

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 29 (Laird)
Version: December 2, 2024
Hearing Date: April 1, 2025
Fiscal: No
Urgency: No
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SUBJECT

Civil actions: decedent's cause of action

DIGEST

This bill permanently removes limitations on recovering damages for pain, suffering, and disfigurement in survival actions.

EXECUTIVE SUMMARY

California's survival statute provides that a cause of action for or against a person is not lost by reason of the person's death. Section 377.34 of the Code of Civil Procedure generally limits the damages that can be recovered in these survival actions or proceedings, which are brought by a decedent's personal representative or successor in interest on the decedent's cause of action. The damages recoverable in such actions are the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived. Section 377.34(a) specifically excludes any damages for pain, suffering, or disfigurement; however, SB 447 (Laird, Ch. 448, Stats. 2021) amended this limitation to allow for such damages in actions filed before January 1, 2026.

This bill permanently makes available such damages in survival actions, aligning it with a majority of the states in this country.

This bill is co-sponsored by the Consumer Attorneys of California and the Consumer Federation of California. It is supported by Equal Rights Advocates, the Western Center on Law and Poverty, and various labor organizations, including the State Building and Construction Trades Council of California and the California Teamsters. It is opposed by a variety of health care-related organizations, including the California Medical Association, Californians Allied for Patient Protection, and the California Dental Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that, except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period. (Code Civ. Proc. § 377.20.)
- 2) Provides that a cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest. (Code Civ. Proc. § 377.30.)
- 3) Requires a court to allow, on motion after the death of a person who commenced an action or proceeding, a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest. (Code Civ. Proc. § 377.31.)
- 4) Limits the damages recoverable, in an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and does not include damages for pain, suffering, or disfigurement. (Code Civ. Proc. § 377.34(a) ("Section 377.34").)
- 5) Provides that notwithstanding the previous section, damages for pain, suffering, and disfigurement are available if the action or proceeding was granted a preference before January 1, 2022, or was filed on or after January 1, 2022, and before January 1, 2026. (Code Civ. Proc. § 377.34(b).)
- 6) Requires a plaintiff who recovers damages pursuant to the preceding section between January 1, 2022, and January 1, 2025, within 60 days after obtaining a judgment, consent judgment, or court-approved settlement agreement entitling the plaintiff to the damages, to submit to the Judicial Council a copy of the judgment or settlement agreement, along with a cover sheet detailing specified information. Judicial Council is required to submit a report detailing such information to the Legislature by January 1, 2025. (Code Civ. Proc. § 377.34(c), (d).)
- 7) Applies the above provisions to the commencement of an action or proceeding the decedent was entitled to commence, and to the continuation of an action or proceeding commenced by the decedent. (Code Civ. Proc. § 377.35.)

- 8) Establishes a cause of action for the death of a person caused by the wrongful act or neglect of another (“wrongful death action”) that may be asserted by specified persons or by the decedent’s personal representative on their behalf. (Code Civ. Proc. § 377.60.)
- 9) Provides that any part of the estate of a decedent not effectively disposed of by will passes to the decedent’s heirs as prescribed in the Probate Code. (Prob. Code § 6400 et seq.)

This bill removes the sunset and reporting requirement from Section 377.34 and authorizes recovery of damages for a decedent’s pain, suffering, or disfigurement in any action or proceeding on the decedent’s cause of action.

COMMENTS

1. Allowing a decedent’s representative to collect pain and suffering damages

Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the unlawful, negligent, or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty. For instance, as a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)

At common law, an individual’s causes of action for personal torts were extinguished with the death of the injured party or the tortfeasor, following the Latin expression *actio personalis moritur cum persona*, i.e., a personal action dies with the person concerned.¹ As documented by multiple opinions by the California Supreme Court: “After at least a half century of debate and many unsuccessful legislative initiatives, California’s first statute providing for the survival of personal tort actions was enacted in 1949.”² This initial “survival action” applied only to causes of action for personal injury.

In 1961, then-Senator, and later Justice, James A. Cobey introduced SB 202 (Cobey, Ch. 657, Stats. 1961). The bill was prepared by the California Law Revision Commission in the wake of its report, *Recommendation and Study Relating to Survival of Actions* (Oct. 1960) 3 Cal. Law Revision Com. Rep. (1961) (“the Report”). Three main recommendations were made to overhaul the statute and were included in SB 202. The first urged the expansion of the survival statute to include actions for personal torts that do not involve physical injury, including invasion of privacy, defamation, and

¹ *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 293.

