



October 17, 2023

via email: legislative.secretary@exec.ny.gov

Hon. Elizabeth Fine
Counsel to the Governor
NYS Capitol - Executive Chamber
Albany, New York 12224

Dear Ms. Fine:

**RE: S6636 (Senator Hoylman-Sigal) / A6698 (Member of Assembly Weinstein)
The Wrongful Death Expansion Act**

*An act to amend the estates, powers and trusts law, in relation to the
payment and distribution of damages in wrongful death actions.*

Thank you for providing us with the opportunity to offer comments on this extremely important but very harmful bill.

The New York Insurance Association (NYIA), the state trade association that has represented the property and casualty insurance industry in New York for over 140 years, is **VERY STRONGLY OPPOSED** to the above-captioned legislation.

This bill, by its terms, would substantially change the nature of wrongful death claims in New York State, by dramatically expanding the class of persons entitled to seek damages, significantly extending the categories of recoverable damages, and by considerably lengthening the statute of limitations in which to bring such lawsuits.

Vetoed by Governor Hochul earlier this year, this bill is simply unnecessary, and very harmful to the interests of New York State, and its people.

What its proponents don't wish the public to know, is that current law already provides a more than adequate legal remedy for those this bill claims to help. By its terms, this bill would unjustifiably expand wrongful death litigation well beyond that presently available legitimate remedy.

In so doing, this legislation, according to the Governor's earlier veto message 192, would impose "massive changes on the economy, small business, individuals, and the State's complex health care system."

When considering this bill, we respectfully wish the Governor to keep in mind, the fact that, presently, without this bill, the family of a person, who has died as a result of negligence, may in fact, indeed, currently recover in litigation, for non-economic compensation.

For, New York's current law does allow a recovery for the loss of their loved one, by a family member, pursuant to a survivorship cause of action, through an action under their loved one's estate, under the New York State Estate Powers and Trusts Law (EPTL) section 11-3.2(b).

Additionally, as if that fact were not sufficient alone to make this bill unnecessary, the law also currently allows for pain and suffering damages, to be awarded to such a family member, (*See, Martin v. Reedy*, 194 A.D.2d 255, 259 (3rd Dep't 1994).

What the proponents of this bill don't wish to have known, however, and wish to have overlooked, is the fact that this bill, is strongly advocated for by our state's plaintiffs lawyers and their civil litigation industry, who stand to become personally and significantly enriched under its provisions, and who would now be afforded by this bill with a mean to needlessly and dramatically expand an already substantial recovery currently allowed under present law, to the point of unaffordability.

As aforementioned, right now, under current law, the family members of a person, who dies because of a negligent act of another, can recover both economic and pain and suffering damages incurred as the result of that wrongful death. This bill would however, take that current reasonable ability for families to recover, far beyond that, without any real nexus to the person who died, or the long held and respected statutes of limitations, that are necessary to assure proper proofs and fairness in our system of justice.

Under section three of this bill, the persons who could maintain a wrongful death recovery is significantly expanded. Presently, Article 5 of the Estate, Powers and Trusts Law, defines the family members who can bring such an action as "distributees", meaning spouses, parents and children, whom the law has long recognized as individuals who can inherit, and who would be impacted by an individual's death.

This bill, however, would historically expand this definition within Article 5, by creating instead, a new amorphous definition, of who could recover, so as to include a spouse, domestic partner, issue, foster-children, step-children, step-grandchildren, parents, grandparents, step-parents, step-grandparents, siblings, or any person standing in loco parentis to the decedent. Moreover, if such list which is uniformly not recognized in other states, is not overly broad enough, this bill would further expand this universe of plaintiffs, to further include any other person, whom the finder of fact (the jury) determines should be entitled to damages, as based upon the specific circumstances relating to such other person's relationship with the decedent.

This overly expansive, and unjustifiable, universe of plaintiffs, might well prove a boon to the civil litigation industry and the plaintiffs bar in New York, but it really would prove of little benefit to the family members who actually have lost the decedent, and who would indeed be helped by a recovery for their actual loss.

As if this fact were not enough, this bill, would also now unfairly impose enormous additional costs on all New York civil defendants, namely governments, businesses, individuals, and health care institutions, where the statutes of limitations, necessary to assure timely claims that can be defended, have now expired.

