

Approved: April 2, 1997  
Date

## MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:08 a.m. on March 24, 1997 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Revisor of Statutes  
Mary Blair, Committee Secretary

Conferees appearing before the committee: Representative Dale Swenson  
Henry Lippincott, Wichita  
Susan Arnold, Best Interest of the Child, Kansas City  
Steven Cox, Wichita  
Bob Creamer, Citizen Action, Chicago  
Gail & Dave Kuhn, Russell  
Dawn Younie, Emporia  
Lynn Rieschick, Mothers Against Drunk Drivers, (MADD)  
Christy Crenshaw, Topeka  
Jim Keele, AFL-CIO  
Terry Humphrey & Steve Dickerson, Ks. Trial Lawyers Association (KTLA)

Others attending: See attached list

The minutes of the March 20, 1997 meeting were approved on a motion by Senator Bond, seconded by Senator Schraad. Motion carried.

### **HB 2143 - Nonpecuniary damages in wrongful death action**

All of the following conferees are proponents of **HB 2143**.

Conferee Swenson, the principle sponsor of **HB 2143**, quickly stated he supported the bill, referred to his handout covering the issues of the bill (attachment 1) and introduced Conferee Lippincott.

Conferee Lippincott gave testimony of the personal loss he and his family suffered when their son Jon died as a result of automobile injuries suffered in an accident which he stated was caused by negligence and lack of judgement on the part of two other persons. He called the current law with it's wrongful death cap set at \$100,000, an "Imposter" which violates "Natural Rights such as Life, Liberty and the Pursuit of Happiness" and "limits the powers of the jury to adjudicate" freely. (attachment 2) He called for an abolishment of the cap which he stated would force wrongdoers to be accountable. (attachment 3)

Conferee Arnold, representing Best Interest of the Child, cited the 1995 Personal Responsibility Act passed by the 103rd Congress and called for Kansas Legislators to lead the nation in enacting other personal responsibility legislation such as that represented in **HB 2143** or remove the wrongful death cap altogether. (attachment 4)

Conferee Cox gave testimony of the personal loss he and his family suffered when he and two of his children were involved in an automobile accident as a result of negligence on the part of another driver. His son was seriously injured while his daughter died two hours after the accident as a result of brain and other injuries. He stated that Kansas places an arbitrary value on lives with a wrongful death cap of \$100,000. He addressed the issue of attorney contingency fees, and stated that "contingency fee arrangement made it possible for me to seek justice.....it was the wrongful death cap that limited justice." He urged the committee to raise the wrongful death cap from \$100,00 to \$500,000 or repeal it altogether. (attachment 5)

March 24, 1997 meeting p.2

Conferee Creamer, Director of the Chicago Office of Citizen Action, a public interest organization, testified on behalf of the organization in support of "the proposal that Kansas should increase its cap on non economic damage awards in wrongful death cases". He called limitations on non economic damages unfair and class and gender discriminatory and cited examples. He stated that these limitations make it less likely that people will be responsible for the consequences of their negligence, again, citing examples. He further addressed the issue of cost citing certain statistical data and concluded that "caps resulted in higher insurance company profits, but didn't affect health care costs for everyone else" and "there is no historic relationship between tort law restrictions and levels of liability insurance cost." (attachment 6)

Gail Kuhn, supported by her husband Dave, gave testimony of the personal loss they suffered when their daughter died as a result of taking an "inappropriate" post natal drug, a drug which was later removed from the market. She stated that the present cap is morally and ethically wrong and that "it protects the people who need to be held accountable for their actions". She and her husband urged passage of HB 2143. (attachment 7)

Conferee Younie, tearfully presented testimony on the loss of her infant daughter and her best friend when a semi-truck crossed a center line and drove over the top of her car, killing both. She stated that the current law in wrongful death cases "protects wrongdoers and promotes subtle discrimination at the expense of the victim's families" and calls the law "immoral". She urged for repeal or, at least, raising the cap to \$500,000. (attachment 8)

Conferee Rieschick, presented MADD's position statement and called the current Kansas wrongful death cap "inexcusable" stating the reasons why and briefly testified of his own personal experiences due to the negligence of a drunk driver. He urges passage of HB 2143. (attachment 9)

Conferee Crenshaw testified on the personal loss of her husband as a result of complications following surgery. She stated that lost lives are irreplaceable but, "reasonable non-economic damage settlements allow us to commemorate our child, husband, sister or parent when their lives have been taken by the careless or cruel behavior of others." She urged committee to support HB 2143. (attachment 10)

Conferee Keele, Chairman of the Brotherhood of Locomotive Engineers Kansas Legislative Board testified on behalf of the Kansas AFL-CIO members and retirees in support of HB 2143. He stated that the cap of \$100,000 prohibits juries from dispensing justice "in a manner that promotes full accountability of the wrongdoer or allows the survivors to adequately deal with their loss" and added that this was particularly important surviving families of railroad workers who are not covered under workers compensation. (attachment 11)

Conferee Humphrey, representing KTLA, presented a history of HB 2143 since its introduction and briefly described the bill. She stated it had received strong support in the House, surviving five floor amendments. She distributed a booklet which addresses key points of debate, covering three primary issues of opponents of the bill namely: additional recovery options, insurance premiums, and additional statutory changes. She urged the committees support of the bill without amendments. (attachment 12)

Conferee Dickerson, Vice-President for Legislation, KTLA, called the current wrongful death law irrational and unfair and stated the reasons why. He pointed out that 80% of the states do not have a cap and of those who do, Kansas has the lowest cap of any state in the nation. He clarified several arguments that have been raised against HB 2143 one of which declares that families can file a "survival" claim and a punitive damages claim in addition to a wrongful death claim. He stated that the core of a survival claim is to compensate the probate estate for conscious pain and suffering. If the injured victim didn't consciously suffer no survival action is possible; punitive damages can only be recovered in survival claims that result from certain malicious conduct. He argued that the real issues aren't: the cost of doing business (stating that evidence shows the cost of obtaining insurance won't materially increase as a result of HB 2143); doctors versus lawyers (stating that only a few wrongful deaths occur each year as a result of medical negligence); attorney fees, (stating they are already regulated by statute and Supreme Court rule). He then stated the real issue which included "bringing essential fairness to a system that now lacks fairness and respecting the worth of a wrongfully taken life". He called for an examination of HB 2143 on its own merits, free from amendments and urged passage of the bill. (attachment 13)

Written testimony in support of HB 2143 was submitted by: Richard Dickey (attachment 14); Dr. Victor Hurtig (attachment 15); Debbie Hahn (attachment 16); AARP (attachment 17); and Kansas National Organization for Women. (attachment 18)

No action was taken at this time since opponents of HB 2143 will be heard Tuesday, March 25, 1997.

March 24, 1997 meeting p. 3

**HB 2264 - Brokerage relationships in real estate transactions act (BRRETA)**

BRRETA is intended to modify common Law rules governing the relationship between brokers or salespersons and their clients or customers. BRRETA establishes a scheme of statutory agency to replace Common Law rules. It is the intent that where BRRETA and Common Law conflict, BRRETA will be applied, but where BRRETA is silent, the Common Law will be applied. In 1984 in the case of Board of Neosho County Commissioners v. Central Air Conditioning Co., 235 Kan. 977, 981, 683 P.2d 1282 the Kansas Supreme Court held that when a statute conflicts with the common law, the statute controls. Additionally, K.S.A. 77-109 specifically provides that statutes which modify the common law should be liberally construed. (attachment 19)

Subcommittee Chair Senator Schraad gave a subcommittee report on **HB 2264** commonly referred to as the BRRETA BILL. He stated that the subcommittee discussed at length possible amendments to the bill including proposed amendment language by two conferees. (attachment 20) No recommendation was formally proposed by the subcommittee. Following discussion Senator Bond made a motion to pass HB 2264 out favorably, Senator Feleciano seconded. Motion carried.

The Chair adjourned the meeting at 10:59 a.m. The next scheduled meeting is Tuesday March 25, 1997.

# SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/24/97

NAME	REPRESENTING
Martin Hawver	Hawver's Capitol Report
GAIL Younie	HB 2143
Dawn Younie	
<del>Steve Blank</del>	Hubbell + Assoc
<del>Steve Dickerson</del>	KTLA
Steve Dickerson	KTLA
ROBERT KEAMER	Citizen Action
Steven & Cop & Family	HB 2143
JASON ANOED	HB 2143
Richard Dickey	HB 2143
Jane Keady	HB 2143
Gail Rudon	HB 2143
Annith Lippincott	HB 2143
MaryAnne Lippincott	HB 2143
Chris Keeshan	KTLA
Calley Denton	Bottenberg & Assoc.
Jennifer Seabel	KTLA

S.S. 3/24 @11:11

STATE OF KANSAS



TOPEKA

HOUSE OF REPRESENTATIVES

DALE A. SWENSON  
REPRESENTATIVE, DISTRICT 97  
TOPEKA ADDRESS:  
STATE CAPITOL—431-N  
TOPEKA, KANSAS 66612-1504  
(913) 296-7683  
HOME ADDRESS:  
3145 S. FERN  
WICHITA, KANSAS 67217  
(316) 524-3976

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COMMITTEE  
JUDICIARY COMMITTEE  
TOPEKA HOTLINE  
DURING SESSION - 1-800-432-3924

**TO:** Members of the Senate Judiciary Committee  
**FROM:** Representative Dale Swenson  
**DATE:** March 24, 1997  
**RE:** HB 2143

As you know I am Dale Swenson. I believe that the Kansas wrongful death law currently lets the wrongdoer off the hook from responsibility.

Did you know in Kansas there is a \$100,000 price tag on you life and your loved one's life? The wrongful death statute in Kansas imposes a \$100,000 cap on non-economic damages, like loss of companionship. Suppose a drunk driver runs over your child. The drunk drivers accountability is limited to \$100,000 for recovery of non-economic damages.

Does \$100,000 compensate families (children, parents, spouses) for their grief or for their life long loss of companionship? **NEVER.** In 1994, my constituents, MaryAnne and Henry Lippincott were affected by the \$100,000 cap when their seven-year-old twin son, Jonathan, died in a Kansas turnpike accident due to not only a negligent driver, but a farmer burning his field. At the accident scene MaryAnne Lippincott watched her son's life fade away. Most of us don't think about the ramifications of the wrongful death cap, until something bad happens. Then we are outraged to learn, as did the Lippincotts that Kansas has a price tag on our grief and more important, limits the responsibility of a negligent driver, and even a criminal.

The Lippincotts know injustice. The injustice of losing the chance to watch their son, Jonathan, grow up, play ball, graduate from college, get married and have children of his own. Their injustice is compounded by Kansas laws that quantify their son's life at \$100,000. You have the responsibility to your constituents to correct this injustice.

The present wrongful death cap undermines the wrongdoers accountability. As legislators it is our responsibility to protect our constituents families, families like the Lippincotts from needless harm. It is time to increase the wrongful death cap from \$100,000 to \$500,000 and give local communities, through juries, the tools to hold criminals, drunk drivers and other negligent people accountable for their actions.

*Senate Judiciary  
Attachment 1  
3-24-97*

Dear

It has been very difficult for me to compose this letter. It is the culmination of several weeks work. Some of the subject matter in place is meant as a review and reminder and not to be taken as a lecture.

MaryAnne has a BA in Elementary Education and Special Education. Currently she is a homemaker and a wonderful mother. I have 14 years of education. I served four years in the United States Air Force as a Crew Chief on the F105G fighter aircraft in the 561st Wild Weasel Squadron. I have lived in Wichita all my life and have worked at Cessna Aircraft Company in the Quality Assurance Department for 23 years. We have three children, Melissa, Jacob and Nathaniel. Our family hobby is playing Celtic and American Traditional music.

I am concerned that what has happened to my family can and will happen to another Kansas family, maybe yours! Thank for your time to read this letter as we are all so very busy these days.

*MaryAnne Lippincott*  
MaryAnne Lippincott

*Henry H Lippincott*  
Henry H Lippincott

*Senate Judiciary  
Attachment 2  
3-24-97*

## Inalienable, (unalienable) or Natural Rights

Natural Rights are those rights such as Life, Liberty and the Pursuit of Happiness. Natural Rights, seen by the founding fathers as coming from our Great Legislator, inspired the writings of, and are the basis of the U.S. Constitution. Hence, laws and statutes which violate Natural Rights, though they have the color of law, are not law but impostors!

Imposter is the category for our wrongful death limit law. This \$100,000 limit law serves the special interests that fight the most to keep it law. It allows the Insurance Industry to keep in their coffers the awards, that normally would be given by our friends and neighbors (jurors) to victims of wrongdoers.

Two of these Natural Rights have been taken from my family! My seven year old son Jonathan's LIFE, a great value, has been taken away from us, and our community here in Kansas by two wrongdoers. Wrongdoers that had little consideration for others safety and employed the use of poor judgement. One wrongdoer, a farmer in Chase county, broke every state law on the books when he set his field on fire and then went home to lunch after setting a second fire. Smoke from the first field fire created hazardous driving conditions on the Kansas Turnpike, zero percent viability. The second wrongdoer exercised poor judgement by driving into the smoke ultimately killing Jonathan.

Our Pursuit of Happiness has been derailed and made very painful and difficult at best. We no longer have Jon's companionship and love to share. All the joys and special circumstances that come from raising twins are gone. His twin brother Nathan had his left leg crushed. He has had nine (9) major operations to date being in and out of body casts. He is facing a major leg lengthening operation to his femur in a couple of years because his leg has quit growing. This will take a six to eight month stay in the Cripple Children Hospital in St Louis. The pain and suffering continues for Nathan and will for the remainder of his life. He still comes to us about once or twice a month with those big tears in his eyes. Those tears are always mingled with our own. I know how he feels. I lost a brother when he was eight. He was a twin to my sister Kathy. Believe me, *the hurt never goes away*, it only subsides. Last Christmas when we went to visit Jon's grave Nathan asked me, "Dad, is Jon- Jon's body a skeleton now?" I can't imagine what kind of thoughts or images he must have of his brother down in that grave. He misses his brother terribly.

When a persons rights are infringed upon, we have recourse provided by our constitution for restitution. We are provided a means to pursue the accused. The accused is provided the right of a trial by members of his community. We are all familiar with this process.

The jury has an unreviewable and unreversible power to determine the facts of a case and award damages in what ever form to the victims. The Founding Fathers intentions here were; *if a right or value has been removed or taken away from a person (victim) in the community where he lives then community members shall determine the value or restitution to go to the victim and the punishment to the wrongdoer.* In this, the members of a community understand if someone wrongs a person or is the cause of the removal of a value from a person or family, justice can be served to the wrongdoer. He can be held fully accountable for his actions and ordered to repay, as determined by the community (jury), to the victim, that value, which was removed. When a life is involved then money is the only recourse for repayment of that value. Unfortunately, the threat of the loss of ones money or assets is the only thing that will move people to act. This, and jail, is the only threat that will cause people to stay within the law.

If members of our community decide to compensate another member in our community, then what business is that of the Insurance companies? It's our decision not theirs! They have no business being in the jury box with the jury! This wrongful death limit law effectively limits the powers of the jury to adjudicate making the law an Impostor! *This is unconstitutional!*

The net effect; there is no fear of the law when liability is limited. In other words another child can die as long as this law remains on the books. How many children will it take to repeal it? No one can imagine the horror MaryAnne and my children went through that day at mile marker 105 on the Kansas Turnpike. They all had to witness Jonathan's life fade away as MaryAnne and Sheriff Officer Stephanie Cowart tried desperately to save him for 45 minutes. The impact was so great that it just crushed my Jonathan to pieces. I will rejoice greatly the day that I die!

My Goal here is to point out the effects of this law on us and to hopefully effect changes that will keep this from ever happening to any other family in our community of Kansas. I will continue to expose this law for what it is, an Impostor. Our Great Legislator told his followers one day that if you neglected your families needs it would be better for you that you had never lived. Whether one wants to believe it or not, we are responsible for each others welfare.



Some final thoughts,

There is so much corruption, as seen by the community, in our government today . I think it is horrible and immoral to see the Insurance Industry benefit by keeping our just compensation to themselves. One can only wonder how many millions they have kept to themselves due to the death of our children and older adults since 1963. How could we have kept this law on the books so long and allowed so many members of our own community to go with out just compensation, determined by us , not the Insurance industry, when they need it the most.

**MOST IMPORTANTLY!** Repeal of the wrongful death limit will encourage everyone to come into compliance with laws passed by our community members at the local and state levels and therefore **PREVENT AS MANY UNNECESSARY DEATHS AND INJURIES AS POSSIBLE** whether a child or adult! Let's not let Jonathan's death go unanswered! We owe it to him and all the other children that have died unnecessarily! Let's do something good for our friends and neighbors and repeal this terrible law. If we must raise it to \$500,000 then so be it. Support House Bill 2143. The higher limit is what it is, another limit on juries. It will not have the desired effect. I pray that our Great Legislator will be with us in our hearts as we all ponder these thoughts and render decisions on behalf, and for, our friends and neighbors. Thank you.

