

# STATE OF NEW YORK

8485--A

## IN SENATE

February 5, 2024

Introduced by Sens. HOYLMAN-SIGAL, ASHBY, GALLIVAN, LANZA, MURRAY, ORTT, PALUMBO, TEDISCO, WEBER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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

LBD02714-08-4

1 (a) The damages awarded to the plaintiff may be such sum as the jury  
2 or, where issues of fact are tried without a jury, the court or referee  
3 deems to be fair and just compensation for the [~~pecuniary~~] injuries  
4 resulting from the decedent's death to the persons for whose benefit the  
5 action is brought. In every such action, in addition to any other lawful  
6 element of recoverable damages, [~~the reasonable expenses of medical aid,  
7 nursing and attention incident to the injury causing death and the  
8 reasonable funeral expenses of the decedent paid by the distributees, or  
9 for the payment of which any distributee is responsible, shall also be  
10 proper elements of damage~~] compensation for the following damages may  
11 be recovered: (i) reasonable funeral expenses of the decedent paid by  
12 the persons for whose benefit the action is brought, or for the payment  
13 of which any persons for whose benefit the action is brought is respon-  
14 sible; (ii) reasonable expenses for medical care incident to the injury  
15 causing death, including but not limited to doctors, nursing, attendant  
16 care, treatment, hospitalization of the decedent, and medicines; (iii)  
17 grief or anguish caused by the decedent's death; (iv) other pecuniary  
18 injuries, including loss of services, support, assistance, and loss or  
19 diminishment of inheritance, resulting from the decedent's death; and  
20 (v) loss of nurture, guidance, counsel, advice, training, and education  
21 resulting from the decedent's death. Interest upon the principal sum  
22 recovered by the plaintiff from the date of the decedent's death shall  
23 be added to and be a part of the total sum awarded.

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

28 § 5-4.4 Distribution of damages recovered

29 (a) The damages, as prescribed by 5-4.3, whether recovered in an  
30 action or by settlement without an action, are exclusively for the bene-  
31 fit of the decedent's [~~distributees and, when collected, shall be  
32 distributed to the persons entitled thereto under 4-1.1 and 5-4.5,  
33 except that where the decedent is survived by a parent or parents and a  
34 spouse and no issue, the parent or parents will be deemed to be distri-  
35 butees for purposes of this section~~] surviving close family members,  
36 which shall be defined as and limited to those persons entitled thereto  
37 under 4-1.1 of this chapter and 5-4.5 of this part, except that where  
38 the decedent is survived by a parent or parents, or any person standing  
39 in loco parentis to the decedent, and a spouse and no issue, the parent  
40 or parents or such person standing in loco parentis will be deemed to be  
41 close family members for purposes of this section. The finder of fact  
42 shall determine which of those close family members, as defined in this  
43 paragraph, are entitled to damages under this section based upon the  
44 specific circumstances relating to the person's relationship with the  
45 decedent. The damages shall be distributed subject to the following:

46 (1) Such damages shall be distributed by the personal representative  
47 to the persons entitled thereto in proportion to the [~~pecuniary~~] inju-  
48 ries suffered by them, such proportions to be determined after a hear-  
49 ing, on application of the personal representative or any [~~distributee~~]  
50 persons for whose benefit the action is brought, at such time and on  
51 notice to all interested persons in such manner as the court may direct.  
52 If no action is brought, such determination shall be made by the surro-  
53 gate of the county in which letters were issued to the plaintiff; if an  
54 action is brought, by the court having jurisdiction of the action or by  
55 the surrogate of the county in which letters were issued.

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

7 (b) The reasonable expenses of the action or settlement and, if  
8 included in the damages recovered, the reasonable expenses of medical  
9 aid, nursing and attention incident to the injury causing death and the  
10 reasonable funeral expenses of the decedent may be fixed by the court  
11 which determines the proportions of the [~~pecuniary~~] injuries suffered by  
12 the [~~distributees~~] persons for whose benefit the action is brought, as  
13 provided in subparagraph (1) of this paragraph, upon notice given in  
14 such manner and to such persons as the court may direct, and such  
15 expenses may be deducted from the damages recovered. The commissions of  
16 the personal representative upon the residue may be fixed by the surro-  
17 gate, upon notice given in such manner and to such persons as the surro-  
18 gate may direct or upon the judicial settlement of the account of the  
19 personal representative, and such commissions may be deducted from the  
20 damages recovered.

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

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

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

31 (a) Within sixty days of the application of an administrator appointed  
32 under 5-4.1 of this part or a personal representative to the court in  
33 which an action for wrongful act, neglect or default causing the death  
34 of a decedent is pending, the court shall, after inquiry into the merits  
35 of the action and the amount of damages proposed as a compromise either  
36 disapprove the application or approve in writing a compromise for such  
37 amount as it shall determine to be adequate including approval of attor-  
38 neys fees and other payable expenses as set forth below, and shall order  
39 the defendant to pay all sums payable under the order of compromise,  
40 within the time frames set forth in section five thousand three-a of the  
41 civil practice law and rules, to the attorney for the administrator or  
42 personal representative for placement in an interest bearing escrow  
43 account for the benefit of the [~~distributees~~] persons for whose benefit  
44 the action is brought. The order shall also provide for the following:

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

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

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

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

14 § 5. This act shall take effect immediately and shall apply to all  
15 causes of action that have accrued on or after January 1, 2021.