

**TORT NOTES**  
**By: James J. Morici, Jr.**

**WRONGFUL DEATH LEGISLATION AND CHANGES TO WORKERS  
COMPENSATION ACT HIGHLIGHT LEGISLATIVE ACTION**

Illinois personal injury and workers compensation practitioners watched with great interest as the passed legislative session unfolded. Chief among the legislatures accomplishments in that session were changes to the Wrongful Death Act and the Illinois Workers Compensation Act. Two other bills, one dealing with collateral sources in an attempt to amend the Illinois Supreme Court's decision in Arthur v. Catour, 216 Ill.2d. 72 (2005) and Senate Bill 1296 on Joined and Several Liability, have failed to move through the Illinois Senate as of mid-July.

**Illinois Wrongful Death Act**

Senate Bill 1798 amended the Wrongful Death Act to allow a jury to award damages for "grief, sorrow, and mental suffering" in wrongful death actions. The bill became law on May 31, 2007 as Public Act 95-0003. Previous to the legislation, juries in wrongful death actions were instructed to not award damages for grief and sorrow to the widow and/or children in wrongful death actions. The bill corrected an injustice in the law that created the aforementioned prohibitions based on the antiquated concept that the value of the decedent to his or her surviving family should be viewed only as an economic asset. Instructing a jury not to award damages for grief and sorrow in wrongful death cases was often confusing to jurors on the issue of loss of society that includes love, companionship and affection. The modern approach, which led to our legislation, was expressed by the Supreme Court of Alaska who stated "Where a statute allows damages for loss of companionship, comfort and guidance, it would be inconsistent to forbid recovery for emotional pain and suffering." In making this change in the law, Illinois joined 23 other states in recognizing grief, sorrow, and mental anguish as elements of damage in wrongful death cases.

Historically, the Wrongful Death Act, first enacted in 1853, followed the harsh pecuniary loss rule that wrongful death is measured by financial contributions. In the 1980s, Illinois recognized that damages under the Wrongful Death Act for loss of society for spouses, parents, children and siblings were proper. Still, an incongruity in the law existed in that prior to the recent legislation, pet owners were permitted to receive damages for "emotional distress" caused by the wrongful death of a pet, yet parents were not allowed to seek damages for grief and sorrow for the loss of a child. It was universally recognized by our Democratic legislature that the change was long overdue.

**Employers Tort Liability**

A legislative change to the Illinois Workers Compensation Act, 820 ILCS 305 Section 4(d) became law two sessions ago, but has only recently come into use. As amended, the Act assigns civil and criminal penalties to employers who fail to obtain workers compensation coverage for their employees. The statutory change makes employers who knowingly fail to comply with the requirements of obtaining workers compensation coverage ineligible for

protection under the exclusivity provisions of the Act. Under the Act, Illinois workers are prohibited from suing their employers for negligence in personal injury actions. The employees "exclusive remedy" is to receive workers compensation benefits including wages during the period of temporary total disability, medical expenses, and disability payments. The statutory change removes the aforementioned prohibition for non-complying employers and makes them liable in actions under the applicable law of the state of Illinois. In addition, the Act prohibits the employer from raising defenses from assumption of risk, contributory negligence or the negligence of a third party. Proof of injury constitutes \_\_\_\_\_ evidence of the employer's negligence and shifts the burden of proof for disproving that negligence to the employer.

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