03/24/97

ST 2 3/24 013

**Henry Lippincott**  
**Wrongful Death - HB 2143**  
**Testimony**

I am Henry Lippincott. I would like to share my family's story. It was April 17, 1994, MaryAnne and our three sons, Jacob, Nathan and Jonathan, and our daughter, Melissa were traveling to the State House for the Governors signing of the proclamation of twins' week. They never made it, because they became the victims of two wrongdoers—a negligent farmer who was burning his field and a negligent driver who was traveling 70 miles an hour into the burning smoke. The burning smoke had produced zero percent visibility for drivers. Even though this driver couldn't see, he didn't slow down. This is a tragedy no family should have to endure. Not your family or your neighbor's family. Therefore, the wrongful death cap should be abolished or at least raised to \$500,000.

The second tragedy for us occurred when we learned that Kansas' laws protected the negligent driver from full accountability and put a price tag on our son's life.

Abolish the cap because it is wrong for the government to put any price tag on our childrens' lives. Instead our communities, represented by juries should evaluate each case on its unique circumstances and decide accountability. Don't tie the hands of our juries. Send a strong message to negligent drivers, drunk drivers and other wrongdoers.

Furthermore, the wrongful death cap runs roughshod over justice. If justice is predetermined, then it isn't justice. If there is a "one-size-fits-all" solution regardless of the circumstances, then justice is never served. Unpredictable circumstances dictated our first tragedy, losing our son. Our second tragedy is preventable. It is preventable by making decisions that ensure accountability. As legislators you can guarantee that everyone has the opportunity to hold wrongdoers accountable.

As I have watched the process of HB 2143, I have become concerned about an issue raised by the insurance company opponents. First, they have suggested that current compensation to victim's families is more than adequate. This simply is NOT the case. They pointed to a survivorship action as proof. However, our attorney explained to us that to have a survivorship claim you must prove conscious pain and suffering. In our case, Jonathan never regained consciousness.

Next, the opponents tried to attack attorneys and attorney fee issues. My request to Dale Swenson was to eliminate or raise the non-economic cap on wrongful death and NOTHING MORE.

The only purpose of HB 2143 is to increase the accountability for wrongful death. Stop letting the wrongdoer off the hook from full responsibility. Offer your constituents, such as my family, faith in the civil justice system. We urge this committee to enact this bill.

*Senate Judiciary*  
*attachment 3*  
*3-24-97*

3/24 S.S. att #4



**Best Interest  
of the Child  
Incorporated**

P.O. Box 12114  
Overland Park, KS 66282-2114  
913.888.2045  
Fax 913.888.3061

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Child Advocate

**Terra Morehead**

Ass. District Attorney  
Wyandotte County

**KANSANS NEED TO UPHOLD ACCOUNTABILITY FOR WRONGFUL DEATH.**

**Best Interest of The Child, Inc. supports legislation that forces any person involved in the wrongful death of another to be held personally responsible.**

Cain Baker was 2 years, 5 months and 6 days old when his mother's boyfriend beat him to death. Seven months earlier he was in a body cast for a spiral fracture of his femur. Child Protection never removed him from the home. The state never filed a Child in Need of Care petition. His family still grieves for their loss.

The 103th Congress in 1995 passed the Personal Responsibility Act for the nation. The national lawmakers intended to send a clear message to the people, "we must all take FULL responsibility for our actions". No more, "it was someone else's fault". In 1997 we have reached our tolerance and demand "three strikes and your out" for violent crimes. We are demanding tougher sentences for criminals. Kansas is awaiting a Supreme Court decision on a pioneer Sexual Predator law, while the nation watches.

Kansas must now act swiftly and decisively to lead the nation in other personal responsibility legislation, as well. Let other states remember Kansas as a state who values life and holds the taker of that precious life accountable. Let us not continue to be victims to the crimes caused by the irresponsibility of the protected wrongdoers.

Increase the wrongful death cap or remove it all together. We have no other way to measure loss. We cannot always depend on the courts or fair sentences to deter the repeat drunk driver or criminal. We CAN attempt to compensate the family left behind by a senseless death.

**Child Abuse  
is not a family value**

*Senate Judiciary  
Attachment 4*

*3-24-97*

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03/24/97

SENATE JUDICIARY COMMITTEE:

**Steven Cox Testimony**

As some of you already know, my name is Steven Cox of Cheney, Kansas. I've always felt that even though I wasn't rich materially, I was rich in family. I had married my high school sweetheart, Tam and had three wonderful children, Michael and twin girls, Amanda and Andrea. However, on January 8, 1996 my family was torn apart by a negligent driver.

I was traveling home with my son, Michael and one of the twins, Andrea. A representative of a national company was working his route. As he negligently ran a stop sign, he crashed into my pick up truck, rolling the truck two or three times. Andrea was setting in the passenger seat. After the crash, I called for Mike and Andrea, the only sound I heard was silence. Michael was Life Watched to an area hospital in critical condition. Andrea was rushed to a Wichita hospital, only to die two hours later due to extensive brain trauma and other serious injuries. This was devastating for my family and the Cheney community.

As any family would, we wanted to be sure justice was served and that the wrongdoer was held accountable. Unfortunately, the heart-break wasn't over. We quickly learned that Andrea's life was **only** worth \$100,000, because Kansas has the lowest wrongful death cap in the United States. I've always believed that you couldn't put a dollar amount on human life and yet, Kansas has placed a value on my daughter's life.

Andrea is dead. No longer will she go hunting with me nor will we hear her scream touchdown as she plays football with her brother. Her twin sister, Amanda won't hear Andrea's endless chatter before bedtime. Our case is settled. We have nothing gain by the raised cap, but the reassurance that grieving parents won't encounter further heart-break when they are told that Kansas has placed an arbitrary value on the loss of our child—the lowest in the nation.

I've recently made several trips here to the State House to meet with legislators and observe floor debate. One issue that a legislator mentioned to me was attorney fees. I also know, contingency fees are a favorite topic of the Kansas Medical Society, I have seen their literature. I would like to address this issue. The contingent fee practice has been an essential ingredient in our justice system. It permits you and I, regardless of wealth and social class, the opportunity to pursue a valid claim against even the most powerful corporation or individual. It's no secret that businesses and individuals who want to avoid accountability for their negligent and reckless acts are pushing for special protections. However, the contingency fee system breaths life into the democratic ideals that none of us are above the law and everyone of us must be accountable for our

*Senate Judiciary  
Attachment 5  
3-24-97*

behavior. **The contingency fee arrangement made it possible for me to seek justice... it was the wrongful death cap that limited justice.**

Uphold our democratic ideals. Until something like this happens to you or your family you can't understand why the cap is so wrong and how it belittles the life of your child or family member. Raise the wrongful death cap from \$100,000 to \$500,000 or repeal it altogether. Let Kansas families know you care. Thank you for your time.

Steve, Tam, Mike, Amanda, and yes, even Andrea



**TESTIMONY OF ROBERT CREAMER  
CITIZEN ACTION**

Mr. Chairman and members of the Committee, my name is Robert Creamer. I am Director of the Chicago office of the nation's largest public interest organization, Citizen Action, which has over 2 million members nationwide – including many in the state of Kansas.

I come here today to add our support to the proposal that Kansas should increase its cap on non economic damage awards in wrongful death cases.

We support this proposal first and foremost because it is fair. Economic loss is certainly important to all of us. But the things we value most in life are not financial. They are health and family, our ability to walk and talk and see and create. Through the current severe restriction on non economic damages, the law says that you may be compensated for the lost income of your dead husband, but not for the loss of the partner upon whom you relied for so much more than money – for his love and companionship and the life you made together.

And if that husband is retired or has little income -- or if the one you lose is a wife who works in the home, or a child with his whole life ahead, but no job at all – then compensation for that loss is severely limited. In this case there will be no economic damages to recover – only the non-economic damages limited by the current law.

The current limitation on non economic damage awards not only fails to compensate for the loss of the things that are most valuable to most of us – it also discriminates against those of modest or middle class means. The family of a sports star killed by a drunk driver may be compensated in the millions, since he had a great deal of income. But the family of a secretary killed by that very same driver receives only \$100,000 in compensation because she had only a modest income.

Limitations on non-economic damages are particularly discriminatory against women since they are more likely to have less income and to work full time in the home. But is there anyone that would argue that the life of a pop singer who makes millions is worth more than the life of a mother who makes a family?

And when it comes to deterrence, the current system means that a doctor must take much more care operating on a well paid executive, than he must when he operates on a child. Let us be clear. No law or regulation can possibly provide the same deterrence

*Senate Judiciary  
attachment 6  
3-24-97*

against unsafe products, or medical negligence as the likelihood that the company, or the medical professional or the HMO will be financially responsible for the consequences of that negligence.

In the famous case of the Ford Pinto, Ford Motor Company and made a corporate decision (recorded in writing) that it would rather allow almost 200 people burn to death than spend less than \$5 per car to fix a gas tank defect. They decided that the costs of the wrongful death cases would be less to the company than the cost of fixing the car. Had it not been for the size of the awards made by a jury of average people who were outraged by the company's conduct many more people would have been allowed to die for the sake of the company's bottom line.

By severely restricting non-economic damages the law makes it less likely that a corporation making children's toys or medical products for women will invest in the safety of their products.

This is simply unfair. And the good news is that this unfairness can be at least partially remedied without risking dramatic rises in insurance rates or explosions in health care costs. To be sure, the bill before you will cost those who wrongfully kill others – or their insurers – somewhat more money. And that's as it should be. But the cost to society at large – to the health care industry – will be negligible.

We don't have to guess at the outcome. The Center for Consumer Rights conducted a study several years ago which was subsequently published in the Loyola University Law Reporter. It compared the changes in health care costs in Indiana and Illinois between 1987 and 1991. During these years Indiana had a cap of \$500,000 and subsequently \$750,000 on all damages in medical malpractice cases – this included economic and non economic damages. Illinois had no caps at all. The study looked at what happened to health care costs in the two state's over the period.

You might have thought that the heavy restrictions on medical malpractice awards in Indiana would result in slower growth in health care costs as compared with totally unrestricted Illinois – but just the opposite was true. Illinois had a significantly lower annual average increase in health care costs than Indiana (7.3% compared to 9.3%). Illinois also had slower growth in expenditures for physician services (7.% compared to 9.1%) ; and slower growth in health care spending as a share of household income (2.36% compared to 4.46%). And doctors didn't flee Illinois. Illinois had more doctors per capita (14.4 compared to 12.0 per 10,000) than Indiana and more hospital beds per thousand (4.2 compared to 4.0).

There was, however, another big difference between Illinois and Indiana. Medical malpractice insurer's profit. As a percentage of premium Illinois averaged 30.7% but Indiana averaged a whopping 57.5%.

A subsequent study by the Coalition for Consumer Rights looked at every state that imposed caps on medical malpractice awards in 1986 and kept them in effect until 1991. They compared health care cost increases in the 21 states that had no caps during the period. The results were clear. Changes in health care costs in the states with caps were virtually exactly the same as those with no caps.

And there is no evidence that caps materially affect liability insurance costs either. When Utah imposed caps, doctors saw their medical malpractice premiums charged by St. Paul Company – the largest Medical Malpractice insurer increase 15.3%. In Missouri, doctors had to pay 38.6% more after caps were imposed. The biggest increase was in Colorado, where doctors who insured with St. Paul Company paid 50.8% more after the legislature passed caps.

So caps resulted in higher insurance company profits, but didn't affect health care costs for everyone else.

But this should be no surprise when you look at the numbers. Opponents of this bill have argued that it would cost the Health Care Stabilization Fund \$10 million per year. This number is derived by assuming that the payouts in all of the 26 cases in which the Fund made a payment last year would increase by \$400,000. In fact, of course only a fraction of these cases would most likely involve any higher payout – and of those only a portion would be the full \$400,000. The real increase in cost to the Fund is probably closer to one to three million per year. But let us assume for a moment that the bill does cost the Fund and primary insurers who deal with the health care industry as much as \$10 million altogether. That may sound like a lot but it is only .12% -- less than an eighth of one percent -- of the approximately \$ 8 billion spent last year in Kansas for health care.

To put this issue in further context you should know that after adjusting for inflation, medical malpractice premiums have been declining across the country for a number of years-- as have the number of malpractice lawsuits per doctor, and per patient. While at the same time malpractice insurance profitability has soared. In fact as a percentage of gross premiums, medical malpractice insurance is now the most profitable line of property and casualty insurance in America. Of course if you look at overall profits, the auto insurance industry has now once again surged ahead with record profits (\$9.5 billion).

The comparison of health care cost changes in states with caps and those without does not come as a surprise when you know one other fact that is extremely important to the debate here in Kansas. There is no historic relationship between tort law restrictions and levels of liability insurance cost.

Liability insurance costs skyrocketed in the early 1980's. But it turned out that these increases had nothing whatsoever to do with the costs of claims – which did not go up materially at all. They went up because of conditions in the investment markets and interest rates, changes in insurance industry investment practices, and the so called



“insurance cycle”. Liability rates in most lines of insurance peaked in the so called “hard market” of the mid 1980’s and have fallen since. None of these changes in premium price – up or down – had any relationship to fluctuations in the volume of underlying claims and certainly not tort laws. That’s because liability insurance companies make most of their profits by investing the premiums you pay them, not mainly on the business of underwriting loss. It is more complicated than this – but put simply liability insurance rates typically go up when returns on investment sag. They go down when there is need to recruit a good deal more money to invest.

Let me give you a brief example. Randy Greene founded Commander Aircraft in the late 1980’s – a company that started producing a high end single engine airplane that used to be manufactured by Rockwell. At the beginning of his venture, he was very concerned about product liability insurance rates. But he was quoted in the May , 1991 issue of Flying magazine as saying that he had received liability insurance quotes one-third of those he received two years before. Greene said he was “mystified” by the system that sets premiums for liability insurance. Without any limitation on tort claims, Greene’s company had received a two third reduction in liability insurance costs.

It is often fashionable to rail against unfair jury awards. But the fact of the matter is that the jury system is the most democratic aspect of our political system. Jurors do not receive big campaign contributions from political action committees. They don’t get fame or acclaim for their public service. Usually, at some sacrifice, they sit in impartial judgment of what is a fair resolution of a conflict. Now juries don’t always make the right decision. Neither do elected officials. But democratic elections and the jury system together remain the best ways humans have devised to govern themselves and resolve their conflicts.

Increasing the cap on non-economic damages will cost the insurance industry some money. But it will have little or no effect on insurance rates of consumers. It will increase the discretion of juries to sit in judgment on the facts of an individual case and determine what is fair. It will allow them to bring an increased measure of fairness to the victims of drunk drivers and others whose recklessness can snatch from any of our families the people and relationships that are the most precious things in our lives.

On behalf of the consumer movement I ask you to pass HB 2143.

6-4

S.J. vol. 3/24 att # 7

Testimony of Dave and Gail Kuhn  
Russell, Kansas  
3-24-1997

Wrongful Death Legislation  
Senate Judiciary Committee

Good morning Senate Judiciary Committee Members. I am Mrs. Gail Kuhn and this is my husband Dave. On July 25, 1993 our nineteen-year-old daughter, Jennifer Jean Kuhn Bishop went to a hospital and gave birth to our first grandson. His name is Ryan Thomas Kuhn Bishop. This is the birth name Jennifer wanted him to have. From the moment we were told by Jennifer that she was going to have a baby we were excited and very proud of her. This was one of her dreams to become a mother. From the moment Ryan was born, we were so excited and Jennifer was ecstatic. Ryan was the son she was waiting for. Jennifer's dream had become reality. Jennifer, Jerry and Ryan were now a family. Later that day, Jennifer died and with her, her dreams. Let me tell you about the catastrophe.

Jennifer died due to a physician's standing order to administer an inappropriate drug. The FDA has been wanting this drug off the market for ten years. One year after Jennifer's death, the drug was removed from the market. It was too late for Jennifer. Dave and I lost our daughter, Christine and Joey lost their sister, Jerry lost his wife and Ryan lost his mother. There have been 90 reported cases of death, strokes or seizures from this drug when administered to women after childbirth.

The present cap is morally and ethically wrong. The wrongful death cap protects the people who need to be held accountable for their actions. They have to be held responsible for taking Jennifer's life. The Kansas law needs to protect the people, instead of the physicians and European Drug Companies who took Jennifer's life for their profit. Even though there are two types of damages, non-economic and economic, the wrongful death cap is very wrong and harsh to the people of this state. The non-economic loss is the REAL loss, because the biggest loss is Jennifer, not her economic contribution. You just can't minimize the non-economic loss by capping it. The cap should be repealed.

Can you tell me how to explain to Ryan that his mother's life is only worth \$100,000 in non-economic damages? Ryan knows that his mother is dead. Later in his life, I would like to say to him that the Kansas government did everything possible to make sure that the people who took her life were held accountable.

