

SENATE THIRD READING
SB 29 (Laird)
As Amended September 9, 2025
Majority vote

SUMMARY

Extends the time frame for a decedent's personal representative or successor in a "survivor's action" to recover damages for a decedent's pain, suffering, or disfigurement to January 1, 2027, and similarly extends the requirement that a plaintiff who recovers such damages report specified information to the Judicial Council relating to damages recovered through July 31, 2026. Extends time for Judicial Council to submit a report to the Legislature January 1, 2027, which covers the period from January 1, 2025, to July 31, 2026.

Major Provisions

COMMENTS

"Survivor actions" at common law and in statute. At common law, a civil cause of action did not survive the death of the plaintiff. However, English Parliament overturned this rule by statute in the 19th century and American states followed suit (eventually) over the course of the 20th century by enacting "survivor statutes." These statutes allow a decedent's personal representative or successor-in-interest (usually a family member) to bring or continue an action on the decedent's behalf. However, even when states recognized a survivor's cause of action, they sometimes limit the damages available. For example, California's statute, enacted in 1949, allowed the decedent's personal representative or successor-in-interest to bring or continue an action and recover the *economic damages* suffered by the decedent prior to death. However, under the California statute, the personal representative or family member could not recover the non-economic damages, including damages for pain, suffering, or disfigurement. The lawmakers apparently accepted the traditional common law rationale for denying pain and suffering in a survivor's action: that is, the successor in interest may have an interest in recovering economic harms to the decedent's estate, but they should not recover pain and suffering damages because they did not experience the pain and suffering.

However, California's ban on recovery of pain and suffering created an arbitrary windfall to the culpable defendant. For if the plaintiff were still alive on the date of the judgement, but died one day later, the defendant would be liable for the plaintiff's pain and suffering. If the plaintiff died one day before the judgement, however, the defendant would not be liable for pain and suffering damages. This so-called "death benefit," as some have called it, creates an incentive for the defendant to delay the trial in order to increase the likelihood that the plaintiff would die before the trial concluded, thereby freeing the defendant from the obligation to pay pain and suffering damages. In 1961, the Legislature amended the statute to (1) allow survivor actions for any tort action (not just physical injury) and (2) allow recovery of punitive damages. At the time, the Legislature considered a California Law Review Commission (CLRC) recommendation to eliminate the restriction on pain and suffering damages, because of the arbitrary windfall and the perverse incentive to delay the trial. Specifically, the CLRC report concluded:

[Survivor] causes of action should survive because they exist and could have been enforced by or against the decedent and 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. [CLRC, *Recommendation and Study Relating to Survival of Actions*, 3 Cal. Law Revision Rep. (1961).]

The Legislature rejected that recommendation in 1961. Sixty years later, SB 447 (Chap. 448, Stats. 2021) belatedly adopted the CLRC recommendation, at least for a time. As introduced, SB 447 would have permanently eliminated the restriction on recovering pain and suffering damages in a survivor action. However, in its final iteration, SB 447 was limited to cases brought on or before January 1, 2026. This compromise was apparently justified by an agreement that – at the very least – the trial delays caused by the Covid-19 pandemic exacerbated the incentive created by existing law to delay trials.

This bill now before the Legislature would extend that law to include cases filed on or before January 1, 2027, and make conforming changes dates relating to plaintiff reports on damages recovered to the Judicial Council and the Judicial Council's report to the Legislature.

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 prevent a decades-old injustice from returning to California by extending the sunset on 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. In doing so, this bill will protect the progress we have made in strengthening victims' rights.

Arguments in Support

The Consumer Attorneys of California, the Consumer Federation of California, and several other groups write in support:

Unless SB 29 is enacted, this vital protection will expire on January 1, 2026, reinstating an outdated legal standard that denies justice to families and shields wrongdoers from full accountability. SB 29 will extend the law through 2030, with continued data collection and reporting by the Judicial Council of California, providing a strong foundation for future legislative action.

CCP Section 377.34 governs survival actions—lawsuits brought on behalf of deceased individuals for injuries they suffered before death. Before SB 447, California law barred recovery for non-economic damages such as pain, suffering, or disfigurement once a plaintiff died. This created a perverse incentive for defendants to delay litigation, knowing that if a victim passed away before trial, their suffering would never be acknowledged in court. SB 447 corrected this injustice by allowing families to seek these damages on behalf of their loved ones.

If SB 447 is allowed to sunset, these families will again be left with no legal recourse for the suffering their loved ones endured. The law will once again favor defendants who stall justice and punish families already enduring unimaginable loss.

Arguments in Opposition

The Civil Justice Association of California (CJAC) in opposition, claims that SB 29 will "continue a harmful policy of allowing three forms of unlimited damages to be awarded in lawsuits brought by a person's estate, "survival actions." CJAC elaborates:

This policy of triple damages was created by SB 447 (Laird, Ch. 448, Stats. 2021) to make up for case delays caused by Covid court closures and was to sunset at the end of this year. SB 29 would arbitrarily extend the policy four additional years.

SB 29 could lead to large-scale court awards or settlements against small businesses, nonprofits, and state and local governments, harming communities and cutting into funding for important services and programs. Because state and local government entities are largely self-insured, any damages awarded against them in settlements or court have to be paid with dollars that might otherwise be used for public programs.

