

# KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman  
Members of the House Judiciary Committee

From: David R. Morantz, Shamberg Johnson & Bergman, Kansas City. – on behalf of KTLA

Date: February 20, 2019

Re: HB 2291 Increasing caps on damages in wrongful death actions and escalating them annually based on the consumer price index -- SUPPORT

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in support of HB 2291.

HB 2291 amends KSA 60-1903, which is part of Article 19, Chapter 60 establishing wrongful death actions. HB 2291 strikes the current \$250,000 cap on damages for nonpecuniary loss and increases it to \$500,000. The bill establishes a new inflationary adjustor to permit the \$500,000 cap to be increased annually by the percentage increase in the Consumer Price Index for all urban consumers.

The House Judiciary Committee's review of the cap on nonpecuniary loss is appropriate. The last time that the Legislature increased the cap was 21 years ago, in 1998. The wrongful death cause of action is a "creature of statute," meaning it was established by the Legislature and would not exist without statutory authority. The English common law did not recognize a tort of wrongful death and followed the rule that when a tort victim died the cause of action died with them. Kansas' wrongful death law provides access to justice for a deceased tort victim's family. It also avoids the disproportionate outcome of protecting wrongdoers whose actions cause death while holding responsible those who merely injure.

The amendments in HB 2291 are undeniably a step forward and an update of the current law. KTLA also urges the committee to consider amendments that would remove the limitation on nonpecuniary loss entirely. Instead of focusing on the sufficiency of damage limits, KTLA recommends that the Legislature delegate to the court or jury the authority to award "...damages as are found to be fair and just under all the facts and circumstances...", KSA 60-1093(a).

Kansans that seek justice under the wrongful death provisions in Kansas law have endured tragedies that no one expects or wants and prays never to experience. The cap on nonpecuniary loss restricts both the remedy available to Kansans and wrongdoers' accountability for their deadly acts.

Kansans deserve the justice a jury verdict wields. Juries are the voice and conscience of the community. Jurors are ordinary Kansans from all walks of life who have no personal interest in the outcome the trial; they are more than qualified to hear the evidence in a specific case and assess "fair and just" damages based on its unique facts. Damage caps are a "one-size-fits-all" solution.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request the Committee's support for HB 2291.



House Judiciary Committee  
Chairman Fred Patton

Re: House Bill 2291  
Increase Wrongful Death Caps (Support)

How much is a human life worth? That question can evoke many answers. You might say “priceless” or “beyond measure.” Depending on your spiritual beliefs you might say it has a value so great that the God of Heaven and Earth sacrificed his only Son for that life. Others might say I cannot answer that question because I cannot bear to think of losing my wife or child.

The Kansas Legislature has answered that question. The value of a human life “cannot exceed the aggregate sum of \$250,000.”

That needs to change and the change needs to begin with this bill. This bill should eliminate all wrongful death caps in Kansas. We should take a strong stand and tell our state and the entire nation that in Kansas human life is priceless. We want to eliminate all wrongful death caps. This bill does not do that. Instead it is the product of compromise and takes a long-outdated cap of \$250,000 and modestly moves it.

I have looked in the eyes of parents and told them the Kansas Legislature believes their deceased child is only worth \$250,000. In fact, the Forshee family of Berryton whose son A.J. died in Topeka on Croco Road got that message. They wanted to be here today, but emotionally did not feel they were able to testify in person. Their written testimony is attached and presented to the committee. When you read it take a moment to consider what it would be like to be in the shoes of Gloria and Darren Forshee and bury your son.

In fact, any time we have a wrongful death case we analyze is There any way we can make the claim in another state that has shown more respect for the value of human life than Kansas. Many well publicized cases have received larger verdicts or settlements because something in the law allowed them to bring their lawsuit in another jurisdiction. That is not right. Kansans like the Forshees should be able to rely on the laws of this state to protect them. This bill is a compromise, but it is a step in the right direction.