Today, you have the opportunity to change the morally and ethically unfair wrongful death cap.

**Jennifer Jean Kuhn Bishop's life is worth more than \$100,000 or even \$500,000. Please support House Bill 2143.**

Senate Judiciary  
Attachment 7  
3-24-97

March 24, 1997

To: Judiciary Committee of the Kansas Senate

Re: HB 2143

Thank you, Senator. I appreciate this chance to tell you the story that changed my life forever.

I am Dawn Younie. One day I was driving from Wichita to LeRoy, Kansas with my best friend, and my baby girl, Mariah. Mariah was strapped safely in her car seat in the back of my car. A semi truck crossed over the center line toward us and smashed my car against the guard rail and drove over the top of the car. When I woke up in the hospital, I learned that both my best friend and Mariah were dead.

When you lose a child, your child can't be reclaimed in dollars. I was, however, astonished when I was told that the life of my child was only worth \$100,000. Because we could not prove economic loss, my child's life wasn't deemed as valuable as my best friends. I am angry at this injustice and outraged at the discrepancy in the law. A law that protects wrongdoers and promotes subtle discrimination at the expense of victim's families is immoral.

Since my loss, I've struggled with depression. I remember people telling me that you're young, you can have other babies. They are wrong. Mariah was my last baby. After Mariah was born, my doctor told me that she would be my last baby and I could not have any more.

Please don't allow Kansas to have the lowest value on life. The right thing to do is to repeal the cap. However, if you can't do that raise it to \$500,000. Because I know my baby Mariah was worth more than \$100,000. I want you to Support HB 2143, for me and for Mariah.

Dawn Younie

*Senate Judiciary  
attachment 8  
3-24-97*

S.J. 3/24/97 attlog

**Lynn Reischick**

26862 C-Rd  
Soldier, KS 66540  
(913) 834-2426

Testimony  
House Bill 2143 - Wrongful Death  
Monday, March 24th

I'm Lynn Rieschick and I am here today representing MADD.

My purpose in testifying today is to appeal to your sense of justice and ask you to make the necessary changes in the wrongful death laws. This is especially important in drunk driving cases. My family knows the pain, the suffering and devastation of alcohol related accidents. And we support MADD's position statement. MADD's position statement clearly states that "MADD stands firmly for the rights of victims of alcohol and other drug impaired driving crimes, in particular the right to be compensated fairly for harm suffered at the hands of impaired drivers." I have a real appreciation of the tragedy of losing a loved one to a drunk driver ; however, we were fortunate. It is our responsibility to ensure accountability. Hold the guilty offenders, like drunk drivers, accountable for a victims family's non-economic losses. The current Kansas wrongful death cap is inexcusable.

Imagine seeing a loved one covered with blood from gaping wounds, disfigured body parts from bone fractures, still strapped in the riddled car with the persons leg pinned. Imagine in the darkness of the night the whirling sound of the Life Star Chopper blades. Imagine the fading light of the Life Star blending into the dark horizon as if it were just another star in the sky. I don't have to imagine, this happened to my family. I could never imagine the changes such a wrongful act would make in my life.

Please pass this bill, so families that DO lose a loved one to a drunk driver, know justice. Thank you.

Senate Judiciary  
attachment 8  
3-24-97

Christy Crenshaw

**RE: Testimony on House Bill 2143 - Raising the Non-Economic Damages Cap in Wrongful Death**

I am Christy Crenshaw, a resident of rural Wabaunsee county. My husband and I returned to my family farm in 1986 to join my parents, brother and sister and their families in a mighty effort to keep our forty year farm from going the way of many farms in the 1980's. We worked in town and then came home to work on the farm and participate in maintaining a vital rural community.

My skillful carpenter husband required back surgery in March, 1993 at the age of 43 years. He was a robust and obedient patient. He walked the mile and a half to the farmstead two days after arriving home from the hospital to have coffee with Mom and discuss how he would hire his friends real cheap to repair the north end of the barn if Mom would cook for them.

Three days later his leg swelled. He called the surgeon and was told to elevate his leg and wear elastic hose. Three days later after following the doctors advice, he died. A bloodcot we didn't know existed burst into his lungs. I got the devastating call at work. The surgeon's advice did not follow the standard of care for leg swelling following back surgery. To grossly compound matters, the surgeon falsified Jim's records. He recorded that he had talked with Jim and pleaded with him to come to the hospital. The date recorded was two days after Jim had died. This process was as close to tawdry as I ever want to be.

One daughter was 14 and one daughter was nine. We are now a single parent family. I didn't want to be a single parent. Our family is diminished without Jim's laughter and skills and social graces. Jim was a good athlete being assigned to the U.S. Army softball team in 1969. My daughters don't have a basketball or softball coach anymore. The father who taught them to fish and had started to teach them to hunt was gone. The father who hauled their steers to the county fair, who could make cleaning out the barn "kind of fun" is gone. The father who knew how to wheedle cherry bombs out of the college boys selling fireworks is gone.

He was a good neighbor and every community needs good neighbors. He was the one who finished remodeling our 78 year-old neighbor's bathroom when he landed in the hospital. No money changed hands, but the neighborhood was richer for Jim's actions.

Can he be replaced? No. Since Jim died, I send my younger daughter to basketball and softball camp as a substitute for the enthusiastic coaching and skillful coaching her father would have provided.

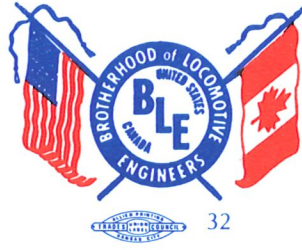
There are still school and 4-H events at which my girls are parent-less. I can't go to 3 PM basketball games. Jim could have. Jim's father died when he was nine and Jim could still recall the empty seat in the bleachers. Coy will carry that emptiness with her also.

For the rest of our life on earth we will miss our loved ones who have died. Those lost lives are irreplaceable. But, reasonable non-economic damage settlements allow us to commemorate our child, husband, sister or parent when their lives have been taken by the careless or cruel behavior of others. I urge you to support HB 2143.

*Senate Judiciary  
Attachment 10  
3-24-97*

# Brotherhood of Locomotive Engineers

Kansas State Legislative Board



**TESTIMONY OF JAMES A. KEELE**

**TO**

**THE SENATE JUDICIARY COMMITTEE**

**THE HONORABLE TIM EMERT, CHAIRMAN**

**CONCERNING HOUSE BILL NO. 2143**

**MONDAY, MARCH 24, 1997**

*Senate Judiciary  
Attachment 11  
3-24-97*

Mr. Chairman and members of the committee, my name is Jim Keele and I am Chairman of the Brotherhood of Locomotive Engineers Kansas Legislative Board. I appear here today representing the Kansas AFL-CIO in the interest of active members and retirees in over 100,000 Kansas households. On behalf of those members, the Kansas AFL-CIO supports passage of HB 2143 to increase the cap in the wrongful death statute.

We do not believe the current \$100,000 cap allows Kansas juries to dispense justice in a manner that promotes full accountability of the wrongdoer or allows the survivors to adequately deal with their loss.

This is particularly important to the surviving families of railroad workers in the state who are not covered under the provisions of workers compensation.

We believe this to be a simple matter of justice. We urge the committee to act favorably on HB 2143 and raise the wrongful death cap in Kansas. On behalf of the working men and women of Kansas thank you.

3/24 S.J. att # 12



KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

**Senate Testimony on Wrongful Death - HB 2143**

**March 24, 1997**

**Terry Humphrey, Executive Director**

Mr. Chairman and members of the Committee, I thank you for the opportunity to appear before you. My name is Terry Humphrey. I am the Executive Director of the Kansas Trial Lawyers Association. Joining me here today is Steve Dickerson, Vice President for Legislation of KTLA. Together we will address a number of issues raised about HB 2143 as it has progressed through this Legislature.

House Bill 2143 sits before you exactly as introduced by Rep. Dale Swenson. It increases the wrongful death cap on non-economic damages from \$100,000 to \$500,000. The bill received strong support in the House Judiciary Committee. The full House of Representatives defeated five floor amendments designed to undermine the bill. While KTLA believes that Kansas should join the majority of states that do not cap non-economic damages for wrongful death, KTLA strongly supports this legislation as introduced given the political realities of the time.

To clarify the issues raised during House debate on HB 2143, KTLA has prepared for you, a booklet addressing key points of debate. The opponents of HB 2143 focus their opposition on three primary issues: additional recovery options, insurance premiums, and additional statutory changes. All these issues are addressed with documented arguments in the booklet before you today. For example, one chart illustrates that Kansas is ranked as having the 42<sup>nd</sup> lowest average auto insurance rates in the country. Of the nine states with lower rates than Kansas, two-thirds don't have caps. I strongly encourage you to spend some time with the charts in the booklet before casting your vote on this bill.

House Bill 2143 offers a simple solution to the problem, raising the cap on non-economic damages. Don't let opponents complicate this simple solution with extraneous arguments. House Bill 2143 is a simple matter of justice and deserves your support without amendment. Thank you.

*Terry Humphrey, Executive Director*

*Senate Judiciary  
Attachment 12  
3/24/97*





KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

**1997  
Legislative Session**

Dear Legislator:

I would like to request your support of HB 2143. As you know, this bill reflects an important public policy decision. Your decision will especially impact our children and our elderly. Even the opponents concurred that the cap is harsh and unfair to children and the elderly.

As you contemplate this important decision, remember that eighty-percent of the states **do not** cap wrongful death recovery for non-economic losses. Kansas not only limits accountability but has the lowest cap in the nation. Very few states have wrongful death caps, of the states that do, the average cap is around \$400,000.

A mindless cap is harsh and unfair. When the life of a child or senior citizen is wrongfully taken it is difficult to establish how their death caused economic loss for the surviving family. If economic loss can't be established, then a family can only hold the wrongdoer accountable for non-economic losses, like the loss of companionship, which is limited by Kansas law at \$100,000 regardless of the number of heirs.

MaryAnne and Henry Lippincott's seven-year-old twin son, Jonathan, died on the Kansas turnpike as a result of a negligent driver. Most of us can't imagine being in the Lippincott's situation. Only when it happens to someone we love do we realize that Kansas laws have placed a price tag on our loved one's lives. This is unacceptable.

Every day dedicated Kansans are responsibly performing their constitutional jury duty, and fairly and justly deciding civil disputes. When a jury is asked to deliver justice in a wrongful death case their hands are tied. The wrongful death cap is an affront to the integrity of Kansans and should be abolished.

A Kansas jury should be entrusted with the solemn task of valuing the life of a loved one for compensation, not faceless government. Even well-meaning government simply has no business substituting its arbitrary valuation of a wrongful death for a jury's thoughtful determination.

*Terry Humphrey, Executive Director*

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 913.232.7756 • Fax 913.232.8825 or 913.232.2680

E-Mail: [triallaw@ink.org](mailto:triallaw@ink.org)

12-2

I would like to encourage you to keep this bill clean of amendments. The opponents have talked about three possible amendments; all are anti-family and should be rejected. The Stratton amendment would be devastating to Kansas families. If the life of a homemaker was wrongfully taken, her loss of services to the family would be capped.

The other possible amendments deal with rules of evidence that should not be repealed. Kansas has followed the vast majority of other states which **exclude** the introduction of evidence of remarriage of the widow/widower in wrongful death actions. Evidence of remarriage will be used by wrongdoers as an excuse for avoiding full responsibility for the destruction of family. The collateral source rule of law keeps information about an injured parties, collateral sources such as insurance or other benefits out of the court proceedings. This ensures that a drunk driver or other wrongdoer can not use that information to **reduce** their responsibility for the damages they caused.

While there are very few wrongful death cases, the victims' families should be entitled to hold wrongdoers accountable for the needless pain and suffering caused by their actions. Victims' families do not want a faceless government mandating the worth of a deceased loved one. Please show your support, vote for HB 2143 and oppose any efforts to amend this bill.

Sincerely,

  
Terry Humphrey  
Executive Director  
KTLA

# HB 2143 WRONGFUL DEATH

## Table of Contents

<b>Title</b>	<b>Tab</b>
<b>Facts about Wrongful Death Actions.....</b>	<b>1</b>
a) Wrongful Death Question & Answer Fact Sheet	
b) Eighty-percent of the States do not have Wrongful Death Caps	
c) Wrongful Death Damages	
<b>Wrongful Death HB 2143 Supporters.....</b>	<b>2</b>
a) Organizations & Groups	
b) Families	
<b>Insurance Issues.....</b>	<b>3</b>
a) What States have the Lowest Average Auto Premiums?	
b) What Drives Insurance Premium Rates?	
c) Do Caps on Damages Reduce Auto Premiums?	
d) How do Median Compensatory Awards Vary?	
<b>Facts About Medical Malpractice.....</b>	<b>4</b>
a) Medical Malpractice Question & Answer Fact Sheet	
b) What factors Drive Medical Malpractice Insurance Rates?	
c) How do Caps on Damages Affect Physician Malpractice?	
d) Do Caps on Damages Reduce Medical Malpractice Premiums?	
e) Has the Repeal of Caps Increased Premiums?	
f) Do Caps on Damages Reduce Medical Malpractice Payments?	
g) Are Caps Related to Profits?	
h) Do Caps Reduce Access to Health Care?	
<b>Concerns.....</b>	<b>5</b>
a) Stratton Amendment	
b) Evidence of Remarriage	
c) Collateral Source	
1. Collateral Source White Paper	
2. Organizations Groups who support Collateral Source	
3. Kansas Civil Kansas	
4. Kansas Tort Cases	

# **Wrongful Death Question & Answer Fact Sheet**

## **Question 1**

### **How can a family hold a drunk driver accountable for the death of a loved one?**

The civil justice system is designed to hold wrongdoers accountable, and dispense justice in an effort to make injured persons whole again. In a wrongful death case, this is impossible. Deceased victims of wrongdoing can not be brought back to life. What is possible, however, is to adequately compensate surviving spouses, children and/or parents for their loss of companionship.

## **Question 2**

### **What types of damages can be claimed in a wrongful death case?**

There are two types of damages that can be awarded in a wrongful death case, economic and non-economic damages. Economic damages include loss of service, advice, protection, and earnings. Economic damages are not capped. Non-economic damages are capped at \$100,000 and include loss of society, loss of companionship and bereavement.

## **Question 3**

### **What is the public policy benefit of HB 2143?**

This bill supports victims' families and hold wrongdoers accountable. Passage of this bill, ensures compensation and provides a sense of justice to victims' families.

## **Question 4**

### **What is the effect of the wrongful death cap on children and the elderly?**

This cap is especially harsh when a wrongdoer kills a child or an elderly person. If a drunk driver kills a baby the parents can not claim an economic loss. If negligence of a nursing home results in the death of an elderly resident, there is no economic loss to the surviving adult children. There is only non-economic loss.

**Question 5**

**How does the Kansas wrongful death cap compare with other states?**

Kansas has the lowest cap in the nation. Eighty percent of the states do not cap general wrongful death damages. The states that do have caps, have an average cap of \$400,000.

**Question 6**

**How many wrongful death cases are there a year in Kansas?**

We don't know. The Kansas Supreme Court does not track wrongful death cases. Wrongful death is not isolated from personal injury.

**Question 7**

**Is there a litigation crisis?**

There is no litigation crisis in Kansas nor are there very many wrongful death cases in Kansas. Only three percent of all cases are tort actions. Of all the torts, most are auto related. Only a tiny fraction of that three percent are wrongful death cases.

**Question 8**

**Are juries capable of deciding compensation in a wrongful death case?**

Every day dedicated Kansans are responsibly performing their constitutional jury duty, and fairly and justly deciding civil disputes. Kansas juries have been making life and death decisions in criminal cases, so they can clearly decide compensation in a wrongful death case.

**Question 9**

**If the Goldman family's wrongful death suit had been tried and decided in Kansas, would the cap apply?**

Yes, the cap would apply. The \$8.5 million award would be reduced by law to \$100,000 for mental anguish and bereavement. In the O. J. Simpson case that would have been a slap on the wrist and justice would not be served.

**Question 10**

**Are Kansans aware of the wrongful death cap?**

Most Kansans are unaware of the wrongful death cap until the loss of a loved one. Then they are outraged to learn that Kansas has put such a low value on their loss.

**Question 11**

**What groups and organizations support this bill?**

Kansas AFL-CIO  
Kansas National Organization for Women  
In the Best Interest of the Child  
Mothers Against Drunk Driving  
American Association of Retired Persons  
United Transportation Union  
Kansas Trial Lawyers

**Question 12**

**What effect would the Stratton amendment have on the wrongful death cap?**

The Stratton amendment would limit economic recovery as it applies to homemakers. Economic recovery has never been capped. The proposed sum of \$200,000 is not justice for mental anguish, bereavement and loss of services provided by a homemaker.

