

HB 4136: Eliminating Noneconomic Damages Limit is Not the Answer

Please **vote NO on HB 4136** to oppose the tripling of the reasonable and constitutional \$500,000 limit on noneconomic damages recoverable in civil injury lawsuits.



- HB 4136 goes too far at a time when costs and access issues continue to increase in our health care system.
- Objective and **predictable economic damages** are already fully recoverable, and that is a fair and reasonable approach for our medical liability system.
- Subjective and **unpredictable noneconomic damages** are limited under Oregon law to bring stability to our liability system and ensure that the cost of liability insurance, including policies for medical professionals, does not skyrocket.
- The Oregon Supreme Court upheld the constitutionality of the noneconomic damages limit in a wrongful death case. See *Hughes v. PeaceHealth*, 344 Or. 142 (2008) (holding that cap does not violate Oregon's right to a remedy or right to jury trial protections).
- Be careful of misleading comparisons to Oregon's Tort Claims Act, which uniquely combines economic and noneconomic damages limits only in lawsuits brought against state or local governments.
- HB 4136 will **jeopardize** our already strained health care system in rural Oregon by increasing costs to the **Rural Medical Liability Reimbursement Program**. This is the program that ensures Oregonians have access to the broadest possible range of specialty physicians and providers throughout the state and not just in urban areas.
- By tripling the limit on noneconomic damages in Oregon, professional liability insurance policies will become more expensive. Physicians and providers in high risk specialties, especially in rural areas, could be forced to limit their practices or close them altogether.

The following coalition members strongly urge you to vote **NO** on eliminating the reasonable and constitutional noneconomic damages cap for both wrongful death actions and other statutorily created causes of action.

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(Over)

Current law ensures injured patients receive fair compensation while preserving access to health care.

Under current law, the following damages are available to a patient's estate in a claim for wrongful death:

UNLIMITED

Economic damages for all past and future medical bills and costs.

UNLIMITED

Economic damages for lost wages, lifetime earning potential and for any other conceivable economic losses.

UNLIMITED

Punitive damages, used to punish a defendant for malicious conduct.

ADDITIONAL

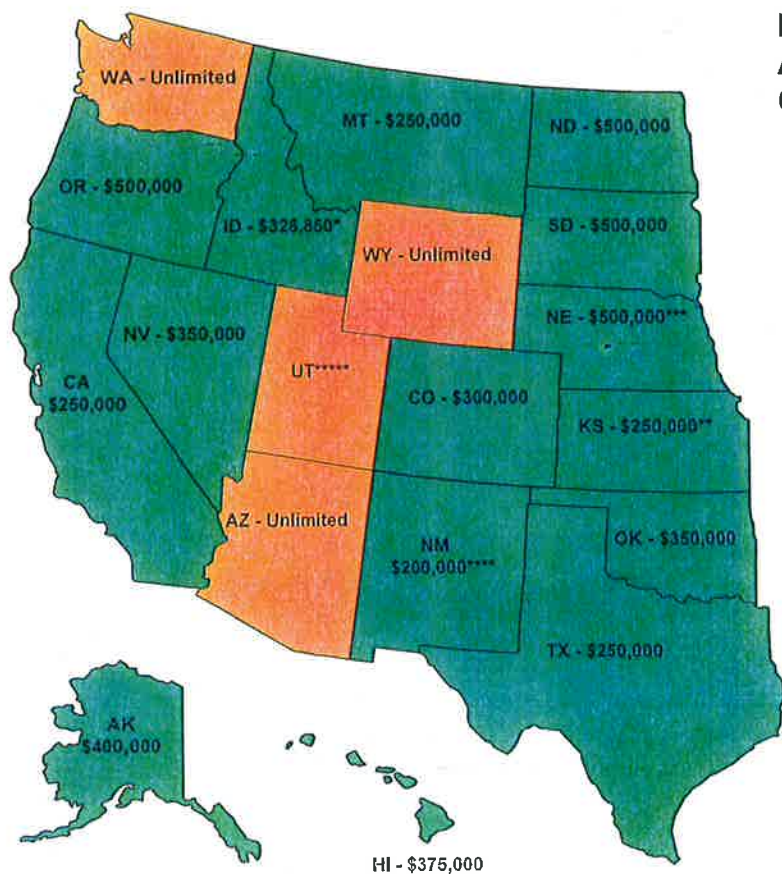
Up to \$500,000 available for non-economic damages, sometimes called pain and suffering awards.

Increasing the cap on non-economic damages for medical liability will increase health care costs and reduce access to health care services, especially in rural and underserved areas.

