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The 'Death Discount': Ending an Unjust Legal Paradox

Loren Schwartz – 5/13/2025

California law once allowed negligent parties to escape full accountability when injured victims died before trial – erasing their pain and suffering from the record – but unless lawmakers pass Senate Bill 29 to make recent reforms permanent, that unjust “Death Discount” will return in 2026.

Historically, California law had a troubling loophole: if a negligent party injured someone--especially an elderly person or someone with a terminal illness--they could benefit financially by delaying the case until the victim died. In these instances, the estate of the deceased victim could recover economic damages, such as medical expenses and lost wages incurred by the decedent prior to their passing. However, any claims for their loved one's pain and suffering--no matter how excruciating or prolonged--vanished.

This legal quirk created what attorneys call the "death discount."

Consider two similar cases: in the first, a person suffers severe injuries caused by a defendant's negligence but survives until their case resolves. The defendant is obligated to compensate the injured party for their economic losses and their pain and suffering. In the second case, the injured party sustains the same negligently caused injuries but dies before the case resolves. At that point, legal recognition of their pain and suffering evaporates, and the defendant is relieved from the financial obligation it would have otherwise owed the individual for causing the full harms - economic and non-economic.

This system didn't just fail victims; it actively incentivized harmful behavior by defendants and their insurers. When facing plaintiffs who were elderly or had terminal conditions, defendants had a financial motivation to delay proceedings, knowing that if the plaintiff died, their responsibility for non-economic damages would disappear.

Justice delayed became justice permanently denied.

Thankfully, California took a significant step toward correcting this injustice in 2021 with [Senate Bill 447](#), which amended [Code of Civil Procedure 377.34](#). Under this reform, which went into effect the following year, if a plaintiff dies prior to the resolution of their claims, their damages for

pain, suffering, and disfigurement are now recoverable in survival actions brought on their behalf by their estate.

But here lies the problem: This reform has an expiration date. After Dec. 31, 2025, California will revert to the previous unjust system unless the legislature acts. Absent legislative action, the "death discount" will return, once again erasing the legal recognition of suffering for those who die before their cases conclude their way through the justice system.

The fact that the legislature added a sunset provision to the amended statute in 2021 suggests that on one hand, the legislature recognized the fundamental inequity of the former approach. On the other hand, however, it also suggests that the legislature lacked the political wherewithal, at least at that time, of implementing permanent reform.

For practitioners representing elderly clients or those with potentially terminal conditions, the sunset provision means they may be forced to file suit earlier than what may have otherwise been prudent. Indeed, absent legislative action that makes the amendment permanent (or extends the sunset date), waiting until after Dec. 31, 2025 to file suit on behalf of a terminally ill plaintiff may be considered malpractice.

In the meantime, there have been some encouraging developments. [Senate Bill 29](#) - introduced earlier this year by Senator John Laird - would eliminate the current sunset provision within CCP 377.34 and thereby pave a continued path for plaintiffs in survival actions to hold wrongdoers to account for the full amount of harms caused. It would, in effect, permanently end the "death discount."

Although there have been some early signs of support for the bill, it is expected to draw outspoken opposition from insurance company associations and groups such as the California Defense Counsel and Civil Justice Association of California.

When Senate Bill 447 - allowing for the recovery of non-economic damages in survival actions - was initially introduced in 2021, California was one of only five states in the nation that precluded the recovery of non-economic damages in these actions (Arizona, Colorado, Florida, and Idaho being the others). The passage of Senate Bill 447, therefore, not only eliminated the incentive for defendants to draw out litigation in cases involving terminally ill plaintiffs, but also finally brought California into line with the vast majority of this nation.

Failing to eliminate the sunset provision of the statute and extend its reach beyond 2025 would be regressive and a step back for Californians.

Senate Bill 29, meanwhile, would make permanent the important changes enacted by SB 447 and preserve accountability for a victim's pain and suffering even if they pass away before their case gets to trial or is otherwise resolved.