The private sector is also straining under the weight of inflation and the state's insurance crises. Small businesses and nonprofits are having a hard time finding affordable insurance, and SB 29 could greatly exacerbate the situation. SB 29 will likely push up their costs, and the liability exposure for excessive damages allowed by SB 29 could be devastating – just a single lawsuit can wipeout a small business or nonprofit.

Proponents of SB 447 used the pandemic court closures as the reason to justify what was supposed to be temporary additional damages recovery in survival actions. There is no longer a basis for continuing this policy of excessive damages since the pandemic is now over.

A large coalition of organizations representing medical providers and medical facilities opposes this bill unless it is amended to exempt medical malpractice claims. They write:

SB 29 would disrupt California's progress in expanding access to health care. In 2022, stakeholders negotiated significant reforms to the MICRA statute. The modernized MICRA statute not only created new provisions for wrongful death, but also the ability to recover separate non-economic damages from both a hospital and a physician. These amounts increase every year in perpetuity. Stakeholders were keenly aware of SB 447's 2026 sunset and therefore incorporated appropriate increases in AB 35.

While SB 447 was moving through the legislative process, supporters argued that defendants were delaying settling cases to prevent payment of non-economic damages, while the opposition argued the pandemic created a backlog of cases in California courts and delays were objectively not of their making. Given this, SB 447 opponents requested a sunset to only apply to cases and claims impacted by COVID-19 delays (see page 8 of SB 447 Senate Judiciary Committee analysis, 2021). The author agreed to this sunset to only capture cases occurring before January 1, 2026.

Even if SB 447 sunsets for medical malpractice claims, a patient's heirs are still able to recover significant non-economic damages and unlimited economic damages thanks to the MICRA modernization. . . . Our diverse coalition of health care providers strongly believe that SB 29 should be amended to clarify that it does not apply to medical malpractice claims so that patients' access to health care isn't jeopardized.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs (Legal Services Revolving Fund, General Fund, special funds), possibly in the hundreds of thousands of dollars to low millions of dollars annually in the near term, to DOJ to represent state agencies in litigation. DOJ reports it has received an increase in requests for representation from state agencies for wrongful death cases since 2021, when SB 447 was enacted (see below). DOJ has received an average of 30 such requests for representation each year since 2021, and expects the number of requests to increase if this bill is enacted. It is not clear whether this bill will increase the number of requests for representation or whether the number of requests will remain at the current level, which appears higher than before SB 447 was enacted. Either way, it seems likely that DOJ will need additional resources to handle the workload associated with these wrongful death cases.

DOJ anticipates costs of \$631,000 in fiscal year (FY) 2025-26, \$1.2 million in FY 2026-34, and \$604,000 in FY 2034-35 for its Torts and Condemnation Section for one deputy attorney general, additional attorney hours, one senior legal analyst, one legal secretary, and costs for external experts, consultants, and witnesses. DOJ's litigation costs are reimbursable through direct billings to client agencies. DOJ's costs will likely extend for several years after this bill's 2030 sunset date because it generally takes several years for each case to resolve.

- 2) Cost pressures (Trial Court Trust Fund, General Fund) to the courts to adjudicate additional and longer cases resulting from this bill. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations. Judicial Council anticipates no costs associated with receiving data about settlements and judgments, and minor and absorbable costs to complete the required report.
- 3) Costs (General Fund, special funds) to state entities of an unknown but significant amount for litigation costs, settlements, and damages resulting from this bill. In the aggregate, these costs may be in the tens of millions to hundreds of millions of dollars or higher, depending on the number of cases and the size of awards and settlements. As of when this analysis was prepared, the following state entities reported costs to this committee:
 - 1) The California Department of Corrections and Rehabilitation (CDCR) expects an unknown but significant increase in legal workload, costs for DOJ or contract counsel representation, and settlement amounts (General Fund). CDCR believes more lawsuits will be filed against the department and the duration of litigation will increase. CDCR anticipates hiring four attorneys and one analyst to handle the increased workload for an ongoing cost of \$1 million annually.
 - 2) California Highway Patrol (CHP) reports it is hard to quantify expected costs, but identifies possible costs in the tens of millions of dollars, with actual costs depending on the number of cases against CHP and the amount of damages. One recent judgment against CHP on special verdict awarded \$5 million in damages and \$1 million for the

decedent's pain and suffering. Future awards and settlements available due to this bill may produce similar costs for CHP.

- 3) California Department of Transportation (Caltrans) estimates costs in the tens of millions of dollars, if not more, in liability, depending on the number of cases that include claims affected by the bill. Caltrans reports that since 2022, it has settled 10 wrongful death cases for \$6.8 million, and has an additional 135 wrongful death cases pending with a combined exposure of approximately \$300 million.
- 4) Significant, non-reimbursable costs to local entities for litigation costs, settlements, and damages resulting from this bill.

VOTES

SENATE FLOOR: 21-10-9

YES: Allen, Arreguín, Ashby, Becker, Blakespear, Cervantes, Cortese, Durazo, Gonzalez, Laird, Limón, McGuire, McNERNEY, Menjivar, Padilla, Pérez, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener

NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Archuleta, Cabaldon, Caballero, Grayson, Hurtado, Reyes, Richardson, Rubio, Weber Pierson

ASM JUDICIARY: 9-3-0

YES: Kalra, Hart, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

NO: Dixon, Macedo, Sanchez

UPDATED

VERSION: September 9, 2025

CONSULTANT: Tom Clark / JUD. / (916) 319-2334

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