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Expansion of Wrongful Death Act Damages Gets Senate Judiciary Committee's OK

New Jersey legislators are moving toward expanding the range of damages that could be awarded under the state's Wrongful Death Act.

By Michael Booth | April 05, 2018

New Jersey legislators are moving toward expanding the range of damages that could be awarded under the state's Wrongful Death Act.

The Senate Judiciary Committee voted 6-4 in recommending passage of S-1766, which is sponsored by the committee chairman, Sen. Nicholas



New Jersey state Sen. Nicholas Scutari/courtesy photo

Scutari, D-Union, and was introduced last February. It now goes to the full Senate. There is no companion measure in the Assembly.

The bill, if it passes both houses of the Legislature and is signed by Gov. Philip Murphy, would allow for damages for mental anguish, emotional pain and suffering, loss of society and loss of companionship.

At present, damages are available for pecuniary loss only: the financial support family members have lost, the actual medical and funeral costs, and the economic value of the loss of companionship, advice and guidance.

“In New Jersey, the current law is much too restrictive in terms of recoverable damages, especially in cases where there is no financial loss to the surviving family members, like the death of a small child,” Scutari said in a statement Thursday. “I think it’s unjust to tell grieving families that nothing can be done to ease the pain of losing a loved one. Right now, we are telling them that they aren’t entitled to be made whole.”

Thursday’s vote was along party lines, with committee Democrats voting in favor and Republicans voting against.

There was no oral testimony on the bill, and both opponents and supporters were required to submit written statements.

A variety of insurance companies and groups connected to the insurance industry opposed the bill.

The New Jersey Civil Justice Institute, a tort-reform group, issued a statement opposing the bill.

“The existing [act] works well and already provides for fair and predictable compensation. Changing the scope of wrongful death remedies to include purely emotional damages, like mental anguish and pain and suffering, would

introduce considerable uncertainty, making cases more difficult to settle, and imposing significant new risk and increased insurance premiums on all New Jersey residents,” wrote the institute’s president and chief counsel, Alida Kass.

The existing act already provides compensation both for straightforward pecuniary losses such as future income, as well as less tangible aspects of loss, she said.

“[T]he existing methodology also ensures clarity and certainty—the approach is well-established and honed through years of developing case law,” Kass said. “And by taking the purely emotional aspects out of the calculation, the methodology permits the ready valuation of cases, which is essential to reaching settlements.

“Changing the rules to permit awards for what is essentially unquantifiable would undo that fairness and predictability,” she said.

The New Jersey Association for Justice, which represents the plaintiffs’ bar, urged passage of the bill.

“What is the life of a child, a stay-at-home spouse or an elderly person wrongfully killed by the actions or negligence of another worth?” said NJAJ President Eric Kahn in his statement. “In the State of New Jersey the answer is zero. This is not fair. This is not just. It is wrong.

“New Jersey’s Wrongful Death Act is an antiquated effort to value the life of a decedent solely in terms of pecuniary or economic loss. This statutory scheme has been the subject of public and judicial criticism for many years,” said Kahn, of Springfield’s Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins.

“The current law limits the value of our citizens to their economic earning capacity when they die, due to the neglect, fault or abuse of a civil wrongdoer,” Kahn said. “In simple terms, that means that the lives of those with little or no income or earning capacity are worth less than people who are employed.”

The Legislature narrowly passed a similar version of the bill in 2008, but it died when Democratic Gov. Jon Corzine declined to take any action on it before the legislative session ended.