**Question 13**

**Why is allowing evidence of remarriage anti-family?**

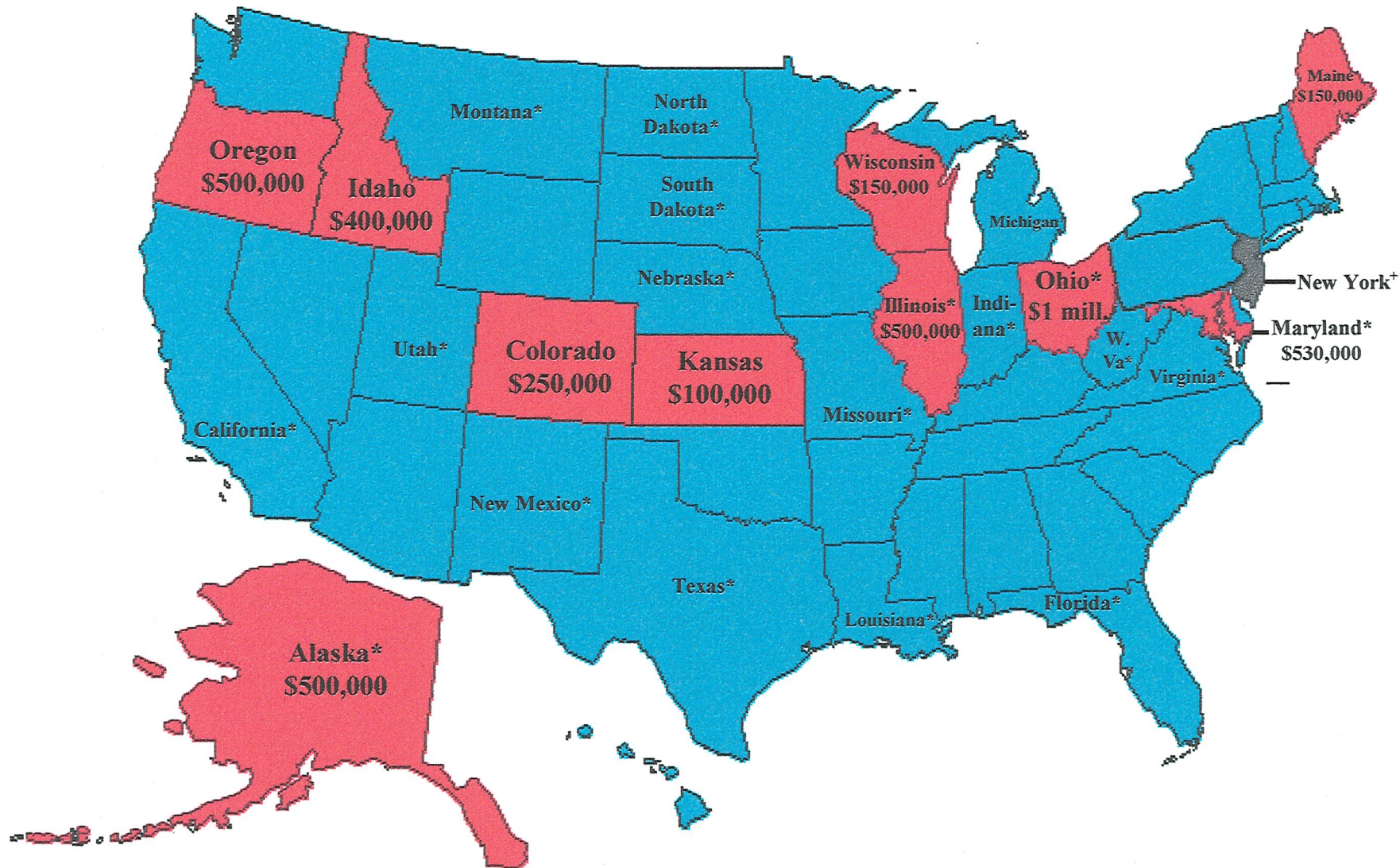
Admitting evidence of remarriage punishes families seeking to rebuild their shattered lives. This is anti-family. Wrongful death suits could take years to work through the court system. Also, a remarriage should not benefit the negligent person and reduce their responsibility.

**Question 14**

**Are punitive damages available in wrongful death cases?**

**No.** Punitive damages are available in survivorship actions. But even with a survivorship claim, punitive damage verdicts are rare.

# Eighty percent of the States do not have Wrongful Death Caps (non-economic damages).



<sup>+</sup> New York only has economic damages

\* Cap on Medical Malpractice wrongful death cases only which is unconstitutional in Kansas. Malpractice Victims v. Bell.

Source: State Trial Lawyer Associations and ATLA.

12-8

# Wrongful Death Damages

**Wrongful death action:** A lawsuit brought on behalf of a deceased person's beneficiaries (parent, spouse, children) alleges that death was "attributable to the willful or negligent act of another" (Black's Law Dictionary, p. 829).

## **Wrongful Death Damages in Kansas:**

- 1) Pecuniary damages are economic damages such as:
  - Loss of financial support or earnings.
  - Loss of service, attention, marital care, parental care, advice and protection.
  - Loss of education, nurturing, training, guidance and loss of complete family.
  - **Economic damages ARE NOT capped.**
  
- 2) Non-pecuniary damages are non-economic damages such as:
  - Mental anguish.
  - Bereavement.
  - Loss of society.
  - Loss of companionship.
  - Loss of comfort
  - **Non-economic damages ARE capped at \$100,000 in Kansas.**
  
- 3) Medical and funeral expenses.



**The Following Organizations  
Support Increasing the Wrongful Death Cap  
from \$100,000 to \$500,000  
in HB 2143.**

**Kansas AFL-CIO**

**Mothers Against Drunk Driving**

**In the Best Interest of the Child**

**Kansas National Organization of Women**

**American Association of Retired Persons**

**United Transportation Union**

**Kansas Trial Lawyers Association**

**The Following Families**  
**Support Increasing the Wrongful Death Cap**  
**From \$100,000 to \$500,000**

**in HB 2143**

**Cheryl Anderson**  
**Holton**

**Steve & Tam Cox**  
**Cheney**

**Terry & Debbie Hahn**  
**Goddard**

**Gail Kuhn**  
**Russell**

**Henry & MaryAnne Lippincott**  
**Wichita**

**Lynn Rieschick**  
**Soldier**

## Support HB 2143

Dear Legislator:

My name is Steven Cox of Cheney, Kansas. I've always felt that even though I wasn't rich materially, I was rich in family. I had married my high school sweetheart, Tam and had three wonderful children, Michael and twin girls, Amanda and Andrea. However, on January 8, 1996 my family was torn apart by a negligent driver.


I was traveling home with my son, Michael and one of the twins, Andrea. A representative of a national company was working his route. As he negligently ran a stop sign, he crashed into my pick up truck, rolling the truck three times. After the crash, I called for Mike and Andrea, the only sound I heard was silence. Michael was lying motionless several feet away from me. He was Life Watched to an area hospital in critical condition. Andrea was rushed to a Wichita hospital, only to die two hours later due to extensive brain trauma. This was devastating for my family and the Cheney community.

As any family would, we wanted to be sure justice was served and that the wrongdoer was held accountable. Unfortunately, the heart-break wasn't over. We quickly learned that Andrea's life was **only** worth \$100,000, because Kansas has the lowest wrongful death cap in the United States. I've always believed that you couldn't put a dollar amount on human life and yet, Kansas has placed a value on my daughter's life. Even the attorney's apologized for the low wrongful death cap.

Andrea is dead. No longer will she go hunting with me nor will we hear her scream touchdown as she plays football with her brother. Our case is settled. We have nothing gain by the raised cap, but the reassurance that grieving parents won't encounter further heart-break when they are told that Kansas has placed an arbitrary value on the loss of our child –the lowest in the nation.

Raise the wrongful death cap from \$100,000 to \$500,000 or repeal it altogether. Let Kansas families know you care and agree that loss of life in Kansas shouldn't be capped at \$100,000.

Thank you,



Mr. And Mrs. Steven Cox,  
Mike, Amanda and yes, even Andrea

P.S. Should you have questions, please call me at 316.542-3851 (home) or 316.262-2098.

Dear Legislator:

Imagine the enormous pain and ordeal of losing a loved one at the hands of a negligent driver, a criminal or a wrongdoer. I don't have to imagine. On April 17, 1994 our seven-year-old twin son, Jonathan, died on the Kansas turnpike as a result of a negligent driver.

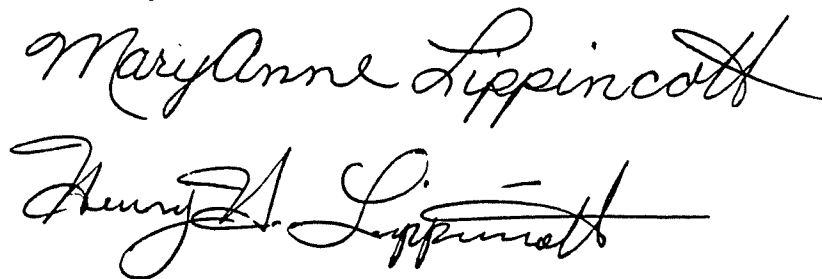
Mary Anne and our three sons, Jacob, Nathan and Jonathan, our daughter Melissa were traveling to the State House for the Governors signing of the proclamation of twins' week. They never made it, because they became the victims of two wrongdoers—a negligent farmer who was burning his field and a negligent driver who was traveling 70 miles an hour into the burning smoke. The burning smoke had produced zero percent visibility for drivers. Even though the driver couldn't see, he didn't slow down.

When a reckless stranger steals your child away from you forever, the only thing that matters is **justice** and **full accountability**. We were outraged when we learned that Kansas law protected the negligent driver from full-accountability and put a **low value** on our son's life. In Kansas, unlike other states, our son's life was only worth \$100,000 which is the lowest cap in the nation. At a minimum the wrongful death cap should be raised to \$500,000. On February 20, the House Judiciary Committee acted favorably on this bill. We would like your support too on **House Bill 2143**.

Unpredictable circumstances dictated our first tragedy, losing our son. Our second tragedy was preventable. It is preventable by making decisions that ensure justice. As legislators you can guarantee that other families, like ours, have the opportunity to experience justice. Raise the cap from \$100,000 to \$500,000. This bill will not help our family, it's too late for that, but it may help your family or a family in your district, seek justice for the wrongful death of a loved one.

Please pass the wrongful death bill—**HB 2143**.

Sincerely,

The image shows two handwritten signatures in black ink. The first signature is 'Mary Anne Lippincott' and the second is 'Henry A. Lippincott'. Both are written in a cursive style.

Mary Anne and Henry Lippincott  
Wichita, District 97

# WHAT STATES HAVE THE LOWEST AVERAGE AUTO PREMIUMS?

RANK	STATE	AVERAGE AUTO PREMIUM	WRONGFUL DEATH CAP
42	Kansas	\$561.74	\$100,000
43	Wisconsin	\$555.20	\$150,000
44	Wyoming	\$549.72	NO CAP
45	Maine	\$547.51	\$150,000
46	North Carolina	\$547.08	NO CAP
47	Idaho	\$533.21	\$400,000
48	Nebraska	\$526.21	NO CAP
49	South Dakota	\$516.18	NO CAP
50	Iowa	\$484.89	NO CAP
51	North Dakota	\$467.15	NO CAP

- **There are nine states with lower average auto premiums than Kansas. Most of them do not have wrongful death caps.**
- **There is no evidence that indicates that insurance premiums will increase due to a raise in the wrongful death cap.**
- **The opposition has never presented any hard data that indicates that insurance rates will increase.**

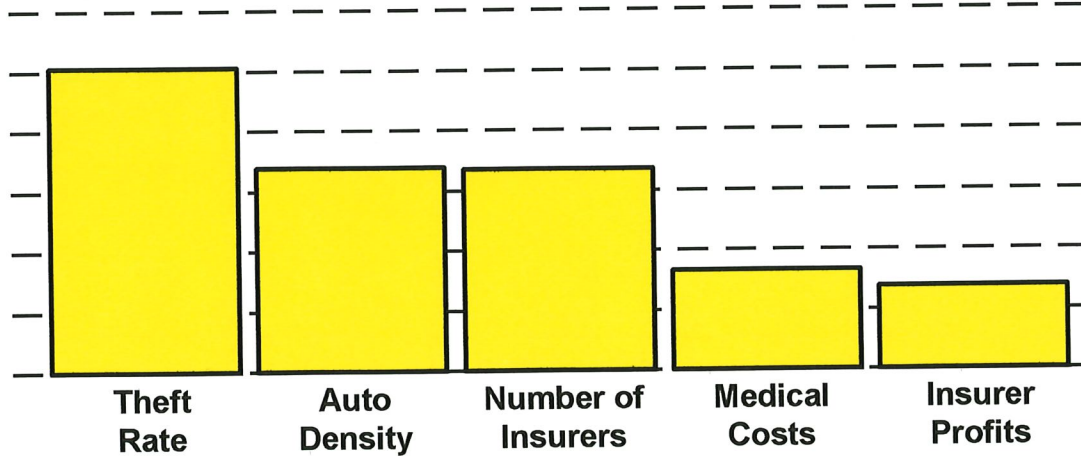
Source: National Association of Independent Insurers (NAII) Greenbook, 1996, p. 55. (District of Columbia was included in this study that is the reason for the 51 states.)

# Insurance Premiums

## What Drives Insurance Premium Rates?

### The Most Important Factors Driving Insurance Premiums

(Based Upon Standardized Regression Coefficients)



### Wrongful Death Do Not Affect Premiums

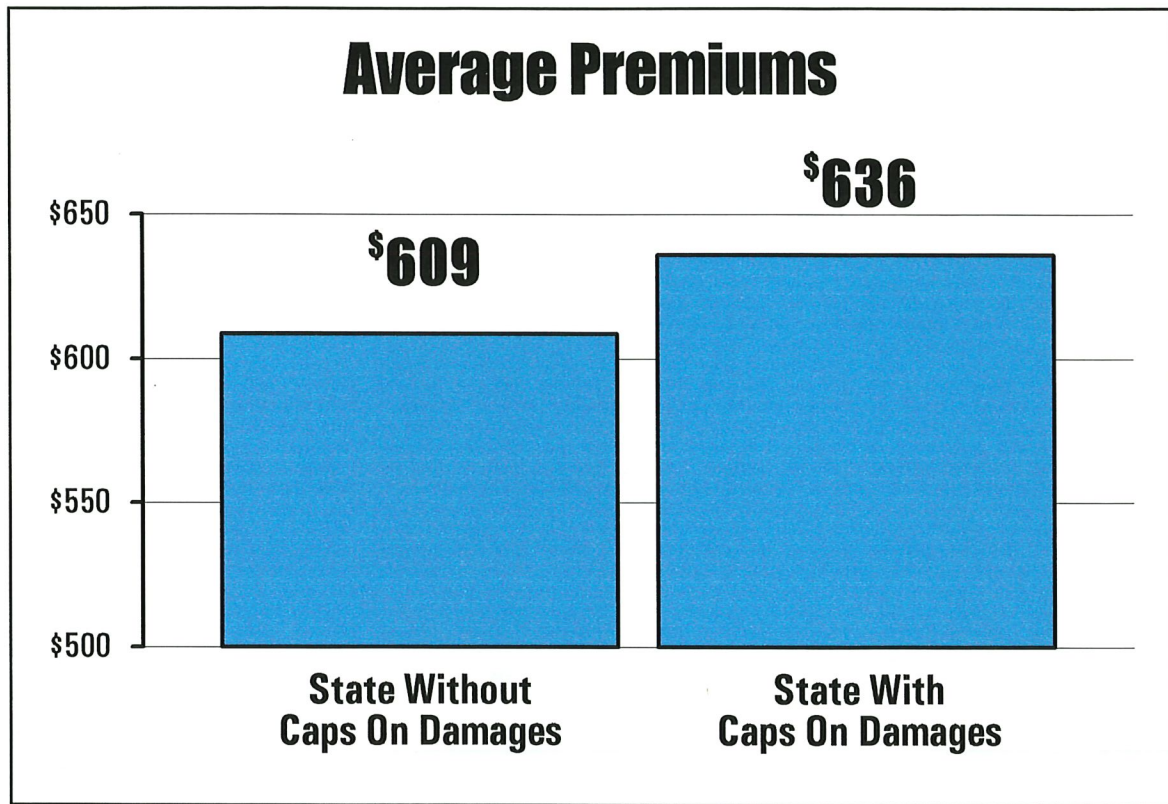
- ◆ **Wrongful Death Caps Have No Statistically Significant Effect on Insurance Premiums\***
- ◆ **Caps Only Take Away Rights**
- ◆ **Caps Do Not Save Consumers Money**

Results are based upon a regression analysis using data from the fifty states. The model explains almost 90% of the variance in insurance premium rates. The other 10% is attributable to idiosyncratic factors in each state. Data was obtained from the Statistical Abstract of the United States, the All Industry Research Advisory Council, and the National Association of Insurance Commissioners.

\* This includes caps affecting wrongful death actions, including both general noneconomic caps and general tort damage caps.

