



MEMORANDUM

TO: Senate Budget and Appropriations Committee
FROM: Alida Kass, President and Chief Counsel
SUBJECT: S1766 – Expansion of Wrongful Death
DATE: December 5, 2019

The New Jersey Civil Justice Institute is a statewide, bipartisan coalition of the state’s largest employers, small businesses, and leading trade associations advocating for a fair and predictable civil justice system in New Jersey. On behalf of our members, **we respectfully oppose S-1766.**

The existing Wrongful Death Act works well and already provides for fair and predictable compensation. Changing the scope of wrongful death remedies to include purely emotional damages, like mental anguish and pain and suffering, would introduce considerable uncertainty, making cases more difficult to settle, and imposing significant new risk and increased insurance premiums on all New Jersey residents.

The Wrongful Death Act already provides compensation both for straightforward pecuniary losses like future income, as well as less tangible aspects of loss. The [New Jersey Supreme Court](#) has already determined that surviving family members may be compensated for lost assistance, care, training, advice, counsel and companionship. The damages available to the surviving family members are in addition to the [damages they may also receive](#) on behalf of the decedant. New Jersey allows for this system of “dual compensation.”

But the existing methodology also ensures clarity and certainty – the approach is well-established and honed through years of developing case law. And by taking the purely emotional aspects out of the calculation, the methodology permits the ready valuation of cases, which is essential to reaching settlements.

Changing the rules to permit awards for what is essentially unquantifiable would undo that fairness and predictability. Tasking juries with putting a dollar value on “grief” without any limit or guidance would significantly undermine predictive value of all other calculations, creating wild fluctuations in awards, and that uncertainty in valuing cases would make those cases much more difficult to settle.

The change would also significantly increase the risk and burden on regular New Jersey residents. People carry insurance because they recognize that a momentary lapse of judgment can sometimes result in tragic, completely unintended consequences. Everyone benefits from

being able to insure against the financial consequences of such a tragic event. But exposing New Jersey residents to an open-ended and unpredictable risk of liability would mean a significant increase in premiums, and even with a new norm of much higher policy limits, no real guarantee that they have adequate protection against a massive jury verdict.

There is no amount of money that can fully compensate for the lost life of a loved one. The best that the civil justice system can do is compensate the quantifiable losses – something the existing Wrongful Death Act already does very well. When we ask for more than the system can reasonably provide, and we lose the predictability and basic fairness that we largely take for granted. The primary effect will simply be higher premiums, with a largely uninsurable risk that a momentary mistake results in life-altering financial calamity.