We have made many efforts in this legislature to recognize the value of human life and protect it. However, the wrongful death cap has not been addressed in far too long. Please pass this bill in this form.

Respectfully submitted,

*Richard W. James*

Gloria and Darren Forshee  
5819 SE Ratner Road  
Berryton, KS 66409

February 18, 2019

Dear Representative Patton  
Judiciary Chair  
Room 519-N  
State Capitol Building  
300 SW 10<sup>th</sup> Street  
Topeka, KS 66612

RE: House Bill 2291 (Increasing Wrongful Death Caps)  
Testimony in support of the bill.

Dear Chairman Patton and the House Judiciary Committee:

I am submitting this testimony as a proponent to House Bill 2291 requesting you to increase the wrongful death caps in the State of Kansas.

Our son AJ was killed by a negligent Fed Ex driver just South of Chairman Patton's district on Croco Road in Topeka. The collision happened May 12, 2018 and our lives forever changed that day.

This photo of our family was taken just two (2) days prior to the collision. AJ is on the far left and was just 28 years old.

AJ was our only son. He grew up with a big sister, Jessica, who loves him very much. They were very close. She is devastated as we are by his death.



AJ will not give us the joy of being grandparents to his children, Jessie will never be an Aunt, Joey an Uncle or Taeton and Jaycie will not be cousins because of the immeasurable negligence of the distracted FedEx driver that killed our AJ.

He made an impact when he spoke to anyone. Time and time again, people share with us how respectful our son and we should be proud of the great son we had raised. He was so kind hearted, smart, loved his large family, his friends, his music, his feeling of riding free on his

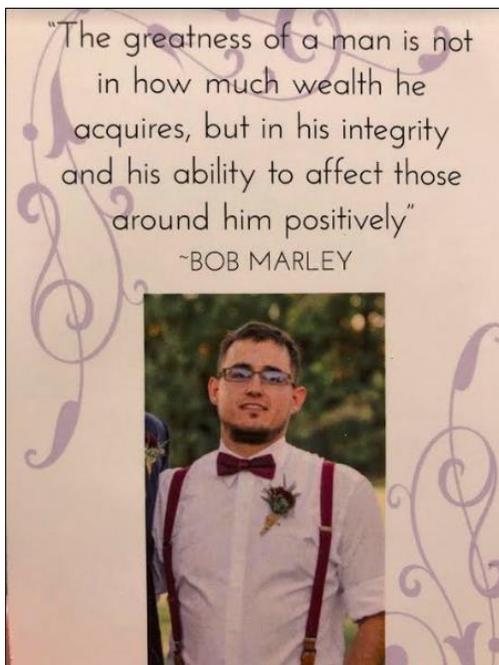
motorcycle, his freedom of choice, his 2<sup>nd</sup> amendment, the water, the snow, his dogs, his BBQ, his Mexican food, his shop, his toys in his shop, his land, his books, his naps.

During his time in the hospital, the ICU waiting room was overflowing with the people who loved him. The nurses said they had never had this many people in the waiting room for one person. Pastor L.D Holmes was amazed by the number of people who were in the waiting room. He could literally feel the love in the room. One by one, AJ's people came to his bedside to see him one last time while his body was being kept alive. It was the most horrifying thing and we pray no parents should ever have to go thru. So devastating to see each friend and family member see him in that hospital bed with his donor quilt over him. Our hearts broke into a zillion pieces. How could this happen!

According to Kansas law, our son's life is only worth \$250,000? That is an insult to our family and our beloved son and an insult to any family who has lost a loved on because of someone's negligence!

When our attorney told us of this statutory cap on wrongful death damages, we were sickened. Many thoughts ran through our minds. Why would our lawmakers put a limit on the value of life? Why would our lawmakers place such an unconscionable limit on the value of someone's life? If we trust juries to make decisions on life or death with respect to crimes, why don't we let a jury hear evidence and make decisions on damages?

