



# Lawsuit Reform Alliance of New York

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## OPPOSE

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<b>BILL:</b>	<b>S.74 (Hoylman)</b>
<b>SUBJECT:</b>	<b>Expansion of the Wrongful Death Statute</b>
<b>DATE:</b>	<b>January 5, 2021</b>
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### Summary:

This legislation would expand the categories of damages which a plaintiff may recover in a wrongful death action to include emotional as well as actual loss. The categories for recovery would be expanded to include grief or anguish as well as loss of love, loss of society, loss of protection, loss of comfort, loss of companionship, and loss of consortium.

### Why we strongly oppose this legislation:

#### ***Expansion of the Law Would Increase Costs on Taxpayers and Consumers***

- While this legislation aims to compensate people for the loss they feel from the death of a loved one, the types of losses that would be compensated are so subjective and variable as to constitute a blank check. Current law regarding wrongful death claims allows recovery for all economic losses arising from the death of a family member, as well as for pain and suffering prior to death. While the grief felt due to the loss of a loved one cannot be disputed, pain and suffering experienced by those not directly injured is not recoverable because of the difficulties in ensuring that juries decide cases based on facts and not sympathy. Emotional losses are speculative and highly susceptible to manipulation, and this type of loss simply encourages juries to award excessive amounts. As the potential payoff for litigation rises, so too do the incentives for defendants to settle, rather than fight, claims with little or no merit. Other causes of action already exist and a radical expansion of the law unduly increases the costs to municipalities, businesses, and individuals attempting to defend themselves in New York's civil courts.

#### ***Increased Cost of Insurance Which is Already Highest in the Nation***

- An actuarial analysis of the proposed legislation estimates that, if enacted, the bill could increase liability premiums by \$2.2 billion annually. The report, prepared by Milliman, Inc., a premier global consulting and actuarial firm, estimates that for medical professional liability, automobile liability, and general liability, annual loss and loss expenses in New York would increase by 12.8% or \$1.9 billion.<sup>1</sup> New York already has the highest medical liability payouts per capita and highest total of such payouts in the country, an amount which totaled \$685.3 million in 2018.<sup>2</sup> Medical liability premiums, which for some practice areas are already higher in New York than anywhere else in the nation, are estimated to increase by 47% as a direct result of this legislation.<sup>3</sup>

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<sup>1</sup> Ryan, T. & Schaffe, D. (2019). *Review of New York Bill S4006: Proposed Expansion of New York's Wrongful Death Act*. Milliman, Inc.

<sup>2</sup> Staff (2019). *2019 Medical Malpractice Payout Report*. LeverageRx.

<sup>3</sup> *Id.* at 1

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The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, healthcare providers, membership organizations, and concerned citizens dedicated to reform of the legal system in order to foster a better business climate and address the growing cost of lawsuit abuse.