



## Toxic Tort

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# Illinois Legislature and Governor Enact Public Act 103-0514 to Allow Punitive Damages in Wrongful Death Cases

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## Introduction

In recent years, discussions surrounding the expansion of wrongful death statutes have gained significant attention across the United States. Recent examples include legislative amendments to the California Code of Civil Procedure and Minnesota's Survival of Claims and Wrongful Death Statutes in October 2021 and May 2023, respectively. These amendments expanded the current wrongful death legislation and allowed California and Minnesota claimants to maintain causes of action on behalf of deceased individuals and to recover damages for that deceased individual's pain and suffering. *See* CAL. CODE CIV. P. § 377.34; MINN. STAT. §§ 573.01-02

In Illinois, the most notable development on this topic had been Illinois House Bill 219, a legislative effort aimed at amending the State's Wrongful Death Act to permit punitive damages. On August 11, 2023, Illinois Governor J.B. Pritzker signed House Bill 219 into law—now Public Act 103-0514. This new law amended 740 ILCS 180/1, 740 ILCS 180/2, and 755 ILCS 5/27-6, to allow punitive damages to be recoverable in wrongful death and survival actions effective immediately. This article delves into the key provisions of Public Act 103-0514 and its potential impact on toxic tort litigation in Illinois.

## Background on Illinois' Wrongful Death Act

Originally enacted in 1853, the Illinois Wrongful Death Act enables the surviving family members of a deceased individual to seek compensation for the loss of that individual due to the negligence or intentional actions of another party. *See* Schwartz, Behrens, & Taylor, *Illinois Tort Law: A Rich History of Cooperation and Respect Between the Courts and the Legislature*, 28 LOY. U. CHI. L.J. 745 (1997). Historically, the Act has aimed to provide financial support to the surviving family members “whenever the act or negligence is such as would have entitled the injured party to recover damages if death had not ensued.” *McDaniel v. Bullard*, 34 Ill.2d 487, 488 (1966). Illinois' Wrongful Death Act and Survival Act were designed to be strictly compensatory and not punitive in nature. *Id.* at 492.

## Overview of Public Act 103-0514

Illinois House Bill 219, which was introduced to the Illinois General Assembly on December 5, 2022, represented an attempt to expand the existing framework of the Illinois Wrongful Death Act and Survival Act. The bill included several key amendments that aimed to expand the current law by allowing the survivors of wrongful death victims to seek punitive damages. House Bill 219 passed through the House on May 16, 2023 with a vote of 75 Yeas and 40 Nays. It passed through the Senate on May 18, 2023, with a vote of 37 Yeas and 19 Nays. Public Act 103-0514 became law on



August 11, 2023 with the Governor's signature. It applies to all wrongful death and survival causes of action in Illinois filed on or after August 11, 2023. The key provisions are:

### *Punitive Damages*

Public Act 103-0514's most significant amendment to Illinois' Wrongful Death Act (740 ILCS 180) and Survival Act (755 ILCS 5/27-6) is including punitive damages as one of the types of damages recoverable. Illinois' Wrongful Death and Survival Acts now state, in part:

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages, including punitive damages when applicable, in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, including punitive damages when applicable, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. 740 ILCS 180/1.

Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person. In every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, including damages for grief, sorrow, and mental suffering, and punitive damages when applicable, to the surviving spouse and next of kin of such deceased person. 740 ILCS 180/2(a).

Actions which survive. In addition to the actions which survive by the common law, the following also survive: actions of replevin, actions to recover damages, including punitive damages when applicable, for an injury to the person (except slander and libel), actions to recover damages for an injury to real or personal property or for the detention or conversion of personal property, actions against officers for misfeasance, malfeasance, or nonfeasance of themselves or their deputies, actions for fraud or deceit, and actions provided in Section 6-21 of the Liquor Control Act of 1934. 755 ILCS 5/27-6.

From this point forward, Illinois wrongful death plaintiffs and their counsel can seek punitive damages against defendants in addition to personal injury and product liability causes of action. 735 ILCS 5/2-604.1. Plaintiffs may recover punitive damages if they can prove with clear and convincing evidence that the conduct of the defendant(s) was "with evil motive or with a reckless and outrageous indifference to a highly unreasonable risk of harm and with a conscious indifference to the rights and safety of others." 735 ILCS 5/2-1115.05(b). In Illinois, there is no cap on punitive damages. *See Wills v. Foster*, 229 Ill.2d 393 (2008).

### *Exemptions for Medical Malpractice and Legal Malpractice Cases*

These newly enacted amendments to the Wrongful Death Act and Survival Act do not apply to all claims. Public Act 103-0514 makes clear that punitive damages may **not** be recovered in medical malpractice and legal malpractice claims.



The amended statutes explicitly state: “Punitive damages are not available in an action for healing art malpractice or legal malpractice[.]” 740 ILCS 180/1-2; 755 ILCS 5/27-6.

### *Exemptions for Public Entities and Public Officials*

Additionally, punitive damages may not be recovered in wrongful death and survival claims against the State of Illinois or its employees. Public Act 103-0514 explicitly states: “Punitive damages are not available . . . in an action against the State or unit of local government or an employee of the State or an employee of a unit of local government in his or her official capacity.” 740 ILCS 180/1-2; 755 ILCS 5/27-6.

### **Conclusion**

The sweeping passage of House Bill 219 through the Illinois General Assembly and subsequent enactment of Public Act 103-0514 represents a national trend in expanding avenues of recovery for claimants in wrongful death cases. Currently, only fifteen states do not allow for the recovery of punitive damages in wrongful death cases. This new legislation will dramatically affect Illinois’ wrongful death and survival cases, including personal injury lawsuits involving product liability and toxic tort causes of action. Public Act 103-0514 drastically increases the scope of liability for defendants in wrongful death cases where the plaintiff has died from his or her injuries. This new law has the potential to increase the number of lawsuits, jury verdict awards, and settlement costs state-wide. Notorious hotbeds for Illinois’ mass tort litigation, such as the asbestos dockets in Cook County, Madison County, and St. Clair County, are likely to see a surge in filings. Attorneys defending wrongful death actions should carefully review the allegations and whether they may allow punitive damages when assessing potential damages in a case.

### **About the Author**

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