

Oregon State Legislature
Oregon State Capitol
Senate Judiciary Committee
900 Court Street NE
Salem, OR 97301

February 17, 2016

Sent via electronic transmission to committee administrators

**RE: HB 4136, Increase in Noneconomic Damages Cap in Wrongful Death Actions -
NAMIC's Written Testimony in *Opposition* to the Proposed Legislation**

Dear Seantor Floyd Prozanski, Chair; Senator Jeff Kruse, Vice-Chair; and honorable members of the Senate Judiciary Committee:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the committee for the February 18, 2016, public hearing. Unfortunately, I will be in another state at a previously scheduled legislative meeting at the time of this hearing, so I will be unavailable to attend. Please accept these written comments in lieu of my testimony at the hearing. This letter need not be formally read into the committee hearing record, but please reference the letter as a submission to the committee at the hearing.

The 1,300 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$208 billion in annual premiums, accounting for 48 percent of the automobile/homeowners market and 33 percent of the business insurance market. NAMIC has 153 members who write P. & C. Insurance in the State of Oregon, which represents 46% of the marketplace.

HB 4136 would increase the amount of noneconomic damages that may be awarded in a wrongful death case or statutorily created causes of action from \$500,000 to \$1.5 million.

On behalf of NAMIC's members, we respectfully *oppose* the proposed legislation for the following reasons:

1) There is no evidence to support the contention that the current cap on noneconomic damages does not adequately address the legal needs and proven damages of litigants -

Unlike economic damages (lost wages, medical expense, property damages, etc.), which are influenced by inflationary changes in the economy, noneconomic damages, like pain and suffering, emotional damages, hedonic damages, etc., are not financially impacted by vacillations in the economy. There is not scientific data to support the belief that emotional, psychological or physical pain today has a greater economic value than it did last year or three

years ago. Consequently, there is no clear economic justification for increasing the noneconomic damages cap by any amount, let alone by 300%.

2) The proposed legislation will create an unnecessary insurance rate cost-driver, that could adversely impact the cost of insurance to the consumer –

It is an inevitable and unavoidable fact that when statutory civil damages caps are raised, plaintiff attorneys raise their settlement demands to match the increased damages caps, because lawyers are duty bound to their client to try and recover as much in damages as possible. This is acutely so in wrongful death cases, because basic human-nature leads one to be extra-sensitive and compassionate in cases where there has been a loss of life, so trial attorneys will use the increased damages cap to justify asking juries for the maximum amount of noneconomic damages.

As the amount of settlement demands increase, so to do the legal defense costs associated with litigating disputed claims and the amount of money paid to litigants in inflated damages settlements. These increases claims costs act as an insurance-rate cost driver that could adversely impact affordability of insurance for consumers.

3) HB 4136 could expose insurance policyholders to greater out of pocket financial liability exposure -

The proposed legislation would increase the non-economic damages by \$1 million dollars, which means that liability insurance coverage limits are more likely to be exhausted quicker; thereby, exposing policyholders to greater out of pocket financial liability exposure. Most consumers do not even purchase \$1million in liability coverage, let alone \$1.5 million in liability coverage limits, so the proposed legislation will have a significant economic impact on insurance consumers, who will have to either purchase dramatically higher insurance liability coverage limits or expose themselves to greater out of pocket financial liability.

4) The proposed legislation will lead to more frivolous litigation, which will burden trial court dockets with cases that should have been settled –

Since HB 4136 would also increase noneconomic damages caps on statutorily created causes of action, there will likely be a serious increase in the number of frivolous and inflated damages claims being filed by plaintiff attorneys. By increasing the damages cap *three-fold*, many defendants will have no choice but to legally contest these extremely high plaintiff settlement demands, especially since noneconomic damages claims, by their very nature, are subjective, difficult to prove and quantify, and easily manipulated by rapacious litigants. Consequently, there will be more frivolous law suits filed for trial, which will congest court trial dockets and delay the adjudication of meritorious legal claims.

NAMIC is also concerned about the provision in the bill that requires the State Court Administrator to annually adjust the cap limit on the noneconomic damages to take into

consideration cost of living adjustments. In today's world, most employees don't see an annual cost of living adjustment to their wages and salaries (a true economic variable), so why should there be an annual cost of living increase on the damages cap for pain and suffering (a noneconomic variable)?

Additionally, what is the specific public policy rationale for requiring that the bill become effective upon passage? How does an increase in the noneconomic damages cap for pain and suffering and emotional damages claims in wrongful death cases create a public policy emergency? Why is an immediate effective date necessary to promote the "preservation of the public peace, and health and safety" of the citizens of the state?

NAMIC is also concerned with the legislative proposal that the increased damages cap be *retroactively* applied to causes of action that arose before the effective date of the legislation. Both plaintiffs and defendants made litigation decisions and created/implemented trial strategies based upon the damages cap law in existence at the time of the filing of the lawsuit. Applying a new damages cap to pending litigation is patently unfair and is likely to have a detrimental impact upon the timely adjudication of cases before the court.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on HB 4136**, because the foreseeable adverse societal consequences that will likely result from the proposed legislation far exceed any possible benefits the bill will provide to litigants and their attorneys, who want to inflate the amount of their noneconomic damages settlement demands.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you have any questions pertaining to my written testimony.

Respectfully,



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