

SB 737-A: Eliminating the Noneconomic Damages Limit is NOT the Answer

Please vote **NO** on SB 737-A to oppose changes to the reasonable and constitutional \$500,000 limit on noneconomic damages recoverable in civil injury lawsuits and other causes of action.



- SB 737-A goes too far at a time when rising healthcare costs and decreased access to health care providers and services are a major concern for Oregonians; this is only exacerbated by the uncertain future of the ACA and Medicaid Funding.



- Objective, *predictable economic damages*, including past and future medical costs, lost wages and potential lifetime earnings, and any other conceivable loss are **unlimited** and fully recoverable, a fair and reasonable approach to our medical liability system. *Punitive damages* to “punish” a defendant for willful and malicious conduct are also unlimited.



- Subjective and *unpredictable noneconomic (pain and suffering) damages* were limited by the Oregon Legislature to bring stability and predictability to our liability system, to improve access to medical care and to create an environment that makes Oregon attractive to practitioners and employers.



- A majority of Western States cap noneconomic damages at or below \$500,000. California caps noneconomic damages at \$250,000 - a decision reaffirmed by voters in 2014.



- Noneconomic damage caps ensure that patients receive fair compensation while preserving access to healthcare. Recent increased severity (cost of claims) trends indicate that medical liability costs are increasing in Oregon. A study by Milliman indicates that maintaining current law will keep rates low and prevent steep medical liability increases for doctors, nurses, and healthcare providers, helping them serve the most vulnerable populations. The study further indicates that keeping both injury and wrongful death caps in place will result in cost savings.



- Oregon’s safety-net providers serve thousands of patients, the majority of whom are women and children. These providers are unable to shift higher insurance costs to their patients – which means less funds available for patient care.



- SB 737-A does not return the law to “pre-Horton” as some have suggested. According to an email from Legislative Counsel, “Before the *Horton* case, the Supreme Court held that the noneconomic damages cap was unconstitutional as to common law causes of action that existed in 1857, but was constitutional as to statutory causes of action created after 1857. The most prominent type of claim created after 1857 was the wrongful death claim, but there could be other statutory causes of action that would have been subject to the cap under pre-Horton law.” It continues “SB 737-A would not impose a damages cap on any statutory causes of action other than a claim for wrongful death.”



- Furthermore, noneconomic damages for any causes of action the Legislature creates in the future would be capped both before and after *Horton*. If SB 737-A passes, those statutorily created causes of action would not be automatically capped as they previously would have been.



- SB 737-A applies to actions that occur before, on or after the effective date. This means those who purchased insurance based on the law in place at the time will have the rules changed with no notice and no ability to modify policies for actions that may have already occurred. Further, the legislation would impact cases already in the pipeline. Defendants make decisions about whether or not to go to trial based on the circumstances at the time. Changing the rules in the middle of the game is patently unfair. This is further exacerbated for causes of actions capped pre-Horton but not by SB 737-A.



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The following coalition members strongly urge you to vote No on SB 737:

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