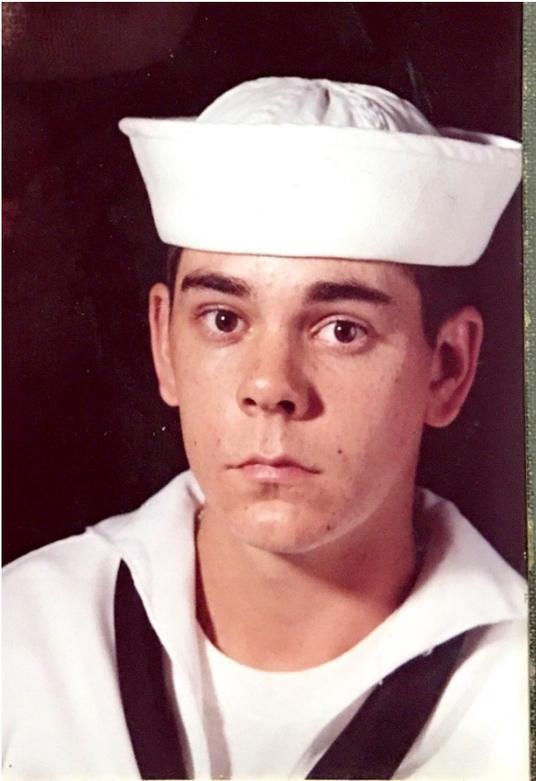
The extent of damages a family sustains as a result of the death of a love one should be up to a jury based upon the totality of the circumstances. A cap of \$250,000 is demeaning to the one lost and to the family that continues to suffer.



Please allow juries to determine the damages someone sustains or support House Bill 2291 increasing the caps on wrongful death cases.

Gloria and Darren Forshee

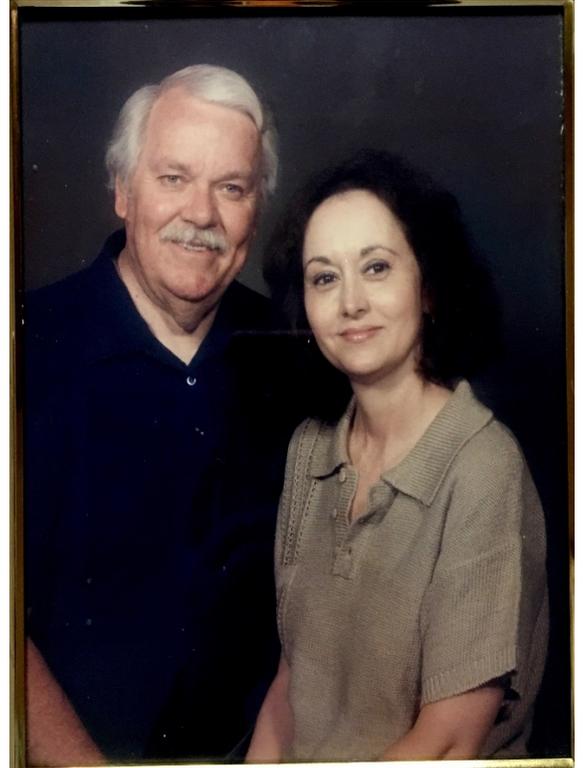
**To: Kansas House Committee on Judiciary  
Regarding HB 2291**



**Mark Castleberry**

**DOB: 2-25-1963**

**DOD: 2-23-1991**



**Barbara Castleberry**

**DOB: 12-21-1934**

**DOD: 1-29-2009**

Submitted by Larry Wall  
8623 E 32<sup>nd</sup> Street N, Suite 300  
Wichita, Kansas 67226  
Ph: (316) 265-6000  
F: (316) 262-6253  
<https://www.whtriallaw.com/>  
email: [larry@whtriallaw.com](mailto:larry@whtriallaw.com)

**My name is Doug Castleberry. I am 89 years of age. I live at 50 Cottonwood Point Lane in Augusta, Kansas. I cannot be present today because of my health.**

