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TO: Sen. Kellie Warren, Chairperson
Sen. Kenny Titus, Vice-Chairperson
Sen. Ethan Corson, Ranking Minority Member
Members of the Senate Committee on Judiciary

FROM: Blake Shuart
Individually and on behalf of Hutton & Hutton Law Firm, L.L.C., Wichita

DATE: February 5, 2026

RE: SB 413 (“Prohibiting counsel from suggesting an amount of damages for noneconomic loss in civil actions.”) (**OPPOSE**)

Chairperson Warren, Vice-Chair Titus, Ranking Minority Member Corson and Members of the Senate Committee on Judiciary,

Thank you for the opportunity to present my written testimony in opposition of Senate Bill 413, which was introduced in the Senate Committee on Judiciary on January 28, 2026, and is presently set for hearing at 10:30 a.m. on February 5, 2026.

This proposed legislation prohibits *any* party or a party’s attorney in a civil lawsuit from suggesting to the jury an amount to award as damages for noneconomic loss—including specifically prohibiting any suggestion as to a specific dollar amount, a range of dollar amounts, a mathematical formula or units of time to determine dollar amounts or any “reference to objects or values lacking any relevant connection to the facts proved by the evidence.” There is nothing left to argue if all these options are prohibited, so the true effect of this proposed legislation is to prevent any party in any lawsuit from making any arguments whatsoever to the jury which may guide them in determining how much, if any, to award a plaintiff in noneconomic loss.

“Noneconomic loss” is defined in the Kansas Pattern Civil Jury Instructions¹ as “pain, suffering, disabilities, disfigurement and any accompanying mental anguish suffered by reason of plaintiff’s injuries to date (and those plaintiff is reasonably expected to suffer in the future).” This pattern instruction, which is given to juries in civil trials across Kansas on a weekly basis, also advises the jury members as follows:

¹ See *Pattern Instructions Kansas (PIK) Civ. (4th) 171.02: Types of Damages Allowed—Personal Injury*

For such items as pain, suffering, disability, and mental anguish, there is no unit value and no mathematical formula the court can give you. You should allow such sum as will fairly and adequately compensate plaintiff. The amount to be allowed rests within your sound discretion.

Kansas jurors also receive the following admonition in their set of instructions:

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that are not supported by the evidence, they should be disregarded.

See PIK Civ. (4th) 102.04: Statements and Arguments of Counsel.

Putting the above items together, here is how a Kansas civil jury trial works: The parties (typically through their attorneys) make opening statements, advising the jury as to what they believe the evidence will be in the case. The jury is admonished to disregard these statements if not supported by the evidence. The jury then hears all the evidence in the case, including in personal injury cases specific evidence about the injuries sustained by the plaintiff. The jury sees medical records, hears opinion testimony from expert physicians on both sides and hears live testimony from parties and witnesses about the plaintiff's claimed injuries. The parties each then make their closing arguments, advising the jury how they should perceive the evidence and how the evidence fits with the law to inform the jury's verdict. These arguments include both sides' arguments about what amount of money, or what range of dollars, will "fairly and adequately compensate the plaintiff" for his or her "pain, suffering, disfigurement and any accompanying mental anguish" given that the court cannot provide the jurors a "unit value" or "mathematical formula." The jury is admonished to disregard these arguments if they are not supported by the evidence. Then, the jury goes back to the jury room to deliberate and reach a verdict on all issues, including the amount of money to be awarded a plaintiff, if any, for noneconomic loss.

This system has worked very well for *both sides* for many, many years. This system works exactly as outlined above for every single other aspect of the trial. Juries determine whether parties are at fault using the same process, with different jury instructions. Juries determine whether malpractice has been committed using the same process, with different jury instructions. Juries decide whether contracts have been breached using the same process, with different jury instructions. Juries decide whether to award a plaintiff lost wages or medical expenses using the same process, with different jury instructions.

In every single civil case, the jury hears the evidence, the parties' attorneys argue their case to the jury to help them reach a verdict, the jury receives the instructions, and the jury reaches a verdict.

Why would we now change this effective system of dispensing justice to Kansans? And why would we change it in only one, narrow, limited area while leaving the system in place for every other type of issue argued to juries by parties and their lawyers? Where is the evidence to

show that this proposed bill is a solution to a problem—not a solution in search of a problem? There is none.

The Kansas civil justice system has countless legal safeguards in place to ensure that jurors are not misled by attorneys during jury trials. Both sides can make pre-trial arguments (motions *in limine*) to the court about what should or should not be argued to the jury, and the court can decide what is appropriate under the specific facts of a case. Post-trial motions and appeals exist to right wrongs which occur during civil jury trials. These are the appropriate forums to address any concerns about arguments being made to juries, and to do so on a fact-specific, case-by-case basis.

This proposed legislation would compound the unpredictability of lawsuits by preventing jurors from being provided an appropriate framework for their deliberations by either party. If there is some concern about Kansas juries reaching improper, arbitrary, emotion-fueled verdicts for noneconomic damages (a concern which has no basis in fact), passing this legislation would make the situation worse—not better.

More unpredictability means more jury trials. Settlements are driven by case-specific data and historic jury trial results in analogous cases, and having arbitrary jury verdicts reached by confused jurors would force more parties into trial. More trials would mean clogged court dockets, more risk and more expense for Kansas businesses and consumers alike. More trials would also mean more appeals, which would compound the expense and delay associated with lawsuits.

Kansas jurors are entrusted with massive, life-altering decisions on a daily basis. They are certainly capable of deciding whether and how to follow the court's instructions by rejecting a party's argument about noneconomic damages if the evidence doesn't support it. Juries reject lawyers' arguments in every single case. It's part of the process, and the process works well.

I respectfully urge the Committee to not pass SB 413. There is no amendment which could be made to this bill to make it beneficial for Kansas businesses *or* Kansas consumers.

Respectfully,

/s/ Blake A. Shuart

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