

Thank you for the privilege of appearing before you today. I am John E. Keefe Jr. and I am president of the New Jersey State Bar Association. We are the only statewide organization representing the entire legal profession – our members come from every part of the state, practice in every area of law, and practice in the government and public sector, in corporations and in law firms of every size. On behalf of our more than 18,000 members, I urge you to support A-4880 today.

This bill is critically important. It will improve a broken insurance market, provide a level playing field for licensed professionals, and, of critical importance, and contrary to what you have heard today, it will provide substantial protection and better protection for New Jersey consumers than currently exists.

In the past five years, it has become increasingly more difficult and more expensive for lawyers and law firms to purchase professional malpractice insurance. That is a direct result of a statute of limitations that is far longer than that of our neighboring states -- and of other professionals in our state – and of the *Saffer v. Willoughby* provision that calls for fee shifting in legal malpractice cases. Fee shifting is not the American Rule – it is reserved for rare and specific conduct, such as consumer fraud or civil rights violations, that legislatures have recognized as needing an additional deterrent. **Fee shifting in legal malpractice cases is unique to New Jersey – no other state has it. And, it applies only to lawyers – no other professionals in our state are subject to it.** The result, as you heard from Mike Mooney of USI, is that the professional liability insurance market for attorneys here is far less competitive and significantly more expensive.

There are more than 25 admitted insurance carriers in the state authorized to write legal malpractice insurance. Yet, **only seven are actually writing and renewing policies.** And, in some practice areas – only one carrier is writing insurance coverage. Even though we have fewer attorneys in private practice than both New York or Pennsylvania, on average New Jersey malpractice insurance rates are **49 percent higher than rates in New York** and **33 percent higher than rates in Pennsylvania.**

The latest data from the Office of Attorney Ethics shows there are 36,993 attorneys in private practice in New Jersey and 14,967 law firms. **An astounding 94% of law firms in New Jersey are firms of 5 lawyers or less.**

For these small firms, the ability to purchase affordable malpractice insurance is of paramount importance to not only protect the firm, but also to protect the consumers they represent. Yet, many insurance companies will not write for these practitioners, forcing them into the unregulated and exorbitant surplus lines market or, even worse, to forego insurance all together. For those who do obtain coverage in the surplus lines market, the coverage is not as complete and it comes at a higher price, with higher deductibles, lower limits and eroding limits where defense costs are included inside the policy limits. **That means there is less coverage for an aggrieved plaintiff and that hurts consumers.**

Consider a quote from a June 2017 report from the New Jersey Supreme Court's Ad Hoc Committee on Attorney Malpractice Insurance. In the report, James Towery, a past chair of the ABA Standing Committee on Client Protection states: "...a study is hardly necessary to demonstrate that client harm results from uninsured lawyers. Without question, lawyers who lack insurance commit malpractice, just as those with insurance... and no one can seriously question that claims against uninsured lawyers are often abandoned, precisely because there is no available insurance." **Pricing lawyers out of the insurance market is what really hurts consumers.**

A-4880 has an additional measure of protection for consumers – the discovery rule, which offsets the reduction in the statute of limitations. Plaintiffs have two years from the time “the cause of such action shall have accrued” to file a malpractice action, not two years from the time they engaged the attorney. So, if legal malpractice is discovered 10 years after a plaintiff has concluded a matter with his or her attorney, that plaintiff has two years from that time to file an action.

It is imperative – especially as a consumer protection measure – that the current broken system for professional malpractice insurance be changed. A-4880 simply brings the statute of limitations in line with neighboring states and levels the playing field with other professionals in our state – doctors, dentists, nurses, physical therapists, etc. It also rectifies the fee-shifting provision that applies only to lawyers in New Jersey. Our research indicates that **no other group of professionals in our state and no lawyers in any other state are subject to fee-shifting for malpractice actions. Again, fee shifting is generally reserved for consumer fraud and civil rights cases.**

The objectors to this bill are predominantly a small faction of attorneys who represent plaintiffs in legal malpractice cases. These lawyers directly benefit from a longer statute of limitations and, even more so, from fee shifting. If they prevail at trial, they reap significant legal fees from even the smallest verdict. In fact, there are cases in our Courts now where New Jersey firms with offices in other states, including Pennsylvania and New York, are being sued for malpractice here, even though the matter has no specific New Jersey connection. The very simple reason for this is that if the plaintiff prevails in New Jersey, his or her attorney's fees and costs of litigation are recoverable. If this trend continues, insurance companies will restrict the market here even further and it will likely become virtually impossible for any lawyer or law firm to purchase malpractice insurance in New Jersey. **That will not benefit consumers.**

The New Jersey Legislature is uniquely poised to step in and fix this growing problem, as it did in the early 2000's to address the medical malpractice insurance crisis. **A-4880 will directly benefit consumers by opening the insurance market in New Jersey** and making malpractice insurance vastly more affordable for the majority of lawyers and other professionals in our state who operate as small businesses. While I speak on behalf of the legal profession, the other professionals covered by this legislation – CPAs, engineers, architects and land surveyors -- join in support of leveling the playing field for all professionals in New Jersey.

**On behalf of the New Jersey legal community – including the solo or small firm attorneys who help fuel their local economy, the new lawyers just starting out with limited resources and large student loan bills, and lawyers who are semi-retired but still want to maintain a small practice – professionals who form the backbone of their communities - I urge you to support a level playing field for professional malpractice. By improving the legal malpractice market in New Jersey and making insurance affordable for lawyers and law firms, you will protect consumers. To do that, you I urge you to vote yes on A-4880**