

# Chicago Daily Law Bulletin®

VOLUME 169, NO. 89

LAW BULLETIN MEDIA

## Punitive damages amendment seeks to alter legal landscape

Change may be coming to Illinois under House Bill 219, a bill that will drastically expand the landscape of recoverable damages under the Wrongful Death Act. For nearly 50 years, the Illinois Supreme Court has held that punitive damages are not recoverable under the Wrongful Death Act absent a legislative amendment permitting their recovery. HB 219 is that amendment.



**LARA LICKHALTER and JUSTIN DOBEK**

### Background

Currently in fast-track posture, HB 219 was introduced on Jan. 12 in the 103rd General Assembly of the Illinois House of Representatives by Speaker Emanuel “Chris” Welch to amend the Wrongful Death Act, 740 ILCS 180/1. The proposed amendment permits the recovery of punitive damages in civil actions brought by personal representatives of the decedent to recover where the general criteria for punitive damages have been met, in addition to recovery for grief, sorrow and mental suffering currently available.

The bill also carves out exceptions for state or local governments, medical malpractice actions and legal malpractice actions. There was little movement on the bill after its introduction until May 11, when State Rep. Jay Hoffman

LARA LICKHALTER is a partner at Wilson Elser LLP in Chicago and a member of the Transportation Committee of the International Association of Defense Counsel. Email: [lara.lickhalter@wilsonelser.com](mailto:lara.lickhalter@wilsonelser.com). JUSTIN DOBEK is of counsel at the law firm and a member of the firm’s Transportation practice group. Email: [justin.dobek@wilsonelser.com](mailto:justin.dobek@wilsonelser.com).

(D-Swansea) became its chief sponsor.

In the week that followed, the bill added 16 co-sponsors in the House and 12 co-sponsors in the Senate and passed both chambers on May 18. The legislation now resides with Gov. J.B. Pritzker for approval. If signed into law, the amendment will apply to wrongful death actions filed on or after its effective date.

Illinois is currently one of 16 states prohibiting the recovery of punitive damages in wrongful death cases. With the fate of this limitation hanging in the balance, businesses and indi-

viduals alike have weighed in on the far-reaching consequences of HB 219.

For example, the transportation industry, which traverses approximately 2,250 miles of interstate highways in Illinois daily, is one of the most vocal opponents to the bill. And for good reason. The amendment has the potential to turn every motor vehicle collision fatality into a shock verdict.

What is certain, the proposed amendment would transform the application of punitive damages by courts under the Wrongful Death Act, which has largely

remained undisturbed for 50 years.

### Punitive recovery barred under Wrongful Death Act

For decades, the Illinois Supreme Court has resisted the push by the plaintiffs’ bar for punitive damages in wrongful death and survival actions.

In *Froud v. Celotex Corp.*, 98 Ill.2d 324 (1983), the court noted that legislation to add punitive damages had been rejected by the legislature and therefore was not permitted in survival actions. More recently, in 2009 the 1st District Appellate Court cited the Supreme Court position, confirming that absent specific statutory authority or very strong equitable reasons, punitive damages are not permitted in Illinois as a part of a common law action for wrongful death. See *Marston v. Walgreen Co.*, 389 Ill. App 3d 337 (1st Dist. 2009).

In *Marston*, the 1st District provided, “[A]ctions for punitive damages will not survive the death of the original plaintiff unless the legislature specifically authorizes such action or there are strong equitable reasons for allowing recovery of punitive damages.”

The Supreme Court has long recognized that the Illinois Wrongful Death Act has a very broad definition of pecu-

niary damages, which “has received an interpretation that is broad enough to include most of the items of damages that are claimed by plaintiffs.” See *Ballweg v. City of Springfield*, 114 Ill.2d 107, 119 (1986) (citing *Hall v. Gillins*, 13 Ill. 2d 26, 31 (1958)).

Should HB 219 become law, the plaintiffs’ bar will acquire the statutory authorization discussed in Marston. Given the expansive definition of damages under Illinois tort law, the proposed amendment would give plaintiffs the opportunity to significantly increase recovery in

wrongful death actions.

### **Larger recoveries for plaintiffs?**

The amendment as proposed creates the potential to effectively give a plaintiff double recovery and punishes defendants with greater exposure. In short, the current draft is not sufficiently narrow to prevent misapplication to cases in which punitive damages are not otherwise warranted.

The plaintiffs’ bar cites other states that allow punitive damages in wrongful death cases to support this

broad amendment. However, a closer look at those states that allow for punitive damages reveals that many of them tailor their laws to certain circumstances or provide statutory caps or restrictions.

For example, in Texas, punitive damages are capped at the greater of \$200,000 or two times the amount of economic damages plus the amount equal to noneconomic damages up to \$750,000. In Nevada, punitive damages are capped at \$300,000 for compensatory damages less than \$100,000 and three times the compen-

satory total if the verdict exceeds \$100,000. The proposed Illinois amendment offers no such restrictions.

The precise constitutional and economic impacts of uncapped punitive damages in Illinois wrongful death actions remain to be seen, but this much is clear: A plaintiff’s ability to recover both compensatory and punitive damages in a wrongful death action will dramatically increase the exposure for Illinois businesses, increase the value of claims at settlement and impact claims administration as a whole.