

NEWS RELEASE

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SENIOR, CONSUMER, DISABILITY, AND CIVIC ORGANIZATIONS URGE GOVERNOR HOCHUL TO APPROVE THE “GRIEVING FAMILIES ACT”

THE LEGISLATION PASSED WITH OVERWHELMING BIPARTISAN MAJORITIES, BUT HAS NOT YET BEEN SENT TO THE GOVERNOR

GROUPS URGE MODERNIZATION OF NY’S *PRE-CIVIL WAR* WRONGFUL DEATH STATUTE

(Albany, N.Y.) Advocates for seniors and individuals with disabilities, along with civic and consumer organizations today called on Governor Hochul to approve the “Grieving Families Act,” which would reform and update New York’s wrongful death law, substantially unchanged from when enacted in 1847.

The legislation was approved in June with overwhelming bipartisan majorities; in the Senate that vote was 57-6 and in the Assembly 147-2. The bill has not yet been sent to the governor.

The wrongful death law allows loved ones to seek damages from the responsible parties for the untimely, wrongfully-caused death of a close family member.

In a letter to the governor, the groups wrote “Each year New Yorkers are killed by drunk drivers, medical negligence, defective products, dangerous roadway conditions, and countless other acts and omissions. *New York’s antiquated wrongful death law fails to value the suffering and grief felt by survivors, nor recognize the loss of companionship, comfort and guidance provided by that wrongfully killed person.* This denies survivors a full measure of justice, devaluing the lives of children, seniors, and other loved ones who would not produce substantial income. As a result wrongdoers are not held fully accountable for the lives they have taken. The law also bars from the courthouse close *non-traditional family* members who suffer when a loved one’s life is wrongfully taken.”

New York’s wrongful death law was adopted in 1847 – 175 years ago, 14 years before Abraham Lincoln was sworn in as president. While some 48 other states have modernized their laws, New York’s wrongful death law is frozen in the Antebellum: A death caused by a reckless or negligent act still is valued solely by the “pecuniary” loss, *i.e.*, financial loss to the survivors, not the loss of affection and emotional support that has been prematurely taken from them or the grief survivors experience. The law was designed to compensate nuclear family members for the loss of a male breadwinner’s income.

The Grieving Families Act [S.74-A (Hoylman)/A.6770 (Weinstein)] recognizes that losing a loved one is more than missing their paychecks; that traditional family structures have changed since 1847; and that New York law inflicts great injustices when the life of a child, senior, woman, or person of color or individual with a disability is wrongfully taken and the hands of judges and juries are tied by an antiquated law.

The organizations urged that the governor act since “It’s past time to fix New York’s pre-Civil War wrongful death statute.”

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Attached: Groups’ letter to Governor Hochul in Support of the Grieving Families Act

December 9, 2022

Governor Kathy Hochul
Executive Chamber
State Capitol
Albany, New York

Re: Approve the *Grieving Families Act*

Dear Governor Hochul:

The undersigned organizations write to urge you to approve the *Grieving Families Act* to correct the serious injustice that results from current law when the lives of persons of color, women, children, seniors and individuals with disabilities are wrongfully taken. The legislation was passed by *overwhelming bipartisan majorities* in the Senate (57-6) and Assembly (147-2).

The *Grieving Families Act* [S.74-A (Hoylman)/A.6770 (Weinstein)] would fix New York's pre-Civil War wrongful death statute by allowing surviving loved ones to seek damages for their grief and relational losses in addition to purely economic damages. New York is one of only two states – along with Alabama – that fails to allow survivors to seek emotional injury damages. The *Grieving Families Act* would also update the law by expanding the circle of loved ones whose losses are recognized.

Each year New Yorkers are killed by drunk drivers, medical negligence, defective products, dangerous roadway conditions, and countless other acts and omissions. New York's antiquated wrongful death law fails to value the suffering and grief experienced by survivors, nor recognize the loss of companionship, comfort and guidance provided by that wrongfully killed individual. Current law denies survivors a full measure of justice, devaluing the lives of children, seniors, and other loved ones who did not produce substantial income. As a result wrongdoers are not held fully accountable for the lives they have taken. The law also bars from the courthouse close family and non-traditional family members who suffer when a loved one's life is wrongfully taken – regardless of the depth of the relationship and how their lives were entwined.

New York's wrongful death law was adopted in 1847 – 175 years ago, 14 years before Abraham Lincoln was sworn in as president. While some 48 other states have modernized their laws, New York's wrongful death law is frozen in the Antebellum: A death caused by a reckless or negligent act still is valued by the "pecuniary" loss, *i.e.*, financial loss to the survivors, not the loss of affection, nurturance and emotional support that has been prematurely taken from them.

This mid-19th century law perpetuates the values, biases, and injustices prevalent in the pre-Civil War era. The law was designed to compensate nuclear family members for the loss of a male breadwinner's income. In failing to recognize emotional and relational losses, New York's current wrongful death law continues to devalue those who are past their prime earning years (seniors); had not reached the job market (children); are not prime breadwinners (often women); or are underpaid due to baked-in biases in the American workplace (women, persons of color and persons with disabilities). The *Grieving Families Act* also acknowledges the obvious: Family structures have changed since 1847. The legislation would update the law to allow others in a close relationship to have their losses recognized.

The unmistakable message the current law sends is that in the eyes of our justice system some lives are virtually without value.

The bill would address these injustices by providing long overdue updates to New York's wrongful death law by:

- Allowing recovery by loved ones for “loss of love, society, protection, comfort, companionship, and consortium,” the hallmarks of deep relationships;
- Including among the damages survivors may claim “loss of nurture, guidance, counsel, advice, training, and education” that result from the loss of a loved one; and
- Moving beyond the constrained definition of “family” to allow recovery for a deceased's grandparents, siblings, domestic partners, and others close to the person whose life was wrongfully taken.

While New York was among the first to “modernize” its law by creating a wrongful death statute in the mid-19th century, nearly every other state has since updated their laws to more fully recognize the impact of the loss of a life wrongfully taken. Whether by legislative or judicial action, all but one other state now allow survivors to recover damages for their emotional losses.

At a time of reckoning with the injustices and discrimination deeply embedded in our laws, as governor you have an historic opportunity to fix New York's pre-Civil War wrongful death statute and offer a path to justice for grieving loved ones by recognizing the full measure of lives wrongfully taken, regardless of their lost earning potential.

We urge you to approve the *Grieving Families Act* when it reaches your desk.

Sincerely,
Brain Injury Association of New York State

Brooklyn Center for the Independence of the Disabled

CARS (Consumers for Auto Safety & Reliability

Center for Justice & Democracy

Center for Independence of the Disabled, NY (CIDNY)

Church Women United in New York State

Citizen Action of New York

Community Service Society

Elijah-Alavi Foundation Inc.

Last Stop Project of Rochester

Long Term Care Community Coalition

New York Environmental Law and Justice Project

New York Public Interest Research Group (NYPIRG)

Peggy Lillis Foundation

Statewide Senior Action Council

The Feal Good Foundation