² *Id.* at 297; see also *County of L.A. v. Superior Court* (1999) 21 Cal.4th 292

malicious prosecution.³ The second recommendation was that the survival statute should allow recovery of punitive damages that the decedent would have been entitled to, reasoning “[t]he object of awarding such damages being to punish the wrongdoer, it would be particularly inappropriate to permit him to escape such punishment in a case in which he killed rather than only injured his victim.”⁴ Both of these recommendations were included in the final bill that was signed into law by Governor Edmund G. Brown.

Relevant here, the third recommendation faced considerable difference of opinion. It urged the Legislature to “discontinue the provision in the 1949 survivorship legislation precluding the estate of the deceased plaintiff from recovering damages for pain, suffering, or disfigurement.”⁵ A study accompanying the Report disagreed, arguing:

[D]amages should not be awarded for the deceased’s pain and suffering, bodily disfigurement or loss of a member of his body. Such injuries are strictly to the person of the deceased and, in and of themselves, do not lessen the value of his estate and are not of such a transmissible nature that they should be made the basis of legal liability or an award of compensatory damages after the victim’s death.⁶

However, the California Law Revision Commission made its case and addressed this argument and other concerns involving the change:

The provision in the 1949 survival legislation that damages may not be allowed to the estate of the deceased plaintiff for “pain, suffering or disfigurement” should also be discontinued. One reason advanced in support of this limitation is that the victim’s death and consequent inability to testify renders it difficult and speculative to award damages for such highly personal injuries. The Commission believes, however, that while it may be more difficult to establish the amount of damages in such a case the victim’s death should not automatically preclude recovery. Other competent testimony relating to the decedent’s pain, suffering or disfigurement will be available in many cases. The argument has also been made that the purpose of awarding such damages is to compensate the victim for pain and suffering which he himself has sustained and that when he is dead the object of such damages is lost and his heirs receive a windfall. This argument suggests that the primary reason for providing for survival of actions is to compensate the survivors for a loss to or diminution in the expectancy which they had in the decedent’s estate. The Commission does not agree. Causes of action should survive because they exist and could have been enforced by or against the decedent and

³ *Sullivan*, at 298-299; Report at F-6.

⁴ *Sullivan*, at 299; Report at F-7.

⁵ *County of L.A. v. Superior Court*, 21 Cal.4th at 296.

⁶ *Ibid.* (discussing the history of survival action legislation and the accompanying Report and study).

because, if they do not survive, the death of a victim produces a windfall for the wrongdoer. Under this view it is inconsistent to disallow elements of damages intended to compensate the decedent for his injury merely because of the fortuitous intervention of the death of either party.⁷

Ultimately, Senator Cobey included the provision in SB 202. However, “[t]he Senate amended the bill at the request of the insurance companies to restore [the] provision of the existing law that prevents the recovery of damages for pain, suffering and disfigurement by the representative of a deceased victim.”⁸ A contemporaneous letter from the California Law Revision Commission also highlights that the amendment was proposed by representatives of the insurance industry and that it “was apparent at the hearing that extensive lobbying had been accomplished by the insurance industry prior to the hearing.”⁹

The relevant statutes were later reenacted in the Code of Civil Procedure. Section 377.20 authorizes the survival action, providing that a cause of action is not lost by reason of the person’s death, but survives subject to the applicable limitations period, except as otherwise provided by statute. Section 377.34(a) lays out the remedies available in such actions:

In an action or proceeding by a decedent’s personal representative or successor in interest on the decedent’s cause of action, the damages recoverable are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.

2. Revising California’s survival statutes

Sixty years later, SB 447 implemented the final recommendation asserted by the California Law Revision Commission. It authorized recovery of damages for pain, suffering, and disfigurement in certain actions granted a preference and in all cases filed between January 1, 2022 and January 1, 2026. The justification for the change being that if a cause of action for such damages does not survive, it results in “a windfall for the wrongdoer.”

SB 447 not only placed a sunset but required plaintiffs receiving such damages to report information about the action and the amount of damages to Judicial Council. Judicial Council was required to submit a report detailing this information to the Legislature by

⁷ Report at F-7.

⁸ Senator James Cobey, letter to Governor Edmund G. Brown, May 31, 1961.

⁹ John H. DeMouly, Executive Secretary with the California Law Revision Commission, letter to Commissioners, April 14, 1961.

