representative, duly appointed in this state or any  
5 other jurisdiction, of a decedent [~~who is survived by distributees~~] may  
6 maintain an action to recover damages for a wrongful act, neglect or  
7 default which caused the decedent's death against a person who would  
8 have been liable to the decedent by reason of such wrongful conduct if

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 death had not ensued. Such an action must be commenced within [~~two~~  
2 three years after the decedent's death[~~, provided, however, that an~~  
3 ~~action on behalf of a decedent whose death was caused by the terrorist~~  
4 ~~attacks on September eleventh, two thousand one, other than a decedent~~  
5 ~~identified by the attorney general of the United States as a participant~~  
6 ~~or conspirator in such attacks, must be commenced within two years and~~  
7 ~~six months after the decedent's death]]. When the [~~distributees~~] persons  
8 for whose benefit an action pursuant to this part may be brought do not  
9 participate in the administration of the decedent's estate under a will  
10 appointing an executor who refuses to bring such action, the [~~distribu-~~  
11 ~~tees~~] persons for whose benefit an action pursuant to this part may be  
12 brought are entitled to have an administrator appointed to prosecute the  
13 action for their benefit.~~

14 § 2. Paragraph (a) of section 5-4.3 of the estates, powers and trusts  
15 law, as amended by chapter 100 of the laws of 1982, is amended to read  
16 as follows:

17 (a) The damages awarded to the plaintiff may be such sum as the jury  
18 or, where issues of fact are tried without a jury, the court or referee  
19 deems to be fair and just compensation for the [~~pecuniary~~] injuries  
20 resulting from the decedent's death to the persons for whose benefit the  
21 action is brought. In every such action, in addition to any other lawful  
22 element of recoverable damages, [~~the reasonable expenses of medical aid,~~  
23 ~~nursing and attention incident to the injury causing death and the~~  
24 ~~reasonable funeral expenses of the decedent paid by the distributees, or~~  
25 ~~for the payment of which any distributee is responsible, shall also be~~  
26 ~~proper elements of damage] compensation for the following damages may  
27 be recovered: (i) reasonable funeral expenses of the decedent paid by  
28 the persons for whose benefit the action is brought, or for the payment  
29 of which any persons for whose benefit the action is brought is respon-  
30 sible; (ii) reasonable expenses for medical care incident to the injury  
31 causing death, including but not limited to doctors, nursing, attendant  
32 care, treatment, hospitalization of the decedent, and medicines; (iii)  
33 grief or anguish caused by the decedent's death; (iv) loss of love,  
34 society, protection, comfort, companionship, and consortium resulting  
35 from the decedent's death; (v) pecuniary injuries, including loss of  
36 services, support, assistance, and loss or diminishment of inheritance,  
37 resulting from the decedent's death; and (vi) loss of nurture, guidance,  
38 counsel, advice, training, and education resulting from the decedent's  
39 death. Interest upon the principal sum recovered by the plaintiff from  
40 the date of the decedent's death shall be added to and be a part of the  
41 total sum awarded.~~

42 § 3. Section 5-4.4 of the estates, powers and trusts law, paragraph  
43 (a) as amended by chapter 357 of the laws of 1975, and the opening para-  
44 graph of paragraph (a) as amended by chapter 595 of the laws of 1992, is  
45 amended to read as follows:

46 § 5-4.4 Distribution of damages recovered

47 (a) The damages, as prescribed by 5-4.3, whether recovered in an  
48 action or by settlement without an action, are exclusively for the bene-  
49 fit of the decedent's [~~distributees and, when collected, shall be~~  
50 ~~distributed to the persons entitled thereto under 4-1.1 and 5-4.5,~~  
51 ~~except that where the decedent is survived by a parent or parents and a~~  
52 ~~spouse and no issue, the parent or parents will be deemed to be distri-~~  
53 ~~butees for purposes of this section] surviving close family members,  
54 which shall be limited to decedent's spouse or domestic partner, issue,  
55 foster-children, step-children, and step-grandchildren, parents, grand-  
56 parents, step-parents, step-grandparents, siblings or any person stand-~~

1 ing in loco parentis to the decedent. The finder of fact shall determine  
2 which persons are entitled to damages as close family members of the  
3 decedent under this section based upon the specific circumstances relat-  
4 ing to the person's relationship with the decedent. The damages shall  
5 be distributed subject to the following:

6 (1) Such damages shall be distributed by the personal representative  
7 to the persons entitled thereto in proportion to the [~~pecuniary~~] inju-  
8 rries suffered by them, such proportions to be determined after a hear-  
9 ing, on application of the personal representative or any [~~distributee~~]  
10 persons for whose benefit the action is brought, at such time and on  
11 notice to all interested persons in such manner as the court may direct.  
12 If no action is brought, such determination shall be made by the surro-  
13 gate of the county in which letters were issued to the plaintiff; if an  
14 action is brought, by the court having jurisdiction of the action or by  
15 the surrogate of the county in which letters were issued.

