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May 25, 2021

To: The House Committee on Rules  
From: Anthony K. Smith, National Federation of Independent Business  
Re: NFIB Written Testimony in Opposition to SB 193 A

**Chair Smith Warner, Vice-Chairs Drazan and Holvey, and Members of the Committee:**

On behalf of the thousands of Oregon small business members of NFIB, many being the smallest of small businesses, I would like to share with you our concerns with Senate Bill 193 A, which would repeal the \$500,000 statutory cap on non-economic damages for every cause of action except wrongful death. This would include injury, emotional distress, and property damage.

In an attempt to align Oregon statutes with a recent Oregon Supreme Court decision, SB 193 A goes further than the court's ruling and has potential implications for any statutorily created cause of action, and although the court's decision in *Busch v. McInnis Waste Systems, Inc.* invalidated the non-economic damages cap as applied to the claim in that case, no court has held that the cap is invalid for other causes of action.

When the non-economic damage cap was deemed unconstitutional by the Supreme Court in *Lakin v. Senco Products, Inc.* in 1999, the statute remained on the books for 17 years. The *Busch* decision came out just last year. Additionally, SB 193 A would apply to any cause of action that occurred before, on, or after the effective date of the measure, including pending cases and cases on appeal, where a final judgement has not yet been entered.

The Legislature need not rush to update the statute immediately, especially since there has not yet been time to conduct a robust analysis of the changes proposed in SB 193 A – changes that may cause all forms of liability insurance to become more expensive. If this turns out to be the case, small businesses will have to pay more for the same general liability coverage – and if they cannot afford to pay more, they run the risk of leaving themselves under-insured, and legally exposed to massive out-of-pocket costs.

For these reasons, NFIB respectfully asks you to vote NO on SB 193 A.

Thank you for your time and consideration,

A handwritten signature in blue ink, appearing to read "Anthony K. Smith". The signature is fluid and cursive.

Anthony K. Smith  
NFIB Oregon State Director