Breaking the Sixty-Year Barrier: SB 29 and the Fight to Preserve Survival Damages

By Alina S. Vulic, Jacqueline Serna

California has spent four years experimenting with a simple proposition. When a person dies before their day in court, the wrongdoer should not get a discount on the human cost of what they did. Senate Bill 447, authored by Senator John Laird in 2021 and co-sponsored by the Consumer Attorneys of California, made that proposition operative. For survival actions filed between January 1, 2022 and January 1, 2026, plaintiffs could recover the decedent's pain, suffering, and disfigurement, the same damages the decedent could have recovered while alive. On January 1, 2026, that window closed. California reverted to a rule that 45 other states and the District of Columbia rejected long ago.

Senate Bill 29, also authored by Senator Laird and co-sponsored by CAOC, asks the Legislature not to leave this injustice in place. The bill would extend for an additional five years the temporary "survival statute" provisions that allow a decedent's personal representative or successor in interest to recover damages that would otherwise be unavailable after the victim's death.

As with the legislation that originally enacted these provisions, SB 29 faces strong opposition from the medical industry and its insurers. They are again seeking a special exemption for medical malpractice actions—even though medical malpractice defendants already benefit from the statutory cap on noneconomic damages under the Medical Injury Compensation Reform Act (MICRA), Cal. Civ. Code § 3333.2.

The barrier SB 29 is designed to break is older than most of the cases it touches. Under the version of Code of Civil Procedure section 377.34 that California has now returned to, a survival action allows the decedent's estate to recover only economic damages: medical bills, lost wages, and the like. The decedent's pre-death pain and suffering, no matter how prolonged or how severe, is extinguished at the moment of death.

A defendant who delays a case long enough to outlast a dying plaintiff gets to keep that money. The plaintiff's family does not.

Alina S. Vulic is an Associate at Kabateck LLP where her practice focuses on complex civil litigation, including personal injury, employment law, wrongful death and medical malpractice. Alina has played key roles in nationally recognized and high-profile litigation, including the wrongful death case arising from the "Rust" film set shooting and the Robson v. MJJ Productions / MJJ Ventures, where she represented sex abuse survivors in complex negligence and corporate liability claims.

av@kbklawyers.com

Jacqueline Serna is CAOC's Policy Director. She joined CAOC in 2011 after working in the Assembly for then-Assemblymember Ricardo Lara. Jacquie has successfully helped passed legislation to permit post-death pain and suffering damages, ban secret settlements in sexual harassment and sexual assault cases, better the rights of elder abuse victims, ensure fair and just compensation for injured undocumented immigrants, and protect the rights of workers.

jserna@caoc.org

That rule did not arrive through reasoned policymaking. Legislative history shows that when the Legislature enacted survival damages provisions in 1961, the insurance industry lobbied to insert the language extinguishing pain and suffering. The Legislature wanted to preserve those damages. Industry pressure prevailed. The same defendants who benefit from court delays today have benefited from that language for more than 60 years.

SB 447 was the first serious correction in California in a generation. It was structured as a four-year pilot, with mandatory Judicial Council reporting, because the Legislature wanted to measure the effect rather than make a permanent change in the dark. The pilot ran. The data came in showing no significant impact to defendants. And then the law expired before the Legislature acted to extend it.

SB 29, as amended in 2026, would extend the recovery of pre-death pain, suffering, and disfigurement in survival actions through January 1, 2030. It preserves the reporting framework, extends the Judicial Council's deadline to report back to the Legislature, and gives the state another four-year window to evaluate the law's effect. For plaintiffs' attorneys, the stakes of that extension are not theoretical. In the practice we handle every day, the survival damages rule can impact what cases get filed at all.

Consider an elderly plaintiff in a nursing home neglect case. The injury is real. The suffering is documented. The defendant's exposure under any honest accounting includes the months or years the plaintiff endured before death. Under the rule California has now returned to, that exposure disappears the moment the plaintiff dies, leaving only the medical bills and whatever economic losses can be proven. Defendants understand this. So do their insurers.

The settlement value of these cases is calculated against the probability that the plaintiff will survive to verdict, not against the wrong that was done. The same dynamic plays out in prolonged-injury cases more broadly: catastrophic injury cases where the plaintiff lingers, toxic exposure cases where the disease progresses slowly, and cases involving medically vulnerable plaintiffs whose mortality is part of the defense's strategy. Without pre-death pain and suffering on the table, the math favors delay. The longer the case takes, the more likely the defendant is to win it through attrition.

That dynamic is not hypothetical. Once again, defendants routinely refuse to agree to bench trials, object to virtual proceedings, and resist preference motions filed under Code of Civil Procedure section 36, the statute meant to give dying and elderly plaintiffs a faster path to trial. SB 447 was a partial corrective. SB 29 is the chance to keep that correction in place long enough to know what it does.

The Elder Abuse and Dependent Adult Civil Protection Act (EADACPA) preserves pain and suffering damages for qualifying claims involving elder or dependent adult abuse, even after SB 447's sunset. That is meaningful, but it is also narrow. It does not reach the universe of cases that SB 447 covered. The protections under Welfare and Institutions Code section 15657 require proof of recklessness, oppression, fraud, or malice, a substantially higher standard than ordinary negligence. For the broader category of personal injury, products liability, medical malpractice, and general negligence cases involving a plaintiff who dies before trial, the EADACPA exception offers no path.

There is also a quieter consequence worth naming. The sunset has reintroduced a sharp filing-date cliff. A complaint filed on December 31, 2025, preserves access to pre-death pain and suffering. An identical complaint filed two days later does not. Two families with the same loss, same defendant, same facts, will recover dramatically different amounts based on a calendar.

That is the barrier to justice this issue presents. It is procedural where it should be substantive. It rewards delay over diligence. It treats the human cost of injury as recoverable when the plaintiff happens to be alive and unrecoverable when they are not. It is the kind of barrier the Forum's theme is built around.

SB 29 will not solve all of it. The bill is structured as another extension, not a permanent change, and the opposition from the long-term care industry and medical industry is real. The Senate Judiciary Committee analysis notes that the Judicial Council's first report identified only four cases that triggered the reporting requirement, a number CAOC and the plaintiffs' bar see as reasonable given that most cases settle before trial. The next four-year window, with continued data collection, is the chance to settle that question with additional evidence.

For now, the practitioner reality is that survival actions filed on or after January 1, 2026 are governed by the old rule. Economic damages remain. Punitive damages remain in the narrow cases where they apply. EADACPA remains for elder and dependent adult abuse claims that meet the heightened standard, but for most, their non economic damages- their pain and human suffering- is extinguised.

Strategy matters more than ever, not less. Strong factual development, careful documentation of the decedent's pre-death course, and a clear evidentiary record of what the defendant knew and when, all remain essential to the cases that come through the door.

But the policy fight is not over. SB 29 is pending an Assembly vote in August. The Legislature has a chance, again, to ensure that California families are not punished by the calendar for losing a loved one before a defendant's delay tactics run their course. That is the fight the Forum should be amplifying. It is the fight CAOC is leading, and it is the fight the plaintiffs' bar should be ready to win. If you have examples of families that have been impacted by the law, send them to your CAOC lobbying team. Stories matter, your voices matter.

Learn more about the CAOC advocates and get in touch today. Visit CAOC.org/ouradvocates to connect with the team. ■

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