



OHIO CHAMBER OF COMMERCE

BEFORE THE HOUSE JUDICIARY COMMITTEE OPPONENT TESTIMONY ON HOUSE BILL 447

Chairman Thomas, Vice-Chair Swearingen, Ranking Member Synenberg, and members of the House Judiciary Committee, thank you for the opportunity for the Ohio Chamber to provide opponent testimony on House Bill 447 (HB 447).

The Ohio Chamber is the state's leading business advocate. We represent over 8,000 companies that do business in Ohio, and our mission is to aggressively champion free enterprise economic competitiveness and growth for the benefit of all Ohioans. In our efforts to champion economic competitiveness, the Ohio Chamber opposes HB 447 because its passage will inevitably increase costs for Ohio businesses and threatens to undo the progress Ohio has made over the past two decades to build a predictable and competitive business and legal climate for job creators.

Our testimony will focus on five important components of Ohio's existing non-economic damage cap and how House Bill 447 will negatively impact residents and businesses in the Buckeye State.

I. What are Economic & Non-Economic Damages

- Ohio law (R.C. 2315.18(A)(2)) defines Economic Loss to include objective and measurable costs such as:
 - Lost wages and other forms of compensation;
 - All expenditures for medical care or treatment, rehabilitation services, or other related services, products, or accommodations; and
 - Any other expenditures a plaintiff incurs.
- There is no statutory cap for economic loss because they are objective and measurable, and their monetary value is easily ascertainable.
- Ohio law (R.C. 2315.18(A)(4)) defines Non-Economic Loss as nonpecuniary harm that results from an injury or loss.
- Non-pecuniary means not consisting of money.
- Non-Economic loss includes subjective losses that cannot be measured in dollars and cents such as:

- Pain and Suffering
 - Loss of Consortium
 - Mental Anguish
 - Any Other Intangible Loss
- These non-economic damages cannot be measured in dollars and cents.
 - Non-economic damage is routinely covered by insurance products, and these damages are the primary drivers for higher premiums.

2. **Why Ohio Established Non-Economic Damage Caps**

- Senate Bill 80 established Ohio's existing non-economic damage cap in 2005.
- The legislature enacted this comprehensive tort reform package to restore fairness and stability to Ohio's civil justice system and to bolster the state's economic competitiveness.
- Before SB 80, unpredictable and skyrocketing jury awards created a crisis that seriously harmed Ohio's economy.
- A primary driver for the legislation was the inability of businesses and medical professionals to obtain affordable liability insurance.
- Rapidly rising premiums drove insurers out of the Ohio market and threatened to force healthcare providers to limit care or leave the state entirely.
- SB 80 directly addressed this crisis by capping non-economic damage awards to reduce the uncertainty and subjectivity associated with civil judgments.
- The current cap sets \$350,000 per plaintiff as the maximum award.
- This cap helps ensure reasonable limits on what a court can award parties for subjective non-monetary damages and plays an important role in Ohio's economy by maintaining a stable civil justice system.

3. **How Non-Economic Damage Caps Benefit Ohio**

- The predictability stemming from Ohio's existing non-economic damage caps delivers tangible market benefits for Ohioans.
- Prior to Senate Bill 80, large non-economic damage payouts partly caused Ohio's insurance market to become expensive with limited coverage options.

- Today, Ohio has some of the most competitive insurance markets in the country.
- Ohio consistently ranks as a top 10 state for most affordable auto insurance premiums and top 15 state for most affordable home insurance rates.
- In fact, the average cost of homeowners insurance in Ohio is approximately 30 percent lower than the national average.

4. House Bill 447 Raises Non-Economic Damage Cap

- House Bill 447 (HB 447) seeks to make two significant changes to the existing non-economic damage cap that could jeopardize the progress Senate Bill 80 achieved.
- First, it immediately raises the non-economic damage cap from \$350,000 to \$580,000.
- This increases the cap by sixty-five percent.
- Second, following this initial increase, HB 447 calls for a yearly increase based upon the Consumer Price Index (CPI).
- These modifications treat subjective losses like "pain and suffering" as if they are commodities that inflate like the price of milk or gasoline.
- None of the nine other states apply a CPI adjustment to their non-economic damage cap for all types of lawsuits, so the proposed automatic annual CPI increase for the cap would make Ohio an outlier among states with caps.

5. HB 447 Will Raise Costs for Ohio Residents and Businesses

- The Ohio Chamber of Commerce opposes HB 447 because its passage will inevitably increase costs for Ohio businesses and residents.
- The bill threatens to undo the progress Ohio has made over the past two decades to lower operating costs for businesses, including:
 - A flat income tax rate;
 - Near elimination of the Commercial Activity Tax; and
 - Creation of the Business Income Deduction.
- Even with the current cap in place, data from the U.S. Chamber of Commerce indicates that Ohio already ranks among the top 10 states for "nuclear verdicts."

- By immediately increasing the cap by 65 percent and then creating an automatic yearly CPI increase, HB 447 will exacerbate the problem of nuclear verdicts.
- Ohio's current tort system has a projected annual cost of \$12.7 billion according to another U.S. Chamber of Commerce study, despite our non-economic damage cap.
- House Bill 447 creates an endless escalator for liability exposure that has no legislative oversight due to its automatic CPI increases on a yearly basis.
- These automatic increases undermine the predictability businesses rely upon to manage risk since no one can predict what the cap will be in future years.

In closing, the Ohio Chamber opposes House Bill 447 because it threatens Ohio's stable and competitive business climate. By immediately increasing the non-economic damage cap by 65 percent and establishing an automatic CPI escalator for subjective damages, HB 447 would inject needless uncertainty and unmanageable liability risk back into our civil justice system, which can lead to higher costs for Ohio job creators and residents.