

# STATE OF NEW YORK

8485--B

Cal. No. 1399

## 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.

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

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

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

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

31 § 5-4.4 Distribution of damages recovered

32 (a) The damages, as prescribed by 5-4.3, whether recovered in an  
33 action or by settlement without an action, are exclusively for the bene-  
34 fit of the [~~decedent's distributees and, when collected, shall be  
35 distributed to the persons entitled thereto under 4-1.1 and 5-4.5,  
36 except that where the decedent is survived by a parent or parents and a  
37 spouse and no issue, the parent or parents will be deemed to be distri-  
38 butees for purposes of this section~~] persons for whose benefit the  
39 action is brought, which shall be defined as and limited to the  
40 decedent's spouse or domestic partner, decedent's distributees, as  
41 defined by 4-1.1 of this chapter and 5-4.5 of this part, any person  
42 standing in loco parentis to the decedent, and to any person to whom the  
43 decedent stood in a position of in loco parentis. An in loco parentis  
44 relationship shall be presumed when an adult and minor share or have  
45 recently shared a household. The finder of fact shall determine which of  
46 those persons for whose benefit the action is brought, as defined in  
47 this paragraph, are entitled to damages under this section based upon  
48 the specific circumstances relating to the person's relationship with  
49 the decedent. The damages shall be distributed subject to the follow-  
50 ing:

51 (1) Such damages shall be distributed by the personal representative  
52 to the persons entitled thereto in proportion to the [~~pecuniary~~] inju-  
53 ries suffered by them, such proportions to be determined after a hear-  
54 ing, on application of the personal representative or any [~~distributee~~]  
55 persons for whose benefit the action is brought, at such time and on  
56 notice to all interested persons in such manner as the court may direct.

1 If no action is brought, such determination shall be made by the surro-  
2 gate of the county in which letters were issued to the plaintiff; if an  
3 action is brought, by the court having jurisdiction of the action or by  
4 the surrogate of the county in which letters were issued.

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

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

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

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

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

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

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

54 (2) All attorneys fees approved by the court for the prosecution of  
55 the action for wrongful act, neglect or default, inclusive of all  
56 disbursements, shall be immediately payable from the escrow account upon

1 submission to the trial court proof of filing of a petition for allo-  
2 cation and distribution in the surrogate's court on behalf of the  
3 decedent's estate.

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

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

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