

## **GRIEVING FAMILIES ACT (GFA)**

Updated on September 10, 2024

### **A) HISTORY OF GFA**

- The current version of the GFA is the third version to pass both houses of the NY Legislature. The Governor vetoed the two prior versions.
- In 2023, the Grieving Families Act bill was A6698/S6636 of 2023 (“GFA 2.0”) and this measure was vetoed by the Governor on December 29, 2023.
- This new Grieving Families Act bill (A9232B/S8545B of 2024, “GFA 3.0”) passed both houses of the NY legislature on June 5, 2024.
- GFA 3.0 is currently sitting in the Legislature, awaiting delivery to the Governor for her approval or veto.

### **B) DIFFERENCES BETWEEN GFA 2.0 AND GFA 3.0**

- GFA 2.0 added as new damages eligible for recovery in NY wrongful death lawsuits “grief or anguish” suffered by surviving close family members of the decedent (person who died as a result of alleged negligent conduct). GFA 3.0 also contains the “grief or anguish” damages. In addition, GFA 2.0 explicitly added as additional damages in wrongful death cases damages for “loss of love, society, protection, comfort, companionship, and consortium resulting from the decedent’s death.” GFA 3.0 narrows this category of damages to only include “companionship.” However, damages for loss of “companionship” are a significant new item of damages.
- GFA 2.0 contained an effective date of immediately upon enactment and applied its provisions to all wrongful deaths occurring on or after July 1, 2018. GFA 3.0 also contains an immediate effective date but now would apply retroactively to all wrongful deaths occurring on or after January 1, 2021.
- GFA 2.0 contained an expansion of the current wrongful death statute of limitations from the current 2 years after death to 3 years. GFA 3.0 also contains the expanded 3-year provision.
- GFA 2.0 contained a list of the specific “surviving close family members” eligible to recover damages. GFA 3.0 expands this list by referencing the current law’s list of family members eligible to recover but without using the current law’s mechanism of limiting recovery to the first existing family members on the list of eligible family members (i.e., if spouse and children, grandchildren, great-grandchildren, etc., are alive, then only the spouse and any existing children receive damages). This limited recovery goes all the way down the line of family members to stipulate that if only first cousins’ children are left, then they recover damages.

### **C) BOTTOM LINE**

- Since a Milliman actuarial study of the “grief or anguish” additional damages estimated an increase in NY medical liability premiums of up to 40 percent and this new additional category of damages is contained in both GFA 2.0 and GFA 3.0, then the significant cost impact of this new version of the GFA is identical to the old version that was vetoed by the Governor in late December of 2023.