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May 29, 2019

**MEMORANDUM IN OPPOSITION TO**

AN ACT to amend the estates, powers and trusts law, in relation to payment and distribution of damages in wrongful death actions

**S. 4006 (Hoylman)/A. 5612 (Weinstein)**

**Senate Judiciary Committee**

**Assembly Judiciary Committee**

NFIB, New York's leading small business advocacy organization, strongly opposes this legislation, which would expand the categories of damages a plaintiff may recover in a wrongful death lawsuit.

Under current law, family members can recover damages for all economic losses in cases of wrongful death and for pain and suffering prior to death. This legislation proposes to expand the categories for recovery to include pain and suffering after the death of a family member – damages that are incredibly subjective and emotional and will undoubtedly lead to extremely high awards and encourage settlements to avoid costly litigation regardless of claims' merits.

The ramifications of this legislation would be devastating to New York's small businesses who will have to pay drastically higher insurance premiums. An actuarial analysis conducted by Milliman, Inc., found that medical professional liability, automobile liability, and general liability insurance would increase by as much as \$2.2 billion. This rise in insurance costs translates to a 12.6% increase in annual premiums for New York State residents and businesses.<sup>1</sup>

At a time when New York State continues to be one of the worst places to do business and voters believe it's harder for businesses to succeed,<sup>2</sup> the state simply cannot afford to pass legislation that increases insurance premiums further and intensifies costly litigation and settlements. In the end, this legislation lines the pockets of powerful special interests like the plaintiffs' attorneys' bar at the expense of small businesses, employers, and consumers – it does not benefit New York State's residents or its economy.

For these reasons, NFIB opposes this legislation.

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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> Siena College Research Institute Poll: <https://scri.siena.edu/2019/04/16/voters-strongly-say-permanent-property-tax-cap-plastic-bag-ban-are-good-for-ny/>