As a result, these targeted governments, businesses, individuals, and health care institutions, under the terms of this legislation, would now be unfairly forced to finance a massive expansion of non-family member plaintiff litigants, their speculative damages, and their lawyers' enormous contingency based legal fees, despite the fact that their claims have expired under the statute of limitations.

The driving force behind this highly questionable aspect of the bill, which resurrects all actions that took place on or after July 1, 2018, is because the present legitimate actions, aforementioned, and currently allowed under the EPTL, are simply not viewed by the trial bar, as a fertile enough financial windfall, for our state's massive civil litigation industry.

One principal reason for this retroactive date, which will impose incredible hardships for any party trying to legitimately defend such a suit, would be to now allow a new set of targeted lawsuits, against nursing homes and hospitals, for alleged wrongful deaths, resulting from the COVID epidemic. These COVID lawsuits, many of which are currently time barred by the statute of limitations, would all be resurrected, and now with massively inflated damages and expanded plaintiffs.

Such a class of lawsuits would present an enormous new potential tax liability for all of New York's already heavily overburdened county real property taxpayers. For it is their counties who are the ones who often own and maintain such hospitals and nursing homes. As many of these institutions rely partly or solely on a self-insurance plan to cover such losses, it would result in county real property taxpayers suffering the bill for any verdict. In a world of the present tax cap, this presents an especially harsh reality, with painful sticker shock for taxpayers. A sticker shock they could rightly blame on this bill.

As if the expanded plaintiff base, and resurrected statute of limitation claims, advanced by this bill were not bad enough, it also dramatically offers an expansion of speculative damages to an unprecedented level. As aforementioned, present law allows the family members of a person, who dies because of a negligent act of another, to recover both economic and pain and suffering damages incurred as the result of that wrongful death.

This bill however, would go far beyond that present, justifiable recovery. For this bill allows for not only the recovery of the traditional compensatory damages that are allowed under current law, but also for a whole new host of speculative, non-exact, non-concrete, damages, including loss of love, society, protection, comfort, companionship, and consortium, loss of services, support, assistance, and loss or diminishment of inheritance, as well as loss of nurture, guidance, counsel, advice, training, and education.

While the plaintiff lawyers and the civil litigation industry will cite that some of these types of damages are allowed in other state, which is indeed true, what they don't want known, is the fact that in such other states, such damages are strictly limited by damage caps, which neither New York, nor this bill contains.

Accordingly, this massive wrongful death expansion bill, which would unreasonably inflate damages beyond not only other states, but to historic new, and unprecedented levels in New York as well.

In so doing, this bill would significantly increase the costs to our civil justice system in a dramatic, unaffordable, and unprecedented way. These are avoidable costs, that all New York municipalities, taxpayers, consumers, health care institutions, and businesses would thereafter all be forced to pay, without any real or significant benefit to the family members who can now recover under a currently affordable, authorized, wrongful death action.

These enormous new, added costs, that would be imposed by this bill, would present themselves in numerous ways. Higher real property taxes, higher construction costs, higher medical costs from medical malpractice, and higher costs for housing, commerce, and transportation. All these areas would be significantly impacted.

Another such effect would be massively increased insurance costs, for every citizen of our state. For according to a Milliman actuarial study, it is specifically estimated, that if this bill is enacted, its impact alone would increase annual overall insurance premiums, by **\$2.2 billion** in New York State. That's **an increased cost of \$110 for every single man, woman and child in New York State.**

All these avoidable added costs to simply enrich plaintiff lawyers and the litigation industry they drive. In essence, this bill would clearly result in an historic increase to the household budgets of all New Yorkers, without any real concurrent benefit for any actual victims.

That is why there is a real and significant reason that Governor Hochul found it necessary to issue one of her very rare vetoes on a virtually identical version of this bill earlier this year.

Such was a prudent, well-reasoned, thoughtfully considered action, as demonstrated by the Governor's insightful, veto message 192. None of the reasons, announced by the Governor in that veto message, was even slightly mitigated, nor addressed, by this new version of this bill.

Accordingly, given all of these negative implications that this bill would have for all the people of the State of New York, **NYIA very strongly opposes this bill, and respectfully requests that the Governor veto this legislation once again, and not sign it into law.**

Sincerely,



Ellen Melchionni
President

cc: Bella Satra, Esq., Assistant Counsel to the Governor
Cherell Beddard, Assistant Counsel to the Governor