(Note: 30% of punitive damage awards are allocated to the prevailing party, while 70% are allocated to various funds under the purview of the office of the Oregon Attorney General.)

Exhibit 1

Western States' Limits on Non-Economic Damages for Wrongful Death as Applied to Medical Professional Liability Claims as of 12/31/15



KEY

- Cap is greater than \$500,000
- Cap is \$500,000 or less

* ID - The controlling Idaho Statute sets the cap on non-economic damages at \$250,000. From July 2004, this cap will increase or decrease to reflect changes in the average annual wage as computed by the ID Industrial Commission. The figure cited represents the current cap amount.

** KS - The cap will increase in steps through July 1, 2022 when it will be set at \$350,000.

*** NE - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on both economic and non-economic damages of \$2,250,000.

**** NM - For covered physicians, any award over this amount is paid from the state patient compensation fund, with a current total cap on damages of \$600,000.

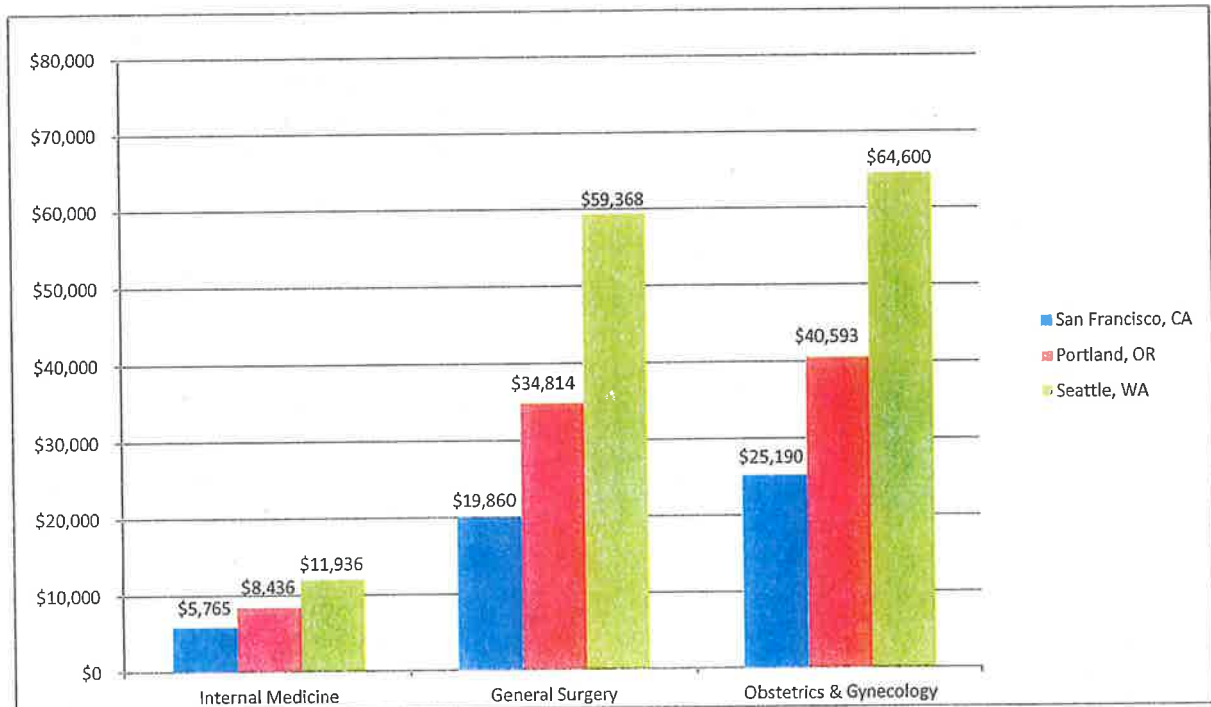
***** UT - The \$450,000 cap for non-economic damages in wrongful death claims was held unconstitutional by UT Supreme Court in August, 2015. A \$450,000 cap on non-economic damages remains in effect for other claims.

2015 Medical Professional Liability Insurance Base Rate Comparison

1/15/2016

Practice location	Internal Medicine	General Surgery	Obstetrics & Gynecology	State's cap on non-economic damages
San Francisco, CA	\$5,765	\$19,860	\$25,190	\$250,000
Portland, OR	\$8,436	\$34,814	\$40,593	\$500,000*
Seattle, WA	\$11,936	\$59,368	\$64,600	None

Source: The Doctors Company rates published in Medical Liability Monitor 2015 Annual Rate Survey Issue



*Oregon only limits non-economic damages in wrongful death actions

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