January 1, 2025. That report indicates that there were only four reported cases involving the payment of pain, suffering, or disfigurement damages in survival actions during the relevant three-year period.¹⁰

This bill now removes that sunset and permanently authorizes the recovery of such damages in survival actions.

According to the author:

When it comes to giving families a chance to recover non-economic damages, there are only three states in the entire nation that reward defendants for prolonging court procedures – leaving victims unable to obtain justice. California must not become the fourth.

Senate Bill 29 will permanently correct a decades-old injustice in California by removing the sunset to Senate Bill 447 (Laird, 2021), maintaining a victim’s right, and the right of their loved ones, to pursue accountability for human suffering – even if they die prior to case resolution. It has always been my intent that this law be made permanent, ensuring that victims and their families can continue to seek justice. In doing so, this bill will protect the progress we have made in strengthening victim’s rights.

3. Stakeholder positions

The Consumer Attorneys of California, a sponsor of the measure, writes:

If SB 447 is allowed to sunset, families will once again be denied the ability to seek full justice for their loved ones’ suffering. This would roll back California’s progress and reinstate a system that rewards delay tactics and shields wrongdoers from full accountability. Allowing wrongdoers to escape liability simply because their victim has died is fundamentally unjust.

Allowing SB 447 to sunset would also encourage defense attorneys to do everything possible to drag out and stall cases until a plaintiff dies. Delaying tactics raise the odds that a severely injured victim will die before trial, awarding the defendants an economic windfall. This discourages efficiency in litigation and creates an absolute disincentive for a guilty company -- or its insurers -- to resolve a case even when liability is

¹⁰ *Recovery of Damages for Pain, Suffering, or Disfigurement by Decedent’s Estate* (January 1, 2025) Judicial Council of California, available at <https://courts.ca.gov/system/files/file/lr-2025-recovery-damages-decedents-estate-ccp37734d.pdf> [as of Mar. 14, 2025].

clear. And when our over-burdened courts must dig through the morass of these dilatory litigation tactics, it creates a ripple effect that impacts the ability of all Californians to use the court system that is funded by their tax dollars.

LeadingAge California writes in opposition:

SB 447 was one of multiple bills passed by the Legislature in 2021 that included a sunset date due to the impacts of the COVID pandemic. SB 447 was passed prior to the passage of AB 35 (Assemblymember Reyes and Senator Umberg) in 2022, which made sweeping changes to modernize the MICRA statute. The changes proposed in SB 29 undo foundational components of those reforms and will dramatically increase the cost of insurance for long-term care providers, regardless of whether claims are filed against them. We are concerned that those costs will negatively impact access to long-term care services in the state, particularly at a time when they are needed most.

Writing in opposition, a large coalition of groups, including Californians Allied for Patient Protection (CAPP) and The Doctors Company, argue:

In 2021, SB 447 (Laird) was passed to allow heirs of injured individuals to recover non-economic damages for pain and suffering if the injured individual passes away before their lawsuit is settled. Among other things, the author and sponsor argued in 2021 that SB 447 was necessary due to the courts being slow to settle cases thanks to the pandemic and a sunset was amended into the bill before the Legislature sent the bill to the Governor. It is important to note that medical malpractice claims are not exempt from SB 447. SB 29 removes the sunset from the law that was passed and extends it into perpetuity.

In 2022, representatives from our organizations agreed to significant reforms to the MICRA statute. We were keenly aware of SB 447's 2026 sunset and we agreed to appropriate increases in AB 35 with that understanding.

Unfortunately, SB 29 conflicts with the spirit and language of the 2022 updates to modernize MICRA so our organizations are opposed to SB 29 unless amended.

The author challenges this assertion:

Exempting medical malpractice actions would strip families that have been injured or killed by medical negligence of their right to recover

damages for their loved one's pain and suffering before death. This is an unjust and unnecessary move that undermines accountability.

Medical negligence cases are already subject to MICRA's cap on damages, which is unique to these cases and clearly defined by statute. The threat of runaway jury awards does not exist in medical malpractice cases because those caps are absolute, with no exceptions. SB 29 respects MICRA's caps and was already existing law before AB 35 (Reyes, Chapter 17, Statutes of 2022) updated MICRA. Despite these reasonable limits, CMA and CAPP are pushing for an extreme exemption, effectively eliminating accountability for pain and suffering damages in medical malpractice cases.

The State Building and Construction Trades Council of California writes in support:

SB 447 (Laird, 2021) will sunset in 2026. SB 29 seeks to permanently eliminate the sunset to ensure California does not roll back its policies to ensure workers who were harmed on the job are made whole. Without the elimination of this sunset, corporate defendants and their insurers will revert to tactics of harassment and delay, legally robbing victims and their families of the compensation they deserve while avoiding liability.