# Insurance Premiums

## Do Caps On Damages Reduce Auto Premiums?

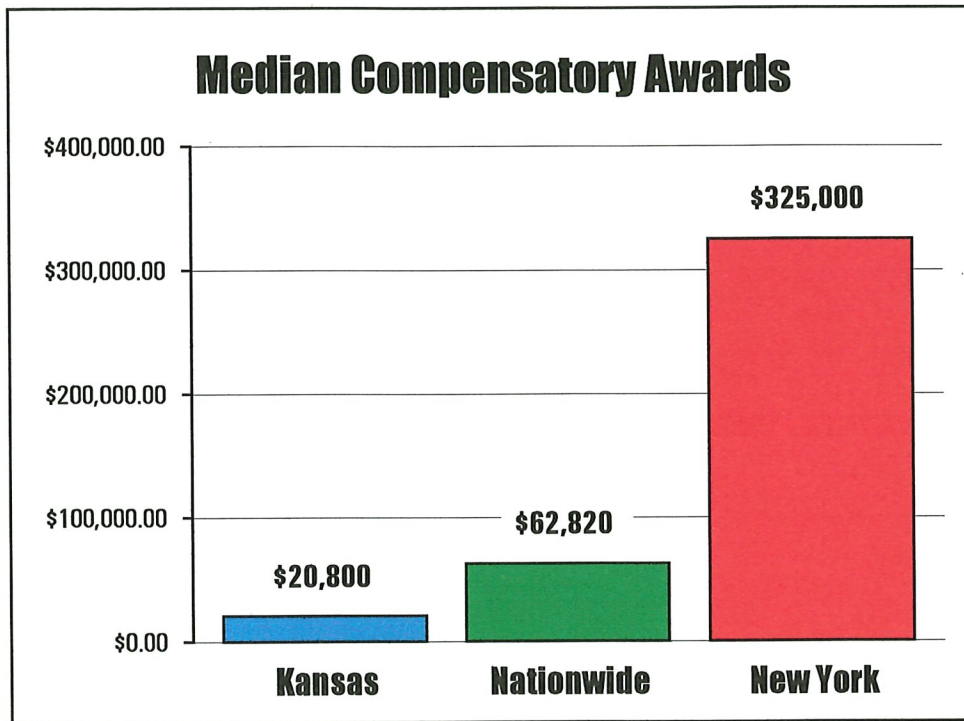


- ◆ **States With Caps On Damages Have Higher Insurance Premiums\***
- ◆ **Caps Only Take Away Rights From Drivers**
- ◆ **Caps Do Not Save Consumers Money**

\* This includes caps affecting wrongful death actions, including both general noneconomic caps and general tort damage caps. Source: National Association of Insurance Commissioners, 1995.KS2ZBABIG

# Compensatory Awards

## How Do Median Compensatory Awards Vary?



- ◆ **New York Ranks First, Kansas Ranks Only 42<sup>nd</sup> In Compensatory Awards**
- ◆ **Kansas' Awards Are Only 33% Of The National Average, 6% Of New York's**
- ◆ **Compensatory Awards Are Low In Kansas**

\* Source: Jury Verdict Research, *Personal Injury Valuation Handbook*, 1998. KS6ZBADIG



# **Medical Malpractice Question & Answer Fact Sheet**

## **Question 1      Do caps on non-economic damages lower health care costs? No.**

- Research indicates that there is no correlation between the imposition of caps and lower health care costs, medical malpractice premium rates, or physician practice rates.
- Between 1980 and 1993, health care costs rose at virtually the same rate in states which had imposed and states which had not imposed caps.

## **Question 2      Do caps decrease average annual medical malpractice insurance rates? No.**

- Rates are decreasing in all states regardless of caps or no caps.
- Premiums charged to physicians for medical malpractice insurance have declined 26% nationally between 1987 and 1993.
- In the states where caps on non-economic damages have been repealed or held unconstitutional, all states have experienced a decrease in their average annual medical malpractice premium.

## **Question 3      Do caps on damages increase the number physicians in rural counties? No.**

- The presence of a cap on non-economic damages does not increase the number of ob/gyns and therefore does not increase access to health care.
- Twelve of the top twenty states with the highest ratio of ob/gyns per 100,000 female population are noncap states.
- A review of the counties nationwide with populations of 5,000 or less turned up one ob/gyn—and that ob/gyn was practicing in a state with no damages cap (Sublette County, Wyoming).

#### **Question 4**

#### **Do caps on damages increase access to care? No.**

- There is no correlation between a cap on damages and the number of physicians who practice.
- Two of the three states (District of Columbia and New York) with the highest number of physicians do not have caps on non-economic damages. In contrast, two of the three states (Alaska and Idaho) with the lowest physician ratios have imposed non-economic damages caps.

#### **Question 5**

#### **Who profits from medical malpractice?**

The insurance industry.

- The insurance industry's profitability is up in almost every state, notwithstanding the presence --or lack of-- a cap on non-economic damages.
- Delaware (which has no cap in place) reported a 66.6% total profit on the medical malpractice line of insurance in 1992. In contrast, its neighboring state of Maryland (which has a cap on tort recovery) saw profits of 38.8 % in the same year.
- Not only have the insurers been recognizing such profits, but in 1993 alone, 36 states saw their medical malpractice insurance systems spend more on overhead and profit than on benefits to those injured by negligent doctors.
- Medical malpractice insurance is a lucrative business; insurers are highly profitable.

#### **Question 6**

#### **Do caps on damages have an effect on per capita health care spending? No.**

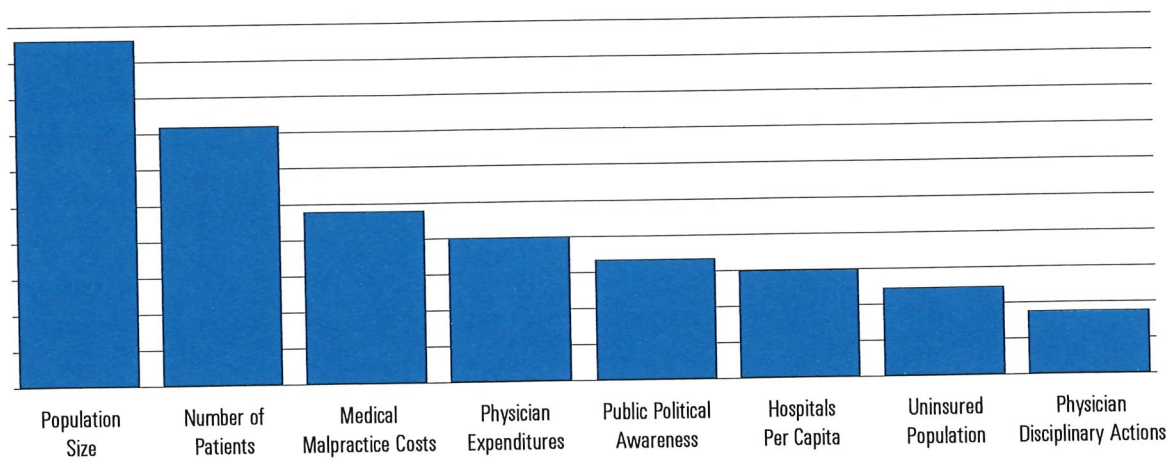
- In California and Indiana, two states with the most stringent caps on medical malpractice, per capita health care spending has continued to climb.
- In Indiana, per capita health care expenditures in 1993 were 237% of what they were in 1980, despite a cap on non-economic damages.

Source: "Health Care Statistics and the Effect of Caps on Non-economic Damages.  
Citizen Action.

# Medical Malpractice

## What Factors Drive Medical Malpractice Insurance Rates?

**The Most Important Factors Driving Medical Malpractice Insurance Premiums**  
(Based Upon Standardized Regression Coefficients)



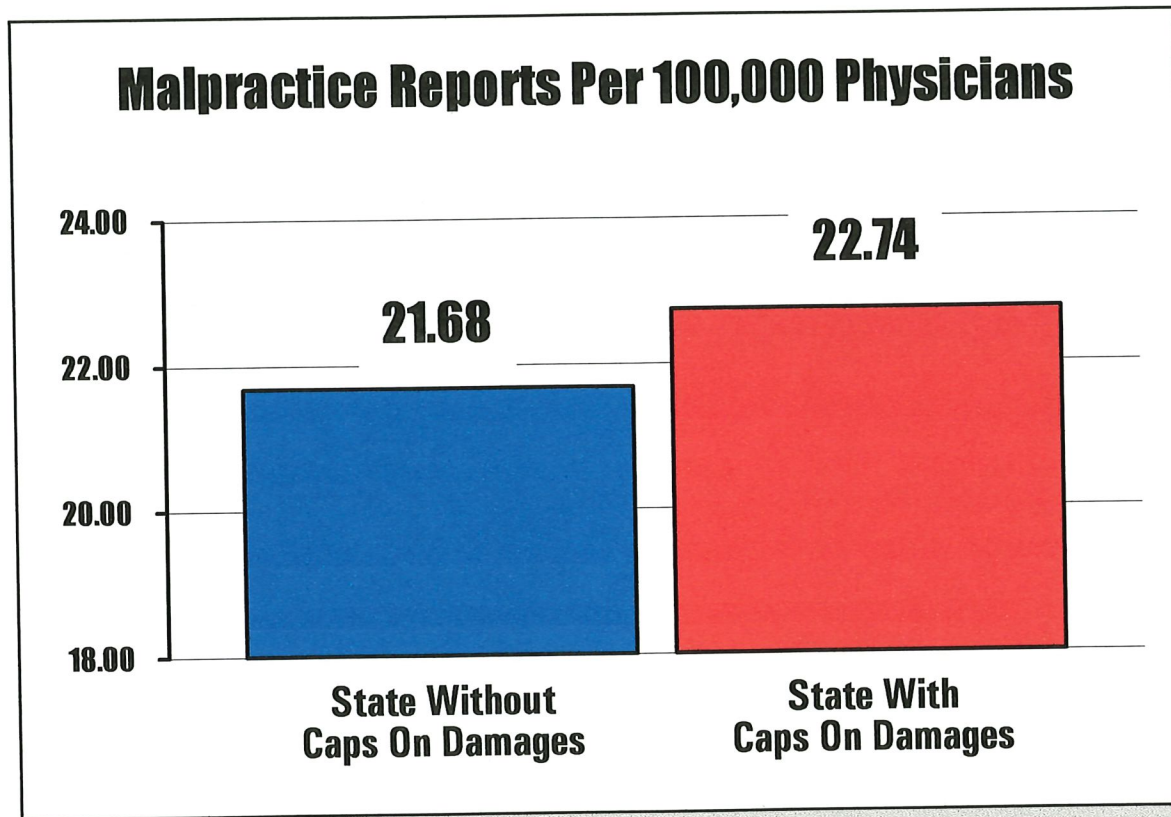
## Medical Malpractice Damage Caps Do Not Affect Premiums

- ◆ **Medical Malpractice Damage Caps Have No Statistically Significant Effect on Premiums\***
- ◆ **Caps Only Take Away Rights**
- ◆ **Caps Do Not Save Consumers Money**

Results are based upon a regression analysis using data from the states. Relative effect of each variable is based upon standardized regression coefficients. Data on premiums is from St. Paul. Data on population size, number of patients, physician expenditures, hospitals per capita (#hospitals/population), and uninsured population is from the Statistical Abstract of the United States. Data on medical malpractice costs represents the average payment times the number of payments; data is from the National Practitioners Data Bank, available online at <http://www.hrsa.dhhs.gov:80/bhpr/dqa>. Public political awareness measure is operationalized from voter turnout data from the Statistical Abstract of the United States and thus measures the public's belief in the ability of political institutions to solve problems. Data on physician disciplinary actions is from Public Citizen, *10289 Questionable Doctors*. Model R<sup>2</sup> is .80. Note: Several other variables did not have a statistically significant effect on premiums, including, but not limited to: percent urban, population density, ob/gyns per female, hospital costs, median income, several fraud measures, population over 65, population 18-24, crime, #physicians, #nurses, poverty rate, percent of pop'n with college degree, percent of pop'n with high school degree, state ideology (liberal/conservative), medicare/medicaid expenditures/enrolees, #patients per physician, birth rate, and overall health expenditures. KS16ZCAGIG

# Medical Malpractice

## How Do Caps On Damages Affect Physician Malpractice?

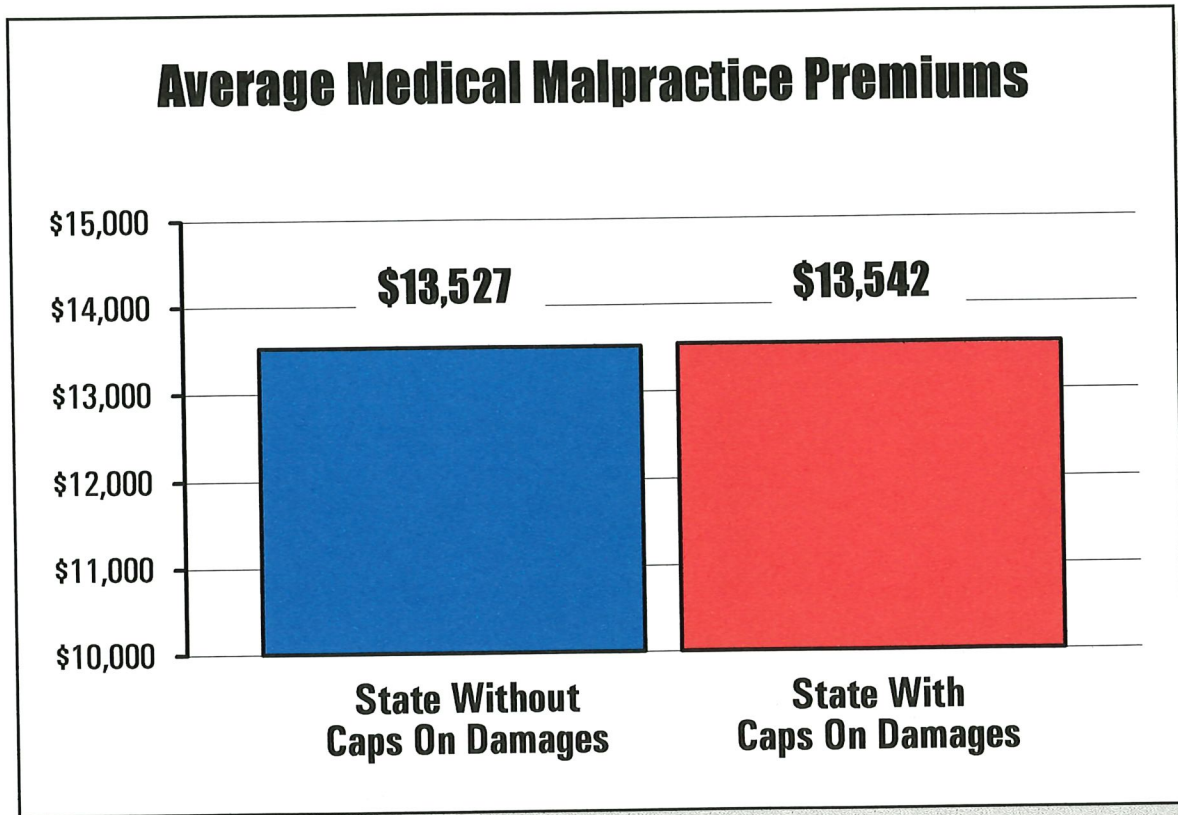


- ◆ **States With Caps On Damages Have More Malpractices Reports**
- ◆ **States With Caps Do Not Deter Malpractice As Well As States Without Caps**
- ◆ **Caps Do Not Save Consumers Money**

Data for reported malpractice rates is from the National Practitioners Data Bank, available online at <http://www.hrsa.dhhs.gov:80/bhpr/dqa>. KS15ZCADIG

# Medical Malpractice

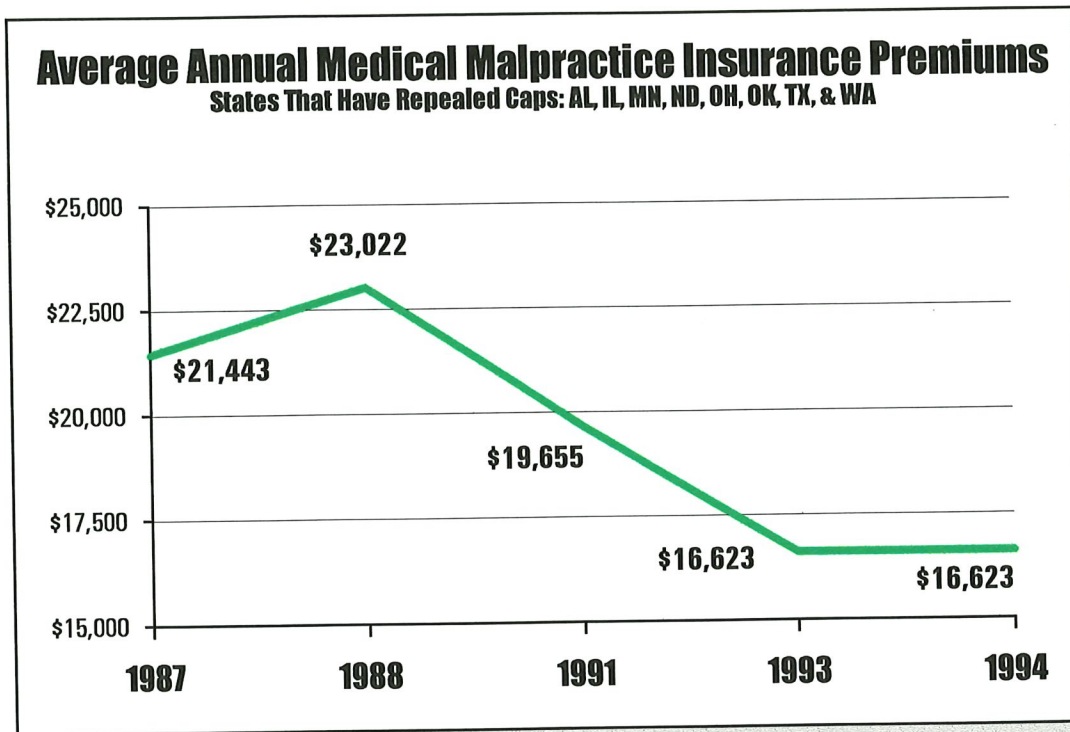
## Do Caps On Damages Reduce Medical Malpractice Premiums?



