



MEMORANDUM IN OPPOSITION

S.74-A (Hoylman) / A.6770 (Weinstein)

AN ACT to amend the estates, powers and trusts law, in relation to the payment and distribution of damages in wrongful death actions

The Capital Region Chamber, representing 2,800 businesses and organizations from throughout the Capital Region that employ more than 160,000 area residents, opposes S.74-A /A.6670, which would permit the families of wrongful death victims to recover compensation for their emotional anguish.

Specifically, the bill would amend EPTL section 5-4.1 to extend the time permitted to bring a wrongful death action by one year and six months; amend EPTL section 5-4.3, to permit recovery of damages for emotional loss when a tortfeasor is found liable for causing a death; amend EPTL section 5-4.4 to permit recovery by close family members; and amend EPTL section 5-4.6 to replace distributees with persons for whose benefit the action is brought. The bill would take effect immediately and would apply to all pending actions and actions commenced on or after such effective date.

Current law regarding wrongful death claims allows recovery for all economic losses arising from the death of a family member, as well as for pain and suffering prior to death. While the grief felt due to the loss of a loved one cannot be disputed, pain and suffering experienced by those not directly injured is not recoverable due to the difficulties in ensuring that juries decide cases based on facts and not sympathy. Emotional losses are speculative. Other causes of action already exist under current law.

The bill's proposed expansion of the law would unduly increase the costs to municipalities, businesses, and individuals defending themselves in New York's civil courts. A report prepared by Milliman, Inc, estimates that for medical professional liability, automobile liability, and general liability, annual loss and loss expenses in New York would increase by 12.6% or \$2.09 billion.

For these stated reasons, the Capital Region Chamber opposes this legislation.

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