

# NY Gov. Vetoes Bill to Expand Wrongful Death Damages

*Grieving families left to recover economic damages only after a death caused by negligence, with no recovery for emotional harm such as pain and suffering*

NEW YORK, NEW YORK, UNITED STATES, April 21, 2023 /EINPresswire.com/ -- Governor Kathy Hochul vetoed a bill that would have expanded the damages available under New York's wrongful death law. Following the veto, grieving families remain limited to purely economic losses should a fatal accident claim a loved one. S74A, the [Grieving Families Act](#), passed the Assembly and Senate on June 2, 2022 and was delivered to the governor on December 28, 2022. It was vetoed on January 30, 2023.

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*Kevin Jay Kohn, New York  
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Wrongful death is one of the more complex areas of personal injury law. In general, wrongful death claims are much like personal injury claims, except they are available when the victim did not survive the inciting incident. The

victim's surviving family members and/or the victim's estate can bring a civil claim for damages, typically seeking damages that the family suffered as a result of the victim's death. A survival action, in contrast, is a lawsuit brought by surviving family members or the estate to seek the damages that the victim would have been able to seek on their own behalf had they survived the action. Following a fatal accident caused by someone else's negligence or wrongdoing, surviving family members often bring both claims.

Whereas personal injury law is relatively consistent across state lines, the rules regarding wrongful death and survivor claims can vary wildly. Each state has its own rules about who can bring a wrongful death claim, what damages they can seek, as well as other procedural rules and requirements.

Kevin Kohn, a personal injury lawyer at The Bronx-based [Kohn Law Firm](#), explains New York's wrongful death statute, which can be found, he says, in [sections 5-4.1 through 5-4.6](#) of New York consolidated laws Chapter 17-B, Estates, Powers and Trusts. “In New York, the duly appointed personal representative of the estate has two years from the date of death to bring forward a

wrongful death claim,” says Kohn. Any recovery goes to the distributees of the estate, such as a surviving spouse, children or grandchildren, or parents of the deceased and other relatives.

The damages available to the family are largely economic in nature, says Kohn, such as medical expenses incurred to treat the victim before they passed; funeral and burial expenses; the victim’s lost earnings and income; and the economic value of the loss of the victim’s support to the household, such as childcare and maintenance. “The surviving spouse and children can also seek compensation for the loss of parental guidance as well as familial care and affection,” Kohn adds.



Kevin J. Kohn, Bronx Personal Injury Lawyer

The state’s wrongful death statute even allows for an award of “punitive damages” in appropriate cases, such as when the defendant acted intentionally, deliberately, willfully, or with a high level of disregard for the consequences of one’s actions. “What’s missing,” says Kohn, “is compensation for so-called non-economic damages such as pain and suffering, which are allowed in personal injury claims but noticeably absent from the wrongful death law.”

For the most part, the damages available in a New York wrongful death claim are derived based on a calculation of the potential future income of the deceased victim. In a typical personal injury claim, a plaintiff can also seek damages for emotional and psychological damages. An injured plaintiff could seek to recover for the pain, suffering, and emotional anguish caused by disability, pain, scarring, disfigurement, loss of life enjoyment, and other mental harms. Pain and suffering often account for the majority of the recovery in personal injury cases.

In many states, surviving family members can seek similar mental damages in a wrongful death claim--compensation for the very real emotional anguish they no doubt feel as a result of the tragic loss of a loved one. Not so in New York. The Empire State’s wrongful death statute limits damages to cold, objective economic loss. Survival actions can seek the pain and suffering felt by the victim before their passing, but in many cases that amounts to little because the accident victim died very quickly. Moreover, the victim’s family is left without recourse for their own emotional and psychological trauma. The overall damages available to families of fatal accidents are significantly limited as a result.

Last year, New York's legislature passed a bill to expand the wrongful death statute to allow claims for the family's grief and anguish. Entitled the Grieving Families Act, the bill passed with strong bipartisan support after years of complaints that the families of fatal accident victims were left without true recourse under the 100-year-old existing law. Proponents argued the change was necessary, in particular, to benefit low-income people and New Yorkers of color.

The bill was opposed by the insurance industry and medical groups who argued the measure would drive up insurance premiums. Governor Hochul proposed a last-minute compromise amendment that would have narrowed the scope of the bill and exempted medical malpractice claims, but lawmakers rejected her proposal.

Ultimately, Gov. Hochul chose to veto the bill. In her veto message, she stated that the bill was passed "without a serious evaluation of these massive changes on the economy, small businesses, and the state's complex health care system." Healthcare and hospital associations cheered the veto, arguing that expanded damages would have put many hospitals on the "financial brink" and would have led to a "physician exodus from New York."

At least 41 other states allow surviving families to seek emotional damages following a wrongful death. New York lawmakers signaled plans to raise the issue once again in the coming legislative session.

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