- ◆ **States With Caps On Damages Have Slightly Higher Medical Malpractice Premiums**
- ◆ **Caps Do Not Make Doctors Pay Higher Premiums**
- ◆ **Caps Do Not Save Consumers Money**

# Medical Malpractice

## Has The Repeal Of Caps Increased Premiums?

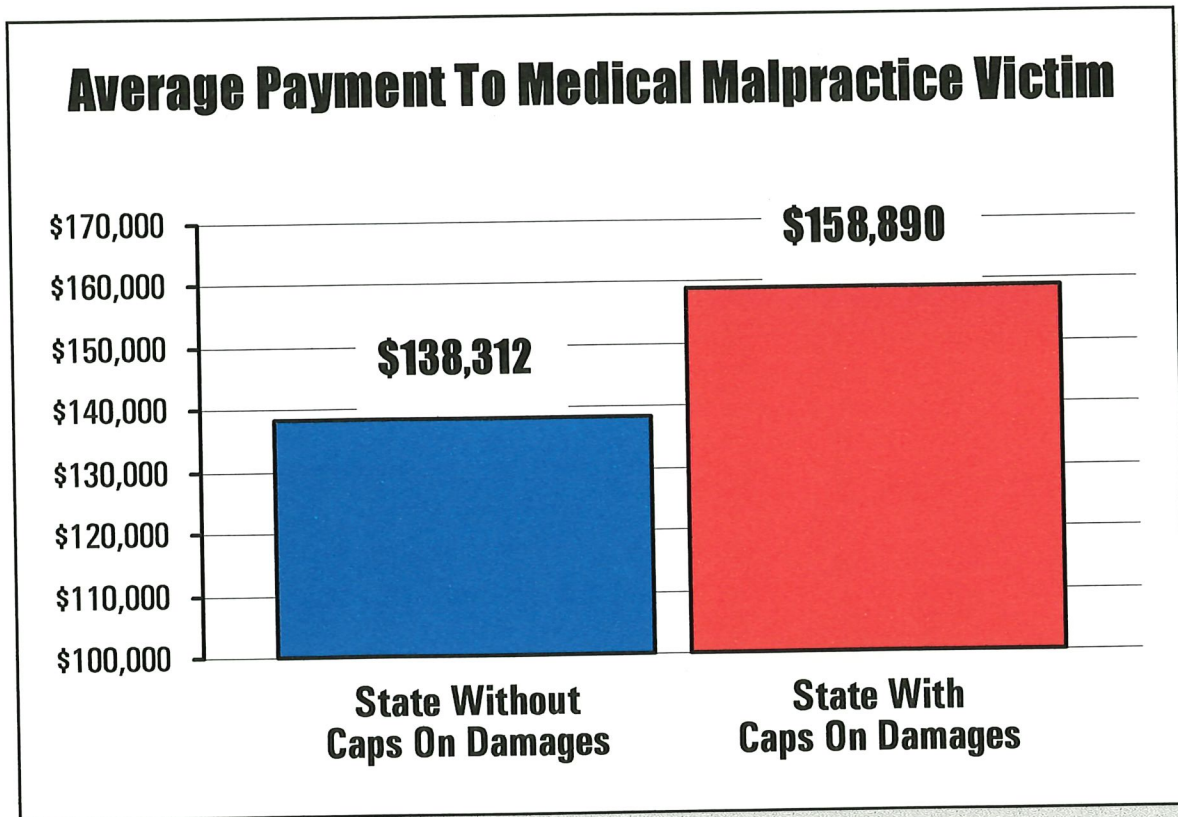


- ◆ **Medical Liability Premiums Have Gone Down In States That Have Done Away With Caps**
- ◆ **Premiums Are Down Almost 30% Since 1988**
- ◆ **Caps Do Not Affect Premiums**

\* Sources: St. Paul Fire and Marine Insurance Co.; GAO, "Medical Liability: Impact on Hospital and Physician Costs Extends Beyond Insurance," GAO/AIMD-95-189 (9/95) (citing The Saint Paul Medical Services, Physician and Surgeon Update, June 1994). Data cited from Citizen Action: Health Care Statistics and the Effect of Caps on Noneconomic Damages, p.11. States are included for all those that have data for each year (AL, IL, MN, ND, OH, OK, TX, and WA). Florida and New Hampshire are excluded because data is not available for each year. K9ZCZB1G.

# Medical Malpractice

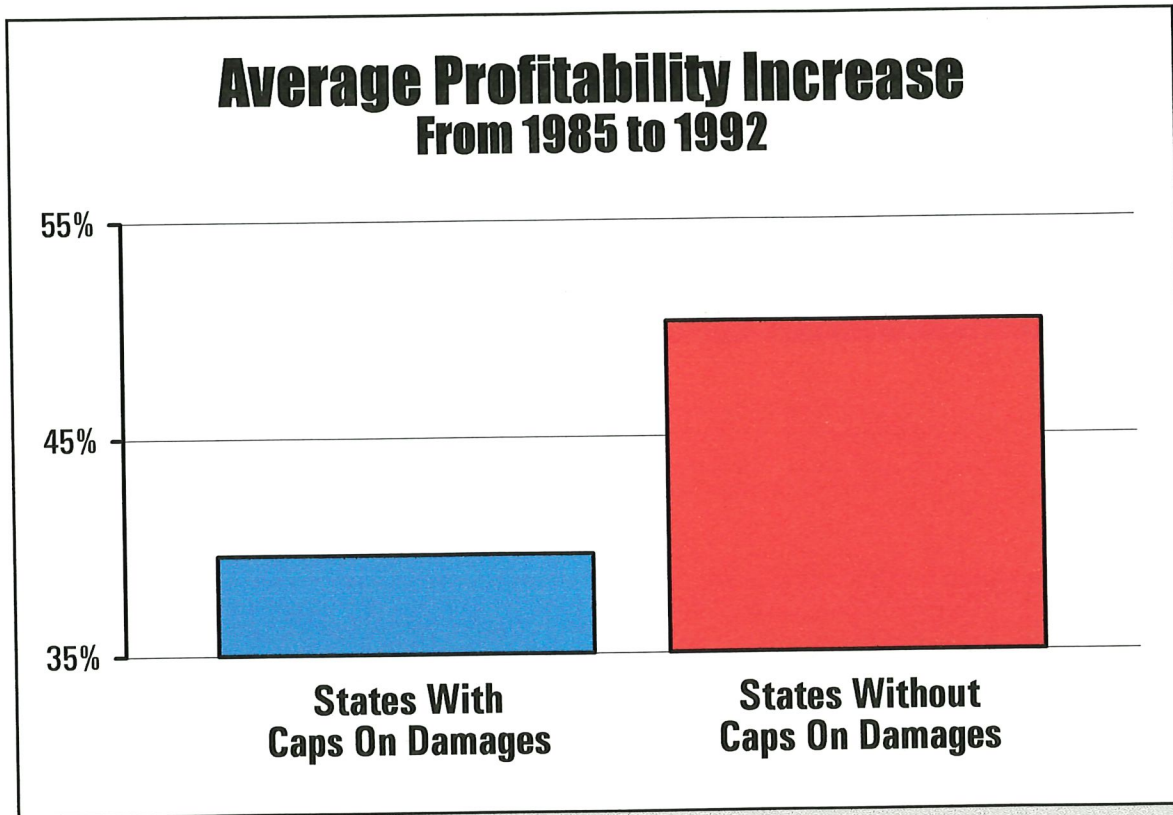
## Do Caps On Damages Reduce Medical Malpractice Payments?



- ◆ **States With Caps On Damages Have Higher Medical Malpractice Payments**
- ◆ **Caps Do Not Increase Costs To Insurers**
- ◆ **Caps Do Not Save Consumers Money**

# Medical Malpractice

## Are Caps Related To Profits?



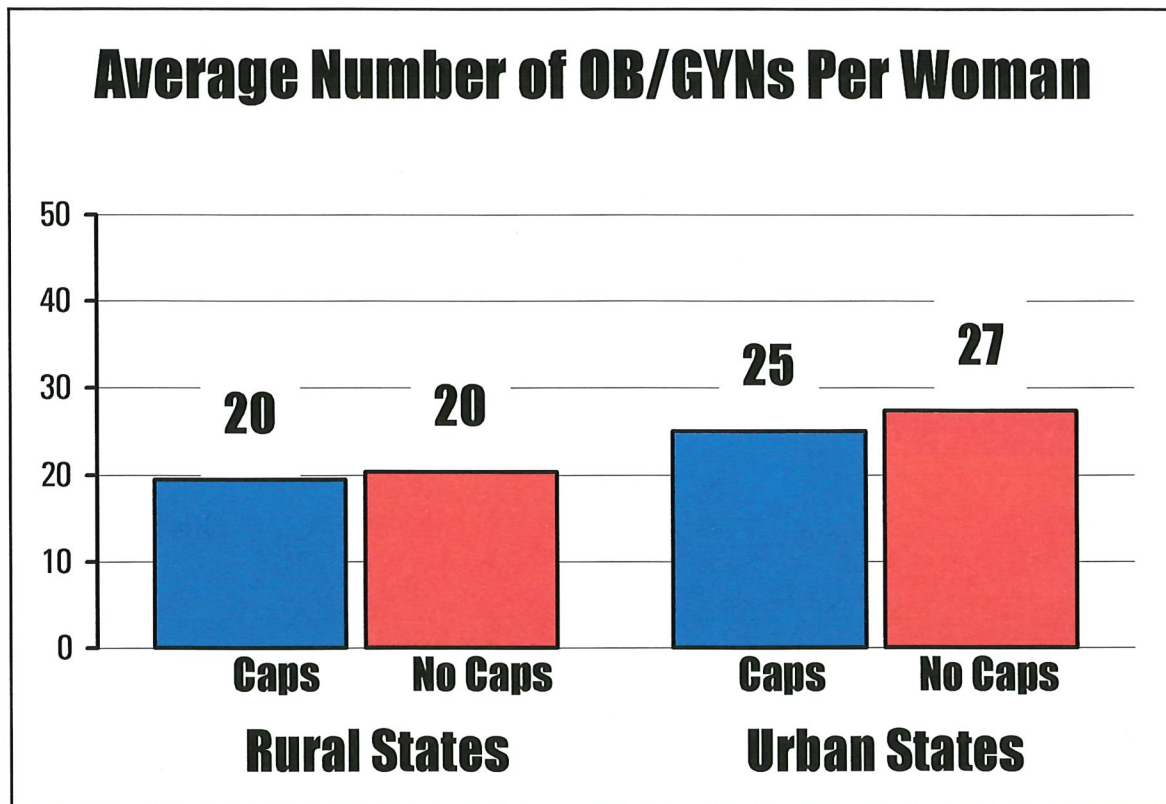
- ◆ **States Without Caps Have Had Higher Profit Increases For Insurance Companies**
- ◆ **If You Want To Decrease Medical Malpractice Premiums, Hold Down Insurance Company Profits**
- ◆ **Holding Doctors Accountable Does Not Cost The Insurance Industry Money**

\* Sources: Citizen Action: Health Care Statistics and the Effect of Caps on Noneconomic Damages, pp. 22-23., based upon data from the National Association of Insurance Commissioners.. KS10ZCZBIG.



# Medical Malpractice

## Do Caps Reduce Access To Health Care?

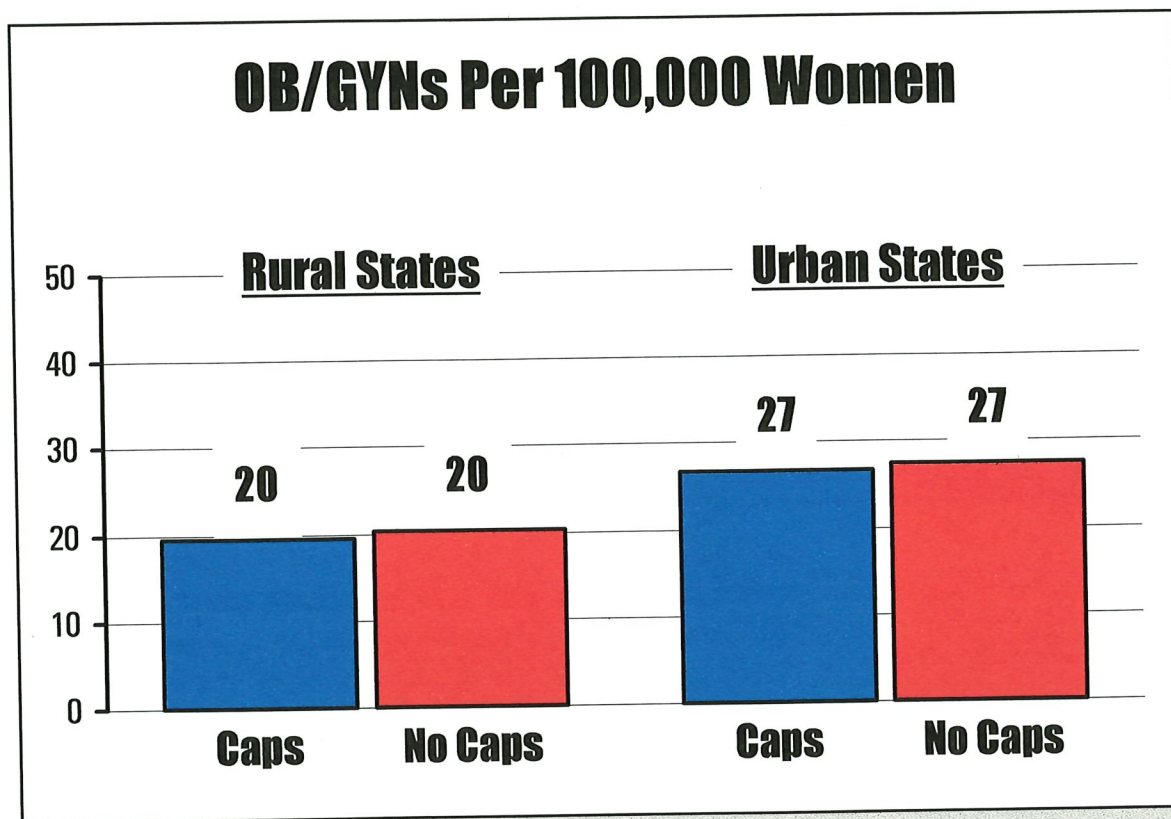


- ◆ **There Is Virtually No Difference In Number Of OB/GYNs Per Woman**
- ◆ **Access Is A Function Of Urbanization, Not Caps**
- ◆ **Caps Do Not Drive Doctors Away**

\* Data is from the US Census Bureau and the American Medical Association, cited in Citizen Action: Health Care Statistics and the Effect of Caps on Noneconomic Damages, p.18. The top 25 most urban states are listed as "urban," the 25 least urban states are listed as "rural." KS12ZBABI6

# Medical Malpractice

## Do Caps Reduce Access To Health Care?



- ◆ **There Is Virtually No Difference In Number Of OB/GYNs Per Woman**
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# Reject the Stratton Amendment

**This amendment is a subterfuge and should be rejected.**

Only 20% of the states have caps on the recovery of damages in wrongful death cases and Kansas has the lowest cap of any state. The few states that do have caps have an average cap of \$400,000. The \$100,000 Kansas cap on non-pecuniary damages is harsh and HB 2143 aims to correct this injustice.

