



**KANSAS ASSOCIATION OF DEFENSE COUNSEL**

825 S. Kansas Avenue, Suite 500 • Topeka, KS 66612  
Telephone: 785-232-9091 • FAX: 785-233-2206 • www.kadc.org

**TO:** Chairman Patton  
And Members of the House Judiciary Committee

**FROM:** Kenneth J. Berra,  
Kansas Association of Defense Counsel (KADC)

**DATE:** February 20, 2019

**RE:** KADC Written Testimony in Opposition to HB 2291 – An Act Increasing the Cap for Non-Pecuniary Damages and Escalating Annually Based Upon the Consumer Price Index

---

Chairman Patton and members of the committee, on behalf of the Kansas Association of Defense Counsel, we thank you for this opportunity to submit written testimony opposing HB 2291.

KADC is a state-wide organization of lawyers admitted to practice law in Kansas who devote a substantial amount of their time to the defense of litigating civil cases. In addition to working to improve the skills of defense attorneys and elevating the standards of trial practice, our organization advocates for the administration of justice, because our clients depend on it.

KADC believes that the current wrongful death statutory scheme, including the limit on nonpecuniary damages, affords the heirs at law a fair and reasonable method for recouping all of the damage's attendant to their loss of a loved one. House Bill 2291 represents an unnecessary change to KSA 60-1903's limitation on nonpecuniary damages especially in light of how pecuniary damages have been interpreted since 1985 in the case of *Wentling v. Medical Anesthesia Services*, 237 Kan. 503, 701 P.2d 939 (1985).

KSA 60-1903 (c) provides three categories of wrongful death damages – nonpecuniary damages, expenses for the care of the deceased cause by the injury, and pecuniary damages. The types of damages recoverable are set forth in KSA 60-1904 and consist of mental anguish, suffering or bereavement; loss of society, companionship, comfort or protection; loss of marital care, attention, advice or counsel; loss of filial care or attention; loss of parental care, training, guidance or education; and reasonable funeral expenses for the deceased.

However, the legal definition of “pecuniary damages” is not limited to financial contributions. Loss of the decedent's services, care, guidance, attention, advice, and protection are listed along with loss of earnings and funeral expenses in the pecuniary category. These damages are referred to as *Wentling* damages and named after the case of *Wentling v. Medical Anesthesia Services*. When those damages are interpreted and valued by a forensic economist,



**KANSAS ASSOCIATION OF DEFENSE COUNSEL**

825 S. Kansas Avenue, Suite 500 • Topeka, KS 66612

Telephone: 785-232-9091 • FAX: 785-233-2206 • [www.kadc.org](http://www.kadc.org)

they can exceed hundreds of thousands of dollars.

As a result, *Wentling* damages provide a means to maximize pecuniary damages as afforded under the current wrongful death statutes and, therefore, eliminates the need to amend the current wrongful death limitation on nonpecuniary damages.



**House Committee on Judiciary  
Testimony in Opposition to HB 2291 and HB 2332  
Presented by Eric Stafford, Vice President of Government Affairs**

**Wednesday, February 20, 2019**

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber appreciates the opportunity to testify in opposition to House Bills 2291 and 2332.

HB 2291 increases the cap in wrongful death action from \$250,000 to \$500,000 and ties future increases to inflation starting in 2020, while HB 2332 would expand damages to cover punitive or exemplary damages. Those punitive damages would be excluded from the \$250,000 cap.

Increasing the cap for wrongful death actions will no doubt result in an increase in premiums for Kansas businesses. A 100% increase in caps included in HB 2291, and expansion to allow for punitive damages included in HB 2332 is a policy change we cannot to support.

It is our belief that Kansas wrongful death statutes currently provide reasonable means to collect damages for those rightfully entitled to a claim.

We appreciate the opportunity to testify in opposition to House Bills 2291 and 2332, and I am happy to answer any questions at the appropriate time.

