



NEW JERSEY'S WRONGFUL DEATH ACT SHOULD REMAIN UNCHANGED

DESCRIPTION

Proposed legislation would allow recovery of damages for “grief” or “emotional distress” of a decedent’s surviving spouse, child, father or mother. In addition, it would expand the categories of persons who could sue under the Wrongful Death Act to include not only spouses and parents, but grandparents, grandchildren and siblings of the decedent.

This proposal goes well beyond what other states allow in wrongful death actions and if enacted, would put New Jersey at an economic disadvantage in competing for businesses and jobs.

BACKGROUND

Approximately 27 states do not allow “grief” damages at all, including states like New York, Pennsylvania, Connecticut and North Carolina that often compete with New Jersey for businesses and jobs.

Of the approximately 23 states that do allow “grief” damages in wrongful death actions, the overwhelming majority of them recognize that there is a serious risk of “runaway jury” verdicts and cap damages. These states have recognized the potential impact of huge jury verdicts on medical malpractice rates, the availability of medical care and the overall business climate.

The expansion of the categories of relatives who can recover for wrongful death actions would also put New Jersey in a small minority of states. Only three states allow recovery by grandparents, only four allow recovery by grandchildren, only eleven allow recovery by siblings and only one jurisdiction allows recovery “by anyone who can prove a loss.” Virtually no other state allows all of the same categories of relatives to receive damages as New Jersey would if the bill is enacted.

NJBIA POSITION

NJBIA supports New Jersey’s existing wrongful death statute as fair and balanced, and opposes legislation that would greatly expand wrongful death liability for New Jersey companies.

The people of New Jersey benefit from a diverse economy, from the large multi-national companies with major operations here to the small businesses that so often drive entrepreneurialism in the State. Many of these businesses would feel the effects of a greatly expanded Wrongful Death Act. Hospitals, physicians and other providers of medical care would face higher medical malpractice insurance

premiums, which in turn would further drive up the cost of healthcare and make it more difficult for employers and employees to afford health insurance. And companies that have done nothing wrong would be punished with higher insurance costs because of the increased liability such a law would bring.

ARGUMENTS IN SUPPORT OF CURRENT LAW

If any of these bills are enacted, New Jersey's Wrongful Death Act would become the most far reaching in the United States. As such, it could have a devastating effect on medical malpractice premiums, product liability insurance premiums, the cost of health insurance and the overall cost of doing business for New Jersey. The people of the State would be better served if legislators maintained New Jersey's current Wrongful Death Act.

New Jersey's existing rules for recovering damages for the wrongful death of another are time-tested and well understood by those who must deal with these cases. Our current law provides a level of certainty and predictability for the lawyers and judges who must try the cases, as well as insurers that must set rates and maintain reserves.

The well understood damages rules that govern wrongful death cases in New Jersey allow cases to be settled efficiently, which is important both to the families of the deceased and to the overall smooth functioning of the civil justice system.

It is important to note that under New Jersey's Wrongful Death Act, claimants are not limited to strictly economic damages. Persons entitled to collect damages for the death of another may recover not just the financial support they have lost (as well as hospital, medical and funeral expenses of the deceased), but the pecuniary value of loss of companionship, loss of advice, and loss of guidance.

Furthermore, one who witnesses the wrongful death of a close family member can, under existing New Jersey law, recover for his or her resulting severe emotional distress under Portee v. Jaffee, 84 N.J. 88 (1980). And the estate of a deceased person can recover pain and suffering, and emotional distress damages that the deceased may have suffered up to the time of death. What New Jersey does not allow is recovery of damages for "grief" or "emotional distress" of a relative.

LEGISLATIVE HISTORY

Several bills have been introduced to amend New Jersey's wrongful death statute, including A-1158, S-125 and S-995. Last session, S-176/A-1511 passed both houses and was pocket vetoed by Governor Corzine.

CONTACT

Christine Stearns, Vice President, Health & Legal Affairs – cstearns@njbja.org or 609-393-7707, ext. 260.