



Kansas Hospital
ASSOCIATION

TO: Senate Financial Institutions and Insurance

FROM: Tara Mays, Vice President State Legislative Relations

DATE: March 22, 2021

RE: Senate Bill 290 – Changes to the Health Care Stabilization Fund

The Kansas Hospital Association (KHA) appreciates the opportunity to provide comments **in support** of Senate Bill 290. This proposed legislation is being requested in response to the Kansas Supreme Court ruling that removes our state's non-economic damage caps in medical malpractice cases.

In 1988, the Kansas legislature enacted K.S.A. 60-19a02 to limit a plaintiff's personal injury recovery for non-economic losses such as pain and suffering. Insurance carriers, hospitals and physicians welcomed this cap on non-economic damages as it provided predictability and stability in insurance rates at a time when medical malpractice coverage costs and the need to recruit physicians to Kansas were at their peak. In 2012, the Kansas Supreme Court affirmed the constitutionality of this statutory non-economic cap in *Miller v. Johnson*, a wrong-site surgery malpractice case.

On June 14, 2019, Kansas Supreme Court handed down a 4-2 decision in *Hilburn v. Enerpipe Ltd.*, a personal injury case in which Diana Hilburn was injured when a truck rear-ended her car. After the jury awarded Hilburn \$301,509 in non-economic damages, the trial court reduced the damages to \$250,000 to meet the cap limit. Hilburn then appealed the trial court's decision stating that the cap was unconstitutional.

In its decision, the Kansas Supreme Court rendered the 31-year-old cap on non-economic damages unconstitutional and said it could not be used to limit, or reduce a jury's award for damages. The *Hilburn* decision changed the intent of K.S.A. 60-19a02 and altered the course of the Court's decision in *Miller*. In a press release, the Court specifically stated that its *Hilburn* decision does not apply to medical malpractice cases.

SB 290 prepares us for an unknown medical malpractice environment. For this reason, we urge you to support SB 290.

Thank you for your consideration of our comments.