16 (2) The court which determines the proportions of the [~~pecuniary~~]  
17 injuries suffered by the [~~distributees~~] persons for whose benefit the  
18 action is brought, as provided in subparagraph (1) of this paragraph,  
19 shall also decide any question concerning the disqualification of a  
20 parent, under 4-1.4 of this chapter, or a surviving spouse, under 5-1.2  
21 of this article, to share in the damages recovered.

22 (b) The reasonable expenses of the action or settlement and, if  
23 included in the damages recovered, the reasonable expenses of medical  
24 aid, nursing and attention incident to the injury causing death and the  
25 reasonable funeral expenses of the decedent may be fixed by the court  
26 which determines the proportions of the [~~pecuniary~~] injuries suffered by  
27 the [~~distributees~~] persons for whose benefit the action is brought, as  
28 provided in subparagraph (1) of this paragraph, upon notice given in  
29 such manner and to such persons as the court may direct, and such  
30 expenses may be deducted from the damages recovered. The commissions of  
31 the personal representative upon the residue may be fixed by the surro-  
32 gate, upon notice given in such manner and to such persons as the surro-  
33 gate may direct or upon the judicial settlement of the account of the  
34 personal representative, and such commissions may be deducted from the  
35 damages recovered.

36 (c) In the event that an action is brought, as authorized in this  
37 part, and there is no recovery or settlement, the reasonable expenses of  
38 such unsuccessful action, excluding counsel fees, shall be payable out  
39 of the assets of the decedent's estate.

40 (d) For the purposes of this section, the term "domestic partner"  
41 shall have the same meaning as defined pursuant to section two thousand  
42 nine hundred sixty-one of the public health law.

43 § 4. Paragraphs (a) and (b) of section 5-4.6 of the estates, powers  
44 and trusts law, paragraph (a) as amended and paragraph (b) as added by  
45 chapter 719 of the laws of 2005, are amended to read as follows:

46 (a) Within sixty days of the application of an administrator appointed  
47 under section 5-4.1 of this part or a personal representative to the  
48 court in which an action for wrongful act, neglect or default causing  
49 the death of a decedent is pending, the court shall, after inquiry into  
50 the merits of the action and the amount of damages proposed as a compro-  
51 mise either disapprove the application or approve in writing a compro-  
52 mise for such amount as it shall determine to be adequate including  
53 approval of attorneys fees and other payable expenses as set forth  
54 below, and shall order the defendant to pay all sums payable under the  
55 order of compromise, within the time frames set forth in section five  
56 thousand three-a of the civil practice law and rules, to the attorney

1 for the administrator or personal representative for placement in an  
2 interest bearing escrow account for the benefit of the [~~distributees~~]  
3 persons for whose benefit the action is brought. The order shall also  
4 provide for the following:

5 (1) Upon collection of the settlement funds and creation of an inter-  
6 est bearing escrow account, the attorney for the administrator or  
7 personal representative shall pay from the account all due and payable  
8 expenses, excluding attorneys fees, approved by the court, such as  
9 medical bills, funeral costs and other liens on the estate.

10 (2) All attorneys fees approved by the court for the prosecution of  
11 the action for wrongful act, neglect or default, inclusive of all  
12 disbursements, shall be immediately payable from the escrow account upon  
13 submission to the trial court proof of filing of a petition for allo-  
14 cation and distribution in the surrogate's court on behalf of the  
15 decedent's estate.

16 (3) The attorney for the administrator or personal representative in  
17 the action for wrongful act, neglect or default who receives payment  
18 under this section shall continue to serve as attorney for the estate  
19 until the entry of a final decree in the surrogate's court.

20 (b) If any of the [~~distributees~~] persons for whose benefit the action  
21 is brought is an infant, incompetent, person who is incarcerated or  
22 person under disability, the court shall determine whether a guardian ad  
23 litem is required before any payments are made, in which case the court  
24 will seek an immediate appointment of a guardian ad litem by the surro-  
25 gate's court or, if the surrogate's court defers, the court shall make  
26 such appointment. Any guardian appointed for this purpose shall continue  
27 to serve as the guardian ad litem for the person requiring same for all  
28 other purposes.

29 § 5. This act shall take effect immediately and shall apply to all  
30 causes of action that accrue on or after July 1, 2018, regardless of  
31 when filed.