



From the Desk of  
Senator Thatcher

## Oppose SB 193 – Last Minute Amendments Repeal Statutory Cap on Noneconomic Damages

The Senate Judiciary Committee passed SB 193 on a party line vote on the last day before legislative deadlines and included a provision that repeals the statutory \$500,000 cap on non-economic damages for every cause of action except wrongful death. Framed as an effort to clean up the statute in relation to a recent Supreme Court decision, the amended version goes beyond the Supreme Court ruling and has potential implications for any statutorily created cause of action. Additionally:

- The legislation only allows the non-economic damage cap to apply in cases for wrongful death – it removes the cap for any other cause of action based on injury, emotional distress or property damage
- The amendment was introduced four days before the one public hearing held on this issue – this is not enough time to thoroughly understand the impact of the change given the 20 years of case law and court decisions that guide application of the cap
- The statutory non-economic damage cap potentially impacts other causes of action, but no analysis has been done to fully understand what the impact of passing SB 193 will be for causes of action outside of wrongful death
- SB 193 applies to any cause of action that occurred before, on or after the effective date and applies even to cases that are on appeal including any case where a final judgement has not yet been entered
- There is an open question to the Oregon Supreme Court from the 9<sup>th</sup> Circuit in *Zweizig v. Rote* asking for clarification as to whether ORS 31.701(1) applies to employment discrimination claims under ORS 659A.030 - the Supreme Court has yet to respond and this legislation would impact that case
- When the non-economic damage cap was deemed unconstitutional by the Supreme Court in *Lakin v. Senco Products, Inc.* in 1999, the statute remained in-tact for 17 years – the latest Supreme Court decision in *Busch v. McInnis Waste Systems, Inc.* was released just 9 months ago – there is no urgency that requires us to “clean up” the statute immediately
- Although the Supreme Court decision in *Busch* invalidated the non-economic damages cap as applied to the claim in that case, no court has held that the cap is invalid in every cause of action except for wrongful death (the standard that would be established in SB 193)
- With no immediate need to address this issue, opponents have requested we pause and take time to understand the implications

The cap on non-economic damages has been a contentious issue and the legislature should not rush to change the statute unnecessarily. We urge the legislature to reject this last minute amendment and allow additional time to understand the implications before making such a drastic change to the current statutory non-economic damage cap.

**Please Vote NO on SB 193**

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