



KANSAS ASSOCIATION OF DEFENSE COUNSEL

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TO: Chairman Patton
And Members of the House Judiciary Committee

FROM: Kenneth J. Berra,
Kansas Association of Defense Counsel (KADC)

DATE: February 20, 2019

RE: KADC Written Testimony in Opposition to HB 2291 – An Act Increasing the Cap for Non-Pecuniary Damages and Escalating Annually Based Upon the Consumer Price Index

Chairman Patton and members of the committee, on behalf of the Kansas Association of Defense Counsel, we thank you for this opportunity to submit written testimony opposing HB 2291.

KADC is a state-wide organization of lawyers admitted to practice law in Kansas who devote a substantial amount of their time to the defense of litigating civil cases. In addition to working to improve the skills of defense attorneys and elevating the standards of trial practice, our organization advocates for the administration of justice, because our clients depend on it.

KADC believes that the current wrongful death statutory scheme, including the limit on nonpecuniary damages, affords the heirs at law a fair and reasonable method for recouping all of the damage's attendant to their loss of a loved one. House Bill 2291 represents an unnecessary change to KSA 60-1903's limitation on nonpecuniary damages especially in light of how pecuniary damages have been interpreted since 1985 in the case of Wentling v. Medical Anesthesia Services, 237 Kan. 503, 701 P.2d 939 (1985).

KSA 60-1903 (c) provides three categories of wrongful death damages – nonpecuniary damages, expenses for the care of the deceased cause by the injury, and pecuniary damages. The types of damages recoverable are set forth in KSA 60-1904 and consist of mental anguish, suffering or bereavement; loss of society, companionship, comfort or protection; loss of marital care, attention, advice or counsel; loss of filial care or attention; loss of parental care, training, guidance or education; and reasonable funeral expenses for the deceased.

However, the legal definition of “pecuniary damages” is not limited to financial contributions. Loss of the decedent's services, care, guidance, attention, advice, and protection are listed along with loss of earnings and funeral expenses in the pecuniary category. These damages are referred to as Wentling damages and named after the case of Wentling v. Medical Anesthesia Services. When those damages are interpreted and valued by a forensic economist,



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they can exceed hundreds of thousands of dollars.

As a result, *Wentling* damages provide a means to maximize pecuniary damages as afforded under the current wrongful death statutes and, therefore, eliminates the need to amend the current wrongful death limitation on nonpecuniary damages.