Writing in support, a coalition of consumer and labor groups, including the California Federation of Labor Unions and the California Low-Income Consumer Coalition, states:

The Problem

If SB 447 is allowed to sunset, families will once again be denied the ability to seek full justice for their loved ones' suffering. This would roll back California's progress and reinstate a system that rewards delay tactics and shields wrongdoers from full accountability. Allowing wrongdoers to escape liability simply because their victim has died is fundamentally unjust.

Solution: SB 29

SB 29 ensures that families can continue to hold wrongdoers accountable for the suffering their loved ones endured. By making SB 447 permanent, this bill removes the perverse incentive for defendants to stall legal proceedings in hopes that plaintiffs will not survive their case. It upholds the principle that justice should not depend on whether a victim lives long enough to see their day in court.

California must not revert to an era where financial gain is placed above human suffering. SB 29 is a necessary measure to protect victims' rights and uphold the integrity of our justice system.

SUPPORT

Consumer Attorneys of California (sponsor)
Consumer Federation of California (sponsor)
ACLU California Action
Asbestos Workers Local 16 Retirees Club
CA Now
California Advocates for Nursing Home Reform
California Alliance for Retired Americans
California Elder Justice Coalition
California Employment Lawyers Association
California Federation of Labor Unions, AFL-CIO
California Long Term Care Ombudsman Association
California Low-Income Consumer Coalition
California Senior Legislature
California Teamsters Public Affairs Council
Consumer Attorneys of California
Consumer Federation of California
Consumer Watchdog
Courage California
Disability Rights California
Equal Rights Advocates
Fund Her
International Association of Heat and Frost Insulators and Allied Workers
State Building & Construction Trades Council of California
Western Center on Law & Poverty, Inc.
Worksafe

OPPOSITION

Adventist Health
Alliance of Catholic Health Care
American College of Obstetricians and Gynecologists
American Property Casualty Insurance Association
American Tort Reform Association
America's Physician Groups
Association of California Healthcare Districts
Beta Healthcare Group
California Academy of Physician Associates
California Assisted Living Association

California Association for Health Services At Home
California Association for Nurse Practitioners
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of Oral and Maxillofacial Surgeons
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Chapter American College of Cardiology
California Chapter of the American College of Emergency Physicians
California Children's Hospital Association
California Dental Association
California Healthcare Insurance Company, Inc.
California Hospital Association
California Manufacturers & Technology Association
California Medical Association
California Orthopaedic Association
California Pharmacists Association
California Podiatric Medical Association
California Radiological Society
California Retailers Association
California Rheumatology Alliance
California Society of Anesthesiologists
California Society of Dermatology & Dermatologic Surgery
California Society of Plastic Surgeons
California State Association of Psychiatrists
Californians Allied for Patient Protection
Central Valley Health Network
Children's Specialty Care Coalition
Civil Justice Association of California
Cooperative of American Physicians, Inc.
CPCA Advocates
LeadingAge California
Loma Linda University Health
Medical Insurance Exchange of California
National Association of Mutual Insurance Companies
Osteopathic Physicians and Surgeons of California
Pacific Association of Domestic Insurance Companies
Physician Association of California
Planned Parenthood Affiliates of California
Private Essential Access Community Hospitals
Public Risk Innovation, Solutions, and Management
The Doctors Company
The Mutual

Union of American Physicians and Dentists
Vituity

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 447 (Laird, Ch. 448, Stats. 2021) *See* Executive Summary & Comment 2.

AB 2445 (Reyes, Ch. 51, Stats. 2020) afforded the legal guardians of a decedent the right to bring a wrongful death claim as if they were the decedent's parents, as specified.

SB 314 (Dodd, Ch. 21, Stats. 2019) explicitly included abandonment as a basis for securing enhanced remedies for a victim of elder or adult dependent abuse, including the exemption from the limitation in Section 377.34 for pain and suffering damages, as specified.

SB 645 (Monning, Ch. 212, Stats. 2019) tightened the limits on the length of deposition testimony in cases involving plaintiffs dying of mesothelioma or silicosis in order to address the perverse incentive that exists for defendants to prolong such litigation as much as possible to secure the windfall that comes if the plaintiff dies before judgment is entered.

SB 202 (Cobey, Ch. 657, Stats. 1961) *See* Comment 1.
