

Oregon State Legislature  
House Committee on Judiciary

March 4, 2019

Submitted through electronic submission system [tohjud.exhibits@oregonlegislature.gov](mailto:tohjud.exhibits@oregonlegislature.gov)

**RE: HB 2014, Noneconomic damages claims - NAMIC's Written Testimony in Opposition**

Dear Representative Williamson, Chair; Representative Gorsek, Vice-Chair; Representative Sprenger, Vice-Chair; and honorable committee members:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the House Committee on Judiciary for the public hearing on HB 2014.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 153 members who write property/casualty in the State of Oregon, which represents 44% of the insurance market.

HB 2014 would remove the statutory damages cap of \$500,000 for civil claims, except for wrongful death. *The legal implications of the proposed legislation are that there will be no damages cap on most noneconomic damages civil claims.*

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 \$500,000 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 no 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.

**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 or removed, plaintiff attorneys raise their settlement demands to either match the increased damages caps or take advantage of the removed damages cap. Why? Because lawyers are duty bound to their client to try and recover as much in damages as legally possible, and because they typically are entitled to a fee of 33.3% - 40% of the collected damages. Without a noneconomic damages cap, plaintiffs will assert extremely high noneconomic damages claims. They will also be encouraged to "build up" their economic damages, so as to support an award from the trier of fact for their inflated noneconomic damages claim.

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

**3) HB 2014 could expose insurance policyholders to greater *out of pocket* financial liability exposure -**

The proposed legislation would allow for “a sky’s the limit” noneconomic damages claim, 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 purchase \$1million or more in liability coverage, 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. This could have a detrimental impact upon all consumers, especially small businesses that may have high liability deductibles and/or low coverage limits, and consumers unable to afford higher liability insurance coverage limits.

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

Since HB 2014 will dramatically increase the settlement value of “subjective damages” (damages not easily subject to economic quantification, unlike medical damages or lost wages which are readily determinable), plaintiffs will be incentivized to inflate their damages claims and “roll the dice” at trial hoping that the sympathies of their case lead to higher noneconomic damages awards. Additionally, by removing the damages cap, many defendants will have no choice but to legally contest extremely high plaintiff settlement demands, especially since noneconomic damages claims, by their very nature, are difficult to prove and quantify, and easily manipulated by rapacious litigants. Consequently, there will be more lawsuits going to trial, which will congest court trial dockets, delay the adjudication of meritorious legal claims, and increase the cost of litigation for all parties.

Additionally, there is no specific public policy rationale for requiring that the bill become effective upon passage. Removing the noneconomic damages cap for pain and suffering and emotional damages claims does not trigger 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 noneconomic 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. Moreover, retroactive application of a new law raises serious due process of law Constitutional law problems that should be avoided by the State Legislature.

For the aforementioned reasons, NAMIC respectfully requests that you **VOTE NO on HB 2014**, because Oregon already has one of the highest damages caps on noneconomic damages in the western United States. **The proposed legislation will make Oregon a dream venue for plaintiff lawyers and a litigation nightmare for small businesses, medical providers, and insurance consumers.**

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you would like to discuss NAMIC’s written testimony.

Respectfully,



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