The Kansas Medical Society (KMS) continues to tout its "Stratton" amendment as a responsible measure to correct the deficiencies in the Kansas wrongful death law. This amendment is a **subterfuge** and should be rejected for the following key reasons:

1. By raising the cap to \$200,000 the amendment creates the appearance of making a major concession. In fact, it takes more from surviving Kansas families than it gives because it greatly expands the scope of the non-pecuniary damages cap to encompass elements of damages that are clearly pecuniary (no cap) under well-established Kansas law.
2. The Wentling decision (237 Kan. 503 [1985]), which involved the death of a 22-year old wife, mother of a Down's syndrome child and homemaker, is a leading Kansas wrongful death case. KMS and the Kansas Hospital Association filed a friend of the court brief in Wentling through Mr. Stratton's law firm. The Supreme Court stated in Wentling that "all parties concede the losses herein, services care and guidance, are valuable per se and pecuniary in nature" (p.514). For KMS to now claim that the Legislature never intended to recognize that the services performed and care given by a homemaker for or to her family are not valuable and pecuniary is **inaccurate**.
3. The "Stratton" amendment clearly caps damages for losses of services, care and guidance. If enacted, the wrongful death of a wife and mother who stays at home rearing her children and providing for her family would never be greater than \$200,000 plus funeral expenses. Nothing could be more **anti-family**.

**Reject the Stratton Amendment  
Pass HB 2143 With No Amendments**

## **The Current Exclusion of Evidence of Remarriage in Wrongful Death Cases Protects and Preserves the Family**

**Allowing evidence of remarriage in wrongful death cases  
lets wrongdoers off the hook.**

**Kansas has consistently followed the vast majority of other states which exclude the introduction of evidence of remarriage of the widow/widower in wrongful death actions. Evidence of remarriage will be used by wrongdoers as an excuse for avoiding full responsibility for the destruction of a family.**

### **Reasons to reject this amendment:**

- 1. Admitting evidence of remarriage punishes families seeking to rebuild shattered lives. This is anti-family. A surviving parent should not be discouraged from remarrying so as to provide a new mother for a child of tender years, or a new father for a troubled teenager.**
- 2. The "new" spouse may have no legal obligation to support the children of the deceased.**
- 3. Evidence of remarriage could distract a jury and lead to reduced damages for the surviving children. For surviving children there can never be a "substitute parent" in love or in law.**
- 4. Introduction of this evidence could needlessly extend the litigation.**

**Allowing evidence of remarriage is a mere distraction for the jury to avoid the real issues - determination of fault and fair compensation. A wrongful death lawsuit may take two to four years. Victimized families should not have to put their lives on hold while their case is tried.**

**Protect and Preserve the Family  
Kansas Trial Lawyers Association  
913-232-7756\*Fax 913-232-7730**

## Collateral Source

Abolishing the collateral source rule threatens the civil rights of all Kansas consumers, especially victims of auto accidents, defective products, medical malpractice and other negligent acts. **Any attempt to abolish the collateral source rule is dangerous and deceptive to Kansans and benefits all of the WRONG people.**

The collateral source rule is a rule of evidence that prohibits telling the jury about certain types of insurance and other benefits that an injured person has or will receive in the future. A similar rule applies to the defendant, which prohibits a jury from being told about any insurance that a defendant may have available to pay a judgment. However, insurance companies only want to abolish the collateral source rule that applies to a victim, therefore tipping the scales of justice in favor of negligent parties like drunk drivers.

The collateral source rule has been in place in our country for more than 200 years and in Kansas for more than 100 years. The rule is based upon the premise that those causing the harm to others must pay for the resulting damages. This policy fosters two beneficial goals: (1) It provides a means for the wrongdoers to compensate their victims; and (2) it serves as a deterrent for similar negligent behavior by the defendant and others in the future.

By abolishing the collateral source rule the medical insurance industry would limit their professional liability and increase profits. Their desire to sacrifice the civil rights of Kansans is particularly arrogant when you consider that only 3 percent of all tort filings in Kansas are malpractice – 54.4 percent of tort cases are automobile accidents. Kansas citizens believe in personal accountability and would be appalled to have the drunk driver benefit from a victim's insurance and then not be held personally and financially accountable for their actions.

**It is vitally important that all Kansas consumers oppose any attempt to drastically reduce individual civil rights and say NO to criminals, drunk drivers, and insurance companies.**

**THE FOLLOWING ORGANIZATIONS**  
**OPPOSE THE REPEAL OF**  
**THE COLLATERAL SOURCE RULE OF LAW**  
**IN HB 2218 AND HB 2220.**

Kansas Coalition Against Sexual and Domestic Violence

United We Stand America of Kansas Inc.  
Third Congressional District

Kansas County and District Attorneys Association

Kansas Bar Association

Survivors of Silicone

The Rachel Foundation

Implant Device Education Association (IDEA)

Toxic Shock Victims

Plumbing and Pipefitters Industry Health  
and Welfare Fund of Kansas

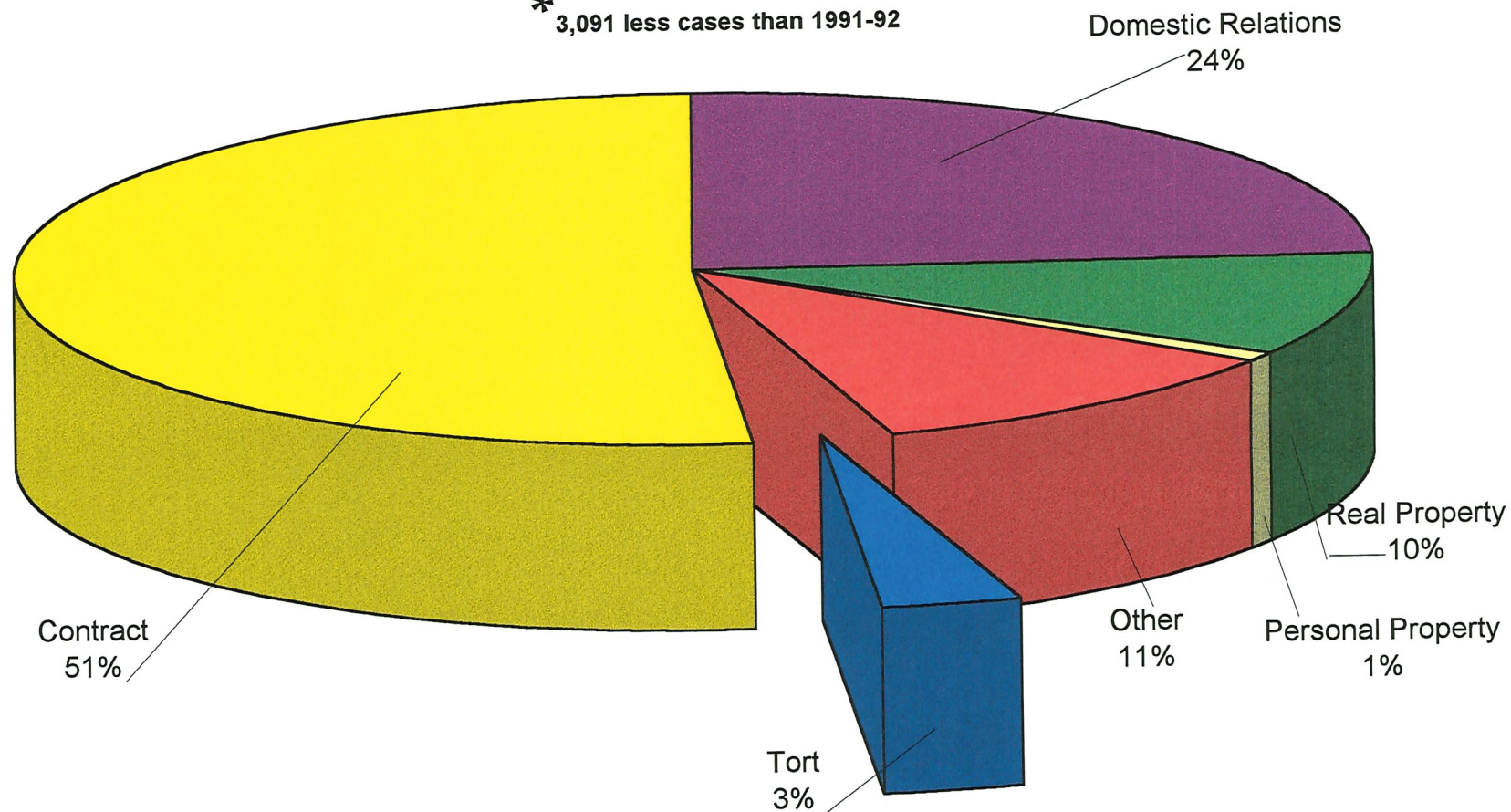
Kansas Trial Lawyers Association

Kansas AFL-CIO

# Kansas Civil Cases FY 1992-93

## Breakdown of 135,875 civil cases filed

\* 3,091 less cases than 1991-92



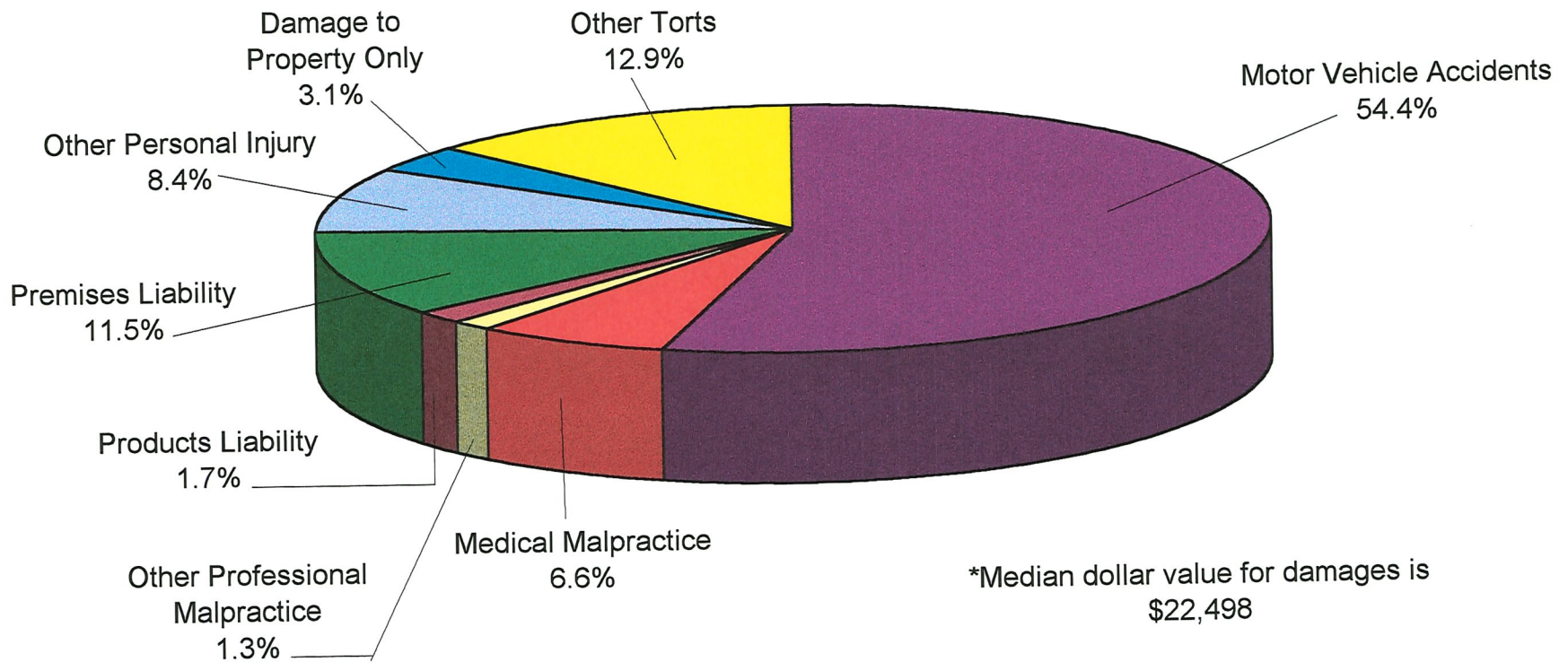
(From the Office of Judicial Administration, Annual Report of the Courts of Kansas, 1992-93 Fiscal Year)

12-32

# Kansas Tort Cases FY 1992-93

Breakdown of 225 tort cases  
that resulted in a jury trial

(3,851 tort cases were dismissed or settled out-of-court)



(From the Office of Judicial Administration, Jury Verdicts in Tort Cases 1992-93)

12-33



*Senate Judiciary Committee*

*House Bill 2143*

*Testimony of*

*Steve Dickerson, Vice-President for Legislation*

*Kansas Trial Lawyers Association*

Mr. Chairman, and members of the committee, good morning. My name is Steve Dickerson and I'm appearing today on behalf of the Kansas Trial Lawyers Association and Kansas consumers. HB 2143 represents a momentous opportunity for this Senate committee to advance important, needed legislation and sound public policy.

"Non-economic loss" sounds so abstract, but it's really very tangible and important. It often encompasses the most significant components of a family's loss on the wrongful death of a loved one - anguish, bereavement and loss of companionship. For example, a parent is a wellspring of unconditional love for a child and the child's best companion in the whole world. When that child is wrongfully robbed of a parent's love and companionship, the loss is as tangible as the piercing chill of a cold winter night.

Death is death is death - we all live with and grieve over the deaths of loved ones. We all die. In the end, does a cap really matter? It matters because losing a loved one at the hands of a drunk driver or a corporation blinded by profit or a wrongdoer is different.

The civil justice system knows it is different and tries to right the wrong the only way it knows how, by judgment for reasonable monetary compensation.

Survivors know it is different too. Whether it's the mother who lost a son due to a blood transfusion that someone forgot to screen for HIV contamination, or the parents who lost a daughter because the buckle on their child safety seat failed in an accident, or the father who lost a daughter when a drunk came across the centerline. These wrongful deaths can be all-consuming and can inspire the survivors to lifelong crusades for an HIV-free blood supply, safe child restraint systems and responsible drunk driving laws.

Laws should be rational so citizens can understand them, and fair so citizens respect them. If the law arbitrarily says to a surviving family who has wrongfully lost a loved one - we don't care about your circumstances or your plight - we don't care what a responsible

*Senate Judiciary  
Attachment 13  
3-24-97*

Kansas jury decided in your case -we don't care if you're deprived of honest compensation; then the law isn't rational, it isn't fair and it isn't right. The \$100,000 wrongful death cap is just such a law and should be changed.

Even though most Kansas families will never experience the enormous pain and emptiness of losing a loved one to a wrongful or senseless or criminal act, they believe, virtually to a person, that if they ever have to face the ordeal, the law will deal with them fairly. When the unthinkable happens and families lose a loved one and turn to the law to find justice, yet find that law unfair, those families never understand.

I have had the distinct professional privilege of counseling surviving families and I have had the unpleasant experience of trying to explain the cap to them. They invariably ask:

"What is a cap?" It's an arbitrary limit on the damages you can recover, no matter what the jury says is fair.

"Does every state do it this way?" No. Most states don't have such a cap or limitation.

"How many don't?" Eighty percent of the states don't have such a cap.

"Where does Kansas stand among the states that have these caps?" It has the lowest cap of any state in the nation.

"Why?" There isn't a good reason why. It's just the law.

Several arguments have been raised against HB 2143 that warrant clarification. During House debate, opponents urged that the cap didn't need to be raised because families can file two other claims in addition to a wrongful death claim, a "survival" claim and a punitive damages claim. The suggestion was even planted that these additional claims create the potential for a double recovery for the death. Unfortunately, the opponents don't tell you everything.

It is true that the wrongful death of a loved one may generate two legal claims, a wrongful death claim and what is commonly referred to as a "survival" claim. However, it is not true that a survival claim is possible in every, or even most, wrongful death cases. The two claims compensate different damages and losses. The wrongful death claim compensates the surviving family's damages and losses. The core of a survival claim is to compensate the probate estate for conscious pain and suffering. If the injured victim didn't consciously suffer, as was the case with Jonathan Lippincott, no survival action is possible.

Punitive damages are similarly a subterfuge in this debate. No matter how irresponsible, flagrant, vindictive or atrocious the act, a wrongdoer can't be held liable for punitive damages in a Kansas wrongful death claim, only in survival claims that result from willful, wanton, fraudulent or malicious conduct. Punitive damages are rarely recovered in this state.

During the House debate on this bill even opponents reluctantly acknowledged that the cap was harsh - especially harsh in wrongful deaths of children, older citizens and others who produce very little income - and probably ought to be raised. But, they wanted "conditions." One of the conditions came in the form of an amendment proposed to the House Judiciary Committee by the Kansas Medical Society.