**I married Barbara in November 1958. Barbara and I were married for over 50 years. We were happy until she was paralyzed She was hurt because her doctor was careless. We had three children. Susan was born on 7-9-61. She is 58 years of age. She lives in Wellington, Kansas. Susan works full time. Susan has two children. Mark was born on 2-25-63. Mark was killed because of a reckless truck driver. He was not married. He was a devoted son. His loss is still devastating. I could use his help. Scott was born on 2-15-65. He is 54 years of age and lives in Wichita. Scott blessed us with 3 more Grandchildren. Scott works full time at Spirit.**

**Mark was killed on February 23, 1991. His death occurred two days before his 28<sup>th</sup> birthday. After Mark was killed by a truck driving too fast and without brakes Barbara and I retained Larry Wall to represent us. We were shocked when we learned that the wrongful death cap for his death was \$100,000.00. Mark was killed by a man was driving a truck and trailer way too fast and he couldn't stop it. The case warranted punishment. We were annoyed to learn that punitive damages could not be imposed because Mark had died. Had Mark lived, punitive damages, could have been imposed. The law is wrong.**

**The driver and the owner of the trucking company got off scot-free. This case could have served as a warning to other commercial truckers that the Kansas legislature deemed the lives of its citizens priceless. Larry Wall told us that hopefully the law will be changed. We didn't get involved and press for changes. That haunts me. That is one reason I am presenting this statement. The main reason is Kansas should value life much higher than \$250,000.00.**

**On December 6, 2007 my wife Barbara, had what she thought might be warning signs of a stroke. We sought medical care and advice from Brian DeBrot M.D. We saw Dr. DeBrot two times in December 2007. The last visit was December 19, 2007. At this visit Barbara complained [again] that she was worried she would have a stroke. Dr. DeBrot told her "don't worry, go Christmas shopping". The next day my soul mate suffered a massive stroke. My Barbara died because of Dr. DeBrot's negligent practice of medicine.**

**I retained Larry Wall to represent me and our children. Our lawsuit was filed on December 3, 2009. The case involved reckless conduct by Dr. DeBrot. We discovered he was impaired when he treated my wife. We learned that he failed to properly and safely treat my wife's elevated blood pressure. His treatment was contrary to national guidelines. He chose to guess instead of test. She had classic signs of an impending stroke.**

The defendant offered nothing at mediation before trial. Larry Wall and Tina Huntington prepared the case for trial. On May 21, 2013 the trial began and lasted 3 weeks. Our lawsuit ended on June 14, 2013 with a verdict that left us with a small sense of closure having a jury acknowledge the loss we endured. That little satisfaction was shattered when the trial court reduced the jury's verdict. The verdict was reduced because of the Kansas caps on pain and suffering and wrongful death. The entire family was hurt. All our friends doubted us when we told them about the law in Kansas as it relates to wrongful death and punitive damages.

After we won the jury trial, we had to endure 5 additional years of appeals. Finally, after winning all the appeals, we are paid the verdict over a period of several years. The laws of Kansas do not favor the injured. The laws for victims are not fair to both sides. I have been in Court two times for wrongful death matters. Believe me, I know the wrongful death laws need changed.

I and my family have been hurt by the cap on recovery for wrongful death. I believe if we want more of something [reckless conduct for example] then we should encourage it by limiting the damages the careless must pay. But if we want less death caused by reckless conduct then we should allow the heirs to punish the wrongdoers. This can be accomplished by allowing punitive damages in wrongful death actions. It will be further accomplished by eliminating the cap on wrongful death. If you leave a cap, then please make certain the cap will be adjusted for inflation. Otherwise, the amount gets less valuable each year. That style of legislation rewards the careless and punishes the victim. That is wrong.

Please eliminate the ban on punitive damages in wrongful death actions and please eliminate any cap on a recovery for wrongful death. If you retain any cap, please allow for the number of heirs and increase the amount by the rate of annual inflation. Thank you.

Doug Castleberry  
2/19/2019 Augusta, Kansas