

TO: Members of the Judiciary Committee
FROM: Rory Whelan, Regional Vice President
DATE: April 6, 2023 --- Public Hearing
RE: Opposition to **LD 934** --- Wrongful Death Expansion

The National Association of Mutual Insurance Companies (NAMIC)¹ and its members, thank you for the opportunity to express strong opposition to legislation referenced above and urge you vote ought not to pass.

This bill represents a radical and reckless departure from current law that will hyper-inflate civil justice costs for every Mainer. Under current law, the civil claim for wrongful death may seek **unlimited** pecuniary damages “for reasonable expenses of medical, surgical and hospital care and treatment and for reasonable funeral expenses.” Additionally, “the jury may give [non-pecuniary] damages not exceeding \$750,000 for the loss of comfort, society and companionship of the deceased, including any damages for emotional distress...” and punitive damages up to \$250,000.² In most cases, an action must commence within two years from the decedent’s death.

It is important to note that Maine also permits a “survival of actions” claim.³ The survival statute provides that causes of action possessed by a deceased may be pursued after death by the estate, in the name of the personal representative (aka “executor” “trustee”). Damages, including loss of wages, recovered in a survival action go to the estate, and like other estate assets, are apportioned to all who have a legal interest in the estate, including family members who are entitled to file separate wrongful death claims.

This legislation is bad policy that threatens Maine’s economy and ability to attract new jobs and investment. LD 934 would **double** the amount for non-pecuniary damages or so-called “pain & suffering” from \$750,000 to \$1,500,000 and increases punitive damages by **400%** from \$250,000 to

¹ [The National Association of Mutual Insurance Companies consists of more than 1,500 member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC member companies write \\$357 billion in annual premiums and represent 69 percent of homeowners, 56 percent of automobile, and 31 percent of the business insurance markets.](#)

² [Title 18-C, §2-807: Actions for wrongful death \(maine.gov\)](#)

³ [Title 18-C, §3-817: Survival of actions \(maine.gov\)](#)



\$1,000,000 creating hyper-inflation in civil justice costs in Maine. The measure would also extend the statute of limitations from 2 years to 3 years.

If enacted, this measure would result in:

- **Threatening the success of the historic Maine Jobs & Recovery Plan.**

It is well-documented that excessive tort costs have detrimental effects on a state's economy, including the ability to attract investments in innovation, new businesses and job creation. The National Association of Independent Businesses (NFIB) commissioned a study that highlighted the importance of economic development and "caps set to limit punitive and noneconomic damages..."⁴ Enacting LD 934 would harm Maine's economy and is contrary to the goals of the Maine Jobs & Recovery Plan, approved by the Legislature, that will make historic investments of nearly \$1 billion in Federal American Rescue Plan funds "to improve the lives of Maine people and families, help businesses, create good-paying jobs, and build an economy poised for future prosperity."⁵

- **Higher costs for insurance and basic goods & critical services.**

Runaway litigation costs affect every Maine resident, small business, and local government. Drivers will pay higher auto insurance rates; patients will pay more for healthcare; taxpayers will foot the bill for additional lawsuits that will flood our already over-burdened courts; local governments will increase property taxes and consumers will pay higher prices for basic goods and services. Every Mainer is feeling the pain of record high inflation --- the practical effect of this legislation would add to the financial burdens of those who can least afford it.

- **More unnecessary lawsuits.**

A majority of states have a 2-year statute of limitation in wrongful death cases.⁶ NAMIC believes that society, in general, and all litigants (plaintiffs and defendants) should be encouraged to pursue reasonably prompt and fair resolution of their claims so that all involved parties may be able to move forward with their lives in a timely manner, and to eliminate societal costs resulting from tactical delaying of lawsuits to increase civil damages ultimately borne by insurance consumers and small businesses. By increasing the statute of limitations from 2 to 3 years, Maine will encourage even more lawsuits in a court system that continues to feel the strain from COVID. Recently, the Chief Justice of the Maine Supreme Judicial Court, Valerie Stanfill, called the state of the court system "frail" and estimated that state courts will not begin to address their backlog of cases until 2028.⁷

⁴ [Perryman-National-Tort-Reform-Impact-12-6-2021.pdf \(nfib.com\)](#)

⁵ [One-Year Progress Report | Maine Recovery & Jobs Plan](#)

⁶ [Statute of Limitations: How Long Do You Have to File a Lawsuit? \(consumersafety.org\)](#)

⁷ [Maine courts may take until 2028 to touch backlog of cases \(msn.com\)](#)



- **Unequal and uneven justice.**

Extending the statute of limitations also increases the likelihood of unequal justice and uneven awards and settlements. Evidence can be lost and memories fade over time. The statute of limitations ensures litigants can access the information needed to back up their allegations or raise defenses. It is also not considered fair for people to constantly have the threat of being sued. The statute of limitations allows people to move on with their lives without the threat of litigation hanging over their heads.⁸

- **Windfall profits for specialty plaintiff's law firms.**

Specialty plaintiff's law firms are most often entitled to one-third of the settlement or judgement PLUS additional reimbursable expenses that can run into hundreds of thousands of dollars or more. This legislation would most benefit the trial bar at the expense of Maine's residents, taxpayers, and small businesses.

For these reasons, NAMIC respectfully requests you vote ought not to pass on LD 934.

Thank you for your consideration.

⁸ [The Puzzling Purposes of Statutes of Limitation \(scu.edu\)](http://www.scu.edu)