It grudgingly raised the cap to \$200,000, creating the appearance of a notable concession, then deftly took away more than it conceded by expanding the scope of the cap. For example, it moved damages for loss of services, care and guidance under the cap even though they are clearly valuable per se and economic in nature under well-established Kansas law. If this strategy were enacted, the wrongful death recovery for a wife and mother who stays at home rearing her children and providing for her family would never be greater than \$200,000 plus the funeral bill. This is harsher than present law and should be rejected as anti-family and unfair.

The real issue isn't the cost of doing business. Evidence shows the cost of doing business or the cost of obtaining insurance isn't going to materially increase as a result of HB2143. Some public policy issues, like this one, have human implications and deserve to be analyzed and dissected on more than just economic terms. Sometimes human factors are no less important than economic factors.

The real issue isn't doctors versus lawyers. Only a relatively few wrongful deaths occur each year as a result of medical negligence.

The real issue isn't attorney fees. Attorney fees are already regulated by statute and Supreme Court rule. The claim has been made that most contingent fee contracts are 50% contracts. That claim is flatly untrue. Only reasonable fees are allowed by law in every wrongful death and medical negligence case.

The real issue is doing what's right; its bringing essential fairness to a system that now lacks fairness; its respecting the worth of a wrongfully taken life; its examining HB 2143 on its own merits, free of amendments intended to undermine the bill's beneficial purpose. If we're going to have a cap, and political realities apparently make it so, then let's have a honest debate about where to set the cap, or whether to index it each year, not about a host of side issues aimed at obscuring the real issue, holding wrongdoers accountable.

The inequity of the Kansas cap is evident. HB 2143 provides a simple solution. Any amendment to this bill would only complicate that solution. KTLA respectfully urges passage of HB 2143 without amendment. Thank you.

24 March, 1997

Richard Dickey  
4250 NW Union Drive  
Topeka, KS

**Support HB 2143**

I am Richard Dickey. My wife Nancy entered the hospital and never returned home. She checked into the hospital because she had an allergic reaction to her a diuretic. She was hospitalized for 26 days. The doctor had repeatedly cautioned me that she might not make it through the night. Soon she was getting better. I was elated when the doctor told me she was going to be moved from the intensive care unit to a general floor. I thought to myself, she's out of the woods. She's going to be okay. I had hope. That hope vanished when I learned that my wife was dead, because her doctor had acted carelessly. The cause of death was due to a punctured artery.

A jury found the doctor 100% responsible for Nancy's death. Sadly, the doctor's defense was that she was going to die anyway. Negligent doctors should be held responsible for the harm they cause families, instead of being protected by insurance companies and state laws that limit their responsibility. I am not indicting the vast numbers of doctors who are responsible and uphold the Hippocratic oath to "abstain from harm." However, there are doctors who are careless, incompetent, and addicted to drugs and alcohol and when these doctor's take a life. They, like all other citizens need to be held accountable.

Holding wrongdoers accountable for their actions is the heart of the civil justice system. This accountability is undermined in Kansas by the arbitrary limit on the amount a jury can compensate a victim's family, such as mine.

Before Nancy died, I supported the wrongful death cap at \$100,000. I actually agreed with the imposition of a cap, until it affected my two son's and me. The year after Nancy died was difficult at best. I had gone from being married, to being a widower; from being the primary breadwinner to being the only breadwinner; from having one son in college to having two sons in college. I am asking you to raise the cap to at least \$500,000 or abolish the cap. Thank you for your accountability to Kansas victims.

*Senate Judiciary  
Attachment 14  
3/24/97*

95. 3/24 att 15  
Written

Written Testimony Supporting HB 2143  
Dr. Victor Hurtig

Dear Legislators:

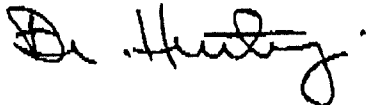
November 29, 1986 was a spectacular and clear sunny day. It was a day to get the yard picked up before winter arrived. It was also the day, our daughter freshly crowned Republic Country Junior Miss was killed a mile from our home by a drunk motorist.

This senseless loss of life of our future young veterinarian could never be justified by any amount of compensation. To add to the injustice of this horror we were covered by our insurance policy for uninsured motorists in the amount of \$300,000. Two months and two lawyers later, we were informed the states \$100,000 cap.

The year my daughter died, nearly half of all fatal car wrecks involve alcohol. Unfortunately, my daughter was one of them. Approximately 2 out of every 5 Kansans will be involved in an alcohol-related crash at some time during their lives. This could even happen to you.

Please support House Bill 2143.

Sincerely,



Dr. Hurtig

Senate Judiciary  
Attachment 15  
3-24-97

Send Bill att 16  
with

Written Testimony of Debbie Hahn  
for consideration of the  
Kansas Senate Judiciary Committee

Kansas Wrongful Death Law  
HB2143

My name is Debbie Hahn. My husband, Terry and I would like you to know a little about our daughter, Jill. She was a very well liked young lady who was an honor student and participated in many activities. She had dreamed of attending Kansas University to Major in Sports Medicine and had the potential to do just that.

On July 30, 1993, Jill was fatally injured in an automobile accident. Substantial negligence by both drivers resulted in the deaths of two promising young adults - Jill and one of the drivers. There are no words to express how devastating your child's death can be. The loss that you feel is beyond comprehension.

If our daughter's life was only worth a maximum of \$100,000, we would have gladly paid that amount on July 30, 1993. We cannot put a price on a human life - there is not enough money in the world, but \$100,000 is like a slap in the face.

Why do we have insurance? Is the cap protecting the insurance companies or families?

*Senate Judiciary  
Attachment 16  
3-24-97*

# AARP

## *American Association of Retired Persons*

*Senate Judiciary Committee  
Hearing on House Bill 2143  
March 24, 1997*

I am Tom Young and I represent the Kansas members of the American Association of Retired Persons. AARP supports House Bill 2143. To explain why, I would like to share with you the attached letter of Marilyn Davis of South Hutchinson, Kansas. Ms. Davis's mother-in-law died as a result of negligence while she was a resident in a nursing home.



March 17, 1997

Dear State Legislator,

Please allow me, as a citizen personally involved with the issue, to relate some of my findings concerning the current statutory cap on damages that may be recovered for wrongful death: the value of life in Kansas is near zero, unless you are a wage earner or have income. For our babies, our children, our disabled and our elderly – for those who were not wage earners before they were wrongfully killed – the cap of \$100,000 effectively prevents many grieving families from obtaining true compensation, or from even seeking compensation in the first place.

I speak from experience. This past year my mother-in-law was killed. She was a resident in a nursing home. Her death was needless, a result of negligence. She was strapped down to her bed to limit her movement. She was left unattended for a lengthy period. When she was finally checked, she was found dead from strangulation by the restraints. The nursing home was cited by the State for failing to follow the laws of Kansas concerning proper monitoring of the patient wearing a restraint. The wrongful death cap gives a break to corporations and businesses that engage in this type sloppy, careless service. The cap punishes the families of their victims, as well as the victims who might have lived if the killers had been held economically accountable.

I was named administrator of my mother-in-law's estate. We wanted to bring a lawsuit to insure that this kind of horrible death wouldn't happen to others. I can tell you that by the time you have all the legal expenses, attorney fees and the trauma of digging up all of the facts, it is not worth the grief encountered by families. With the cap, many families just have no economic incentive to bring a lawsuit, or they will be unable to obtain adequate legal representation to pursue their case. My attorney tells me this is especially true in medical malpractice cases, where the expenses of such a case, including the need to find and hire doctors to analyze the case and testify, will prohibit many lawsuits by the families of non-wage earners. Few lawyers wish to take a case that is capped at \$100,000 when they must gamble \$60,000 of their own money to prepare such a case, and, if they prevail, their attorney fee leaves them with less than what they spent on the case. The cap simply closes the court house doors -- and denies justice - - to families in those cases.

Lawsuits, such as the suit by the family of those killed by O.J. Simpson, have been a traditional part of our system of justice for good reason. Civil suits place the responsibility for wrongdoing directly on the wrongdoer, not on the victims. This makes sound economic sense, because the cost of the wrongful conduct is then placed on the party in the best position to prevent the injury or death – the party that caused it. Negligent nursing homes, corporations, companies, and hospitals that make life or death decisions should have economic incentive to value human life, and should not be allowed to pass the cost of their human carnage on to our welfare rolls and shattered families.

Kansas has some very poor nursing homes. Could you and I someday be at the mercy of caretakers who abuse and neglect us, even though they are being paid well to care for us. How are we to ensure that our loved ones are properly cared for? Money is the only thing that talks with many of these corporations. Better care would result where families could recover full compensation from negligent caretakers. I feel a cap of \$500,000.00 would be a tremendous improvement, but would still not be adequate. Meanwhile, our fragile, vulnerable parents or grandparents in nursing homes are at the mercy of greedy caretakers.

In Kansas we seem to be inviting inferior care in our nursing homes and hospitals. Why do we have a cap on wrongful death damages that is the lowest in the nation -- lower than any other state in the Union? The cap only serves to protect killers. Why go to Oklahoma or Texas to set up nursing homes? There, you run the risk of paying a million dollars if you carelessly take a human life. Cut costs and come to Kansas! You can provide sloppy care, get low insurance rates, get protection from the law if you kill someone, and you can deal with people who apparently place business interests over the value of their families and loved ones.

The value of human life cannot be measured simply in economic terms. My parents were 94 and 95 years of age when they died. They became more precious to me every year they lived. My mother's value could not be measured in money. At age 91 she was my rock while our family was traumatized by the cancer and chemotherapy of our son. At the time, he was 17, and would have also been considered as a "low value" citizen by the State of Kansas, because, he too, was not an economically valuable citizen. Now, he has a college degree and is very much a contributing citizen.

Animals get better care and attention than our babies (born and preborn) and our senior citizens. People would really rise up and scream if an animal was destroyed, abused or left with sores from lack of care. Where are OUR priorities?

If you, as lawmakers, truly believe that insurance companies would raise our rates because we enacted a bill that would protect families and add value to human life, then perhaps you should investigate the insurance industry and their ratemaking process. Are the huge insurance conglomerates, with their trillion dollar profits, holding the Kansas legislature hostage? Why do some legislators claim to uphold the value of the family, and claim to be prolife, and then fight hard to keep a low value on life in Kansas, and to protect those who shatter families by carelessly killing mothers, fathers, and children? It is time we stop discriminating against children, the elderly, and the disabled, by capping the value of the life of such non-wage earners, and by giving economic protection to those that take their lives.

Thank you for your consideration of this matter and the progress of Kansas.

Respectfully,

*Marilyn Davis*

Marilyn Davis  
504 S. Walnut  
S. Hutchinson, KS



PO Box 15531  
Lenexa, KS 66285-55531

**To:** Senate Judiciary Committee  
**Submitted By:** Jana L. E. Gryder  
*Kansas National Organization for Women*  
**Date:** March 24, 1997  
**Re:** Support to HB 2143

The Kansas Chapter of the *National Organization for Women* supports legislation that raises civil liability of persons who cause the wrongful death of another.

The survivors of these insensible killings deserve proper compensation for the loss of life so wrongfully taken. Wrongful death actions serve not only to compensate survivors, but to punish the person responsible for the death. This is a historical way to deter such activities, and indemnify the ones left behind to live with the unexpected death.

A tragic scenario, that is not only universal but has hit home recently here in Topeka, is the death of a woman at the hands of her husband. Approximately 4,000 women are killed by significant others each year. These fatal acts result in many children and family members left without the support of a loved one.

In the case of a woman, especially homemakers, economic loss to survivors is hard to calculate and even harder to recover. Therefore, the only recovery available is for non-economic losses which in Kansas now stands at \$100,000. If this unjustly murdered woman is the mother of six children the recovery of the \$100,000 would be in the aggregate. In other words, all six children, who are now left without their mother, would only recover a total of \$100,000 in non-economic damages. Can the Legislature put a price on the value of a mother to a child?

A victim's heirs deserve to recover for the life that is wrongfully taken from them. Wrongful death actions are a significant issue for families affected by domestic violence. Unfortunately, as we have seen recently in some high profile cases, these have the tragic result of death. The only way to value these women's lives is to remove the wrongful death cap or at the minimum, raise the amount of recovery to \$500,000 for the survivors that are left behind.

Why are we protecting wrongdoers, and not compensating families for their terrible loss? Kansas needs to hold those who take the life of another accountable by making them civilly liable for their actions.

*Senate Judiciary  
Attachment 18  
3-24-97*

BRRETA is intended to modify Common Law rules governing the relationship between brokers or salespersons and their clients or customers. BRRETA establishes a scheme of statutory agency to replace common law rules. It is the intent that where BRRETA and Common Law conflict, BRRETA will be applied, but where BRRETA is silent, the Common Law will be applied.

In 1984 in the case of Board of Neosho County Commissioners v. Central Air Conditioning Co., 235 Kan. 977, 981, 683 P.2d 1282 the Kansas Supreme Court held that when a statute conflicts with the common law, the statute controls. Additionally, K.S.A. 77-109 specifically provides that statutes which modify the common law should be liberally construed.

Senator Ement  
3/24/97

Senate Judiciary  
Attachment 19  
3-24-97

Judiciary Subcommittee on HB 2264, BRRETA.

The Judiciary subcommittee on HB 2264 met on Thursday, March 20, 1997.

The meeting was attended by subcommittee members consisting of Senators Goodwin, Donovan, Schraad. Senator Schraad presented a written summary of possible amendments provided to the full committee during hearings on the bill.

Each proposed amendment was discussed at length, with the subcommittee inviting input from concerned participants, both opponents and proponents of the bill.

At the close of the meeting, each member of the subcommittee was asked if they would like to propose any of the amendments to the full committee. There appeared to be no strong feeling toward any member of the committee in offering any of the proposed amendments. Senators Goodwin and Donovan indicated that proposed amendment 2 be explored.

The two conferees who submitted proposed amendment language were Matt Eck of Matt Eck Real Estate and John Todd of Todd & Associates in Wichita.

Proposed amendments were as follows:

- 1) Both Todd and Eck recommended changes to the clause in section 30 (Section 30(a) on pages 48 & 49) dealing with compensation, to read as follows: "A buyer or seller of real estate can employ the services of a real estate licensee to assist them in the purchase or sale of real property, provided that the prospective buyer or seller who desires those services, pays for those services."

By reading the full text of sections 30 and 31, it lays out that in any transaction, the brokers compensation may be paid by the seller or the buyer. A broker may, with the written agreement of the seller or landlord, share a commission with another broker who acted as a subagent or as a buyer's broker. Payment of compensation is all negotiable in this bill.

- 2) Mr. Eck urged that we not allow an agent to represent both parties to a transaction in the same office and do not allow buyer brokerage to be practiced under the same roof.

The ability of one brokerage firm to offer both buyer and agency and seller agency existed prior to BRRETA, so this bill would not change that. It does, however, eliminate disclosed dual agency, which was the practice of one agent representing both the buyer and the seller. This was one of the recommendations of the BRRETA task force.

- 3) Mr. Eck requested that the bill not exempt commercial, farm and multi-family of more than 4 units.

*Senate Judiciary  
Attachment 20  
3-24-97*

HB 2264 actually brings these types of transactions back under BRRETA. This bill passed last year exempted these transaction from coverage under BRRETA. The only exemption which applies for these transactions is that they are exempt from having to provide the agency option brochure (sec. 40(3), pg. 63).

The commercial brokers were asking to be exempted completely from the law last year. Under this bill, commercial brokers fall under BRRETA , but exempt from handling the brochure – it was seen as a compromise that the commercial seem satisfied with. (see Dan Sight written testimony)

- 4) Mr. Todd requested that the statutory law language in the bill relating to agency needs to be deleted from the bill with the common law of agency left in place to protect the public interest. (sec. 26(a) & 27(a), pg 42 and 43)

This section of the bill clarifies that the only way a real estate licensee can deal with the public is by acting in one of the capacities outlined in the law; either as a buyer agent, a seller agent, or a transaction broker. If this section is deleted, then disclosed dual agency would be an option since common law permits disclosed dual agency. The elimination of disclosed dual agency was a recommendation of the task force.

- 5) The liability protection (sec 32(6)(b), pg 50) of the bill needs to be deleted or revised to protect the public's interest.

The bill provides; "If pursuant to subsection (a)(3)(D) pg 49, the licensee advised the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee, no cause of action for any person shall arise against the licensee pertaining to such material matters."

This section requires an agent to obtain expert advice as to material matters about which the licensee knows of, but the specifics of which are beyond the expertise of the licensee. The thought here is that real estate professionals are not qualified to offer information the way a structural engineer or termite specialist might do, and they should not be held liable for defects which the consumer was advised to have a professional person inspect.

- 6) There were also concerns about the provisions of the bill regarding misdemeanor charges for willful violations, sec 18(a) & 19(a) page 34.

Paragraph (b) of this section states that the law shall not be construed as requiring the Kansas Real Estate Commission to report minor violations of the acts for criminal prosecution if the commission believes the public interest will be adequately served by other administrative action.

The commission has not assessed any fines against a licensee for BRRETA violations.