

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: David R. Morantz, Shamberg Johnson & Bergman, Kansas City. – on behalf of KTLA

Date: February 20, 2019

Re: HB 2291 Increasing caps on damages in wrongful death actions and escalating them annually based on the consumer price index -- SUPPORT

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in support of HB 2291.

HB 2291 amends KSA 60-1903, which is part of Article 19, Chapter 60 establishing wrongful death actions. HB 2291 strikes the current \$250,000 cap on damages for nonpecuniary loss and increases it to \$500,000. The bill establishes a new inflationary adjustor to permit the \$500,000 cap to be increased annually by the percentage increase in the Consumer Price Index for all urban consumers.

The House Judiciary Committee's review of the cap on nonpecuniary loss is appropriate. The last time that the Legislature increased the cap was 21 years ago, in 1998. The wrongful death cause of action is a "creature of statute," meaning it was established by the Legislature and would not exist without statutory authority. The English common law did not recognize a tort of wrongful death and followed the rule that when a tort victim died the cause of action died with them. Kansas' wrongful death law provides access to justice for a deceased tort victim's family. It also avoids the disproportionate outcome of protecting wrongdoers whose actions cause death while holding responsible those who merely injure.

The amendments in HB 2291 are undeniably a step forward and an update of the current law. KTLA also urges the committee to consider amendments that would remove the limitation on nonpecuniary loss entirely. Instead of focusing on the sufficiency of damage limits, KTLA recommends that the Legislature delegate to the court or jury the authority to award "...damages as are found to be fair and just under all the facts and circumstances...", KSA 60-1093(a).

Kansans that seek justice under the wrongful death provisions in Kansas law have endured tragedies that no one expects or wants and prays never to experience. The cap on nonpecuniary loss restricts both the remedy available to Kansans and wrongdoers' accountability for their deadly acts.

Kansans deserve the justice a jury verdict wields. Juries are the voice and conscience of the community. Jurors are ordinary Kansans from all walks of life who have no personal interest in the outcome the trial; they are more than qualified to hear the evidence in a specific case and assess "fair and just" damages based on its unique facts. Damage caps are a "one-size-fits-all" solution.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request the Committee's support for HB 2291.