



MEMORANDUM IN OPPOSITION

S6636 (Hoylman-Sigal) / A6698 (Weinstein)

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

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 **STRONGLY OPPOSED** to the above-captioned bill.

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 actually hurtful. What its proponents don't wish the public to know, is that current law already provides a legal remedy for those this bill claims to help. What it does do however, is unjustifiably expand wrongful death litigation well beyond that legitimate remedy. And in so doing, it, according to the Governor's veto message 192, imposes "massive changes on the economy, small business, individuals, and the State's complex health care system."

When considering this bill, what New Yorkers need to know, is that presently, without this bill, the family of a person, who has died as a result of negligence, may in fact, currently recover in litigation, for non-economic compensation. For current law allows a recovery for the loss of their loved one, by an actual 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 an actual family member, (*See, Martin v. Reedy*, 194 A.D.2d 255, 259 (3rd Dep't 1994).

What the proponents of this bill don't want you to know, however, is that this bill, strongly advocated for by the Trial Lawyers, who stand to become significantly enriched under its provisions, would seek to needlessly and dramatically expand this already substantial recovery currently allowed under present law. As a result, without any real benefit to actual family members, this bill would unfairly impose additional costs on all New York civil defendants, namely governments, businesses, individuals, and health care institutions, who would be targeted, under its terms, to now pay for a massive expansion of non-family member plaintiff litigants, their speculative damages, and their lawyers' enormous contingency based legal fees.

The driving force behind this bill is that the present legitimate actions, 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. So they seek this bill, which would unreasonably expand damages beyond traditional family members, and dramatically extend statutes of limitations, which are put in place, to assure honest and provable claims.

In so doing, this bill would significantly increase the costs to our civil justice system. Avoidable costs, that all New York municipalities, taxpayers, consumers, health care institutions, and businesses would now all be forced to pay. Such costs would be imposed by this bill, despite the fact, that the actual family member victims, this bill claims to help, can now already recover under current law. All without the damage that this bill inflicts.

To this regard, it is interesting to note, that a highly respected actuarial study, has estimated that if this bill is enacted, it would increase annual overall insurance premiums, by an estimated **\$2.2 billion** in New York State. All this to simply enrich trial lawyers. As a result, in essence, this bill would represent an historic increase to the household budgets of all New Yorkers.

There is a real and significant reason why Governor Hochul found it necessary to issue one of her very rare vetoes on a virtually identical version of this bill earlier this year. None of those reasons, announced by the Governor, was even slightly mitigated, by this new version of this bill.

Accordingly, given all of these negative implications, **NYIA strongly opposes this bill, and respectfully requests that it not be reported from any committee, or enacted by either house of the New York State Legislature.**