KNOLL LEIBEL LLP
ATTORNEYS AT LAW

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Chairwoman Larson and members of the Judiciary Committee

I am a licensed attorney in the State of North Dakota with an office in Bismarck, ND. I have been practicing law since 2001, mostly in the area of civil litigation. I am writing to express my opposition to SB 2206.

SB 2206 has three main problems.

A. The proposed statute of limitation is unfair and vague.

SB 2206 seeks to amend § 28-01-18. Chapter 28-01 contains statutes of limitations for various types of claims. Claims for personal injury are controlled by N.D.C.C. 28-01-16, which provides a six (6) year statute of limitation for "[a]n action...for any other injury to the person or rights of another not arising upon contract, when not otherwise expressly provided." Claims for wrongful death have a two (2) year statute of limitations. N.D.C.C. § 28-01-18(4). By creating a new subsection to § 28-01-18, SB 2206 seeks to give a "commercial motor carrier" the special protection of a two (2) year statute of limitations.

However, a "commercial motor carrier" is not defined by the proposed amendment. Under the United States Code, a "commercial motor vehicle" is a vehicle that is used in interstate commerce and: (A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds; (B) is designed or used to transport more than 8 passengers for compensation, (C) is designed or used to transport more than 15 passengers, including the driver, and is not used for compensation, and (D) is used to transport hazardous materials and is required to have a placard. *See* 49 U.S.C. § 31132(1). This begs an initial threshold question. How is a person rear-ended during rush hour in Fargo supposed to know whether the other driver was a "commercial motor carrier?" How about the farmer who gets backed into at the elevator when the grain truck in front of him rolls backwards?

This is only the most obvious problem. For example, if Person A owns a trucking company and injures Person B in a bar fight, is the statute of limitations two years or six years? What about if Person A is self-employed as a truck driver and is involved in a car accident while driving his personal vehicle after hours. Is the statute of limitations two years or six years? Under each example, a defendant could argue that the two-year statute applies. The fundamental problem is that SB 2206

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does not modify the modify the limitations for a type of claim. Instead, it is intended to protect a certain type of person.

Nowhere is this clearer than the bonus SB 2206 gives to the commercial driver. The limitation under SB 2206 is two years for an action against a commercial motor carrier for an injury or death of an individual "*other than the owner or operator of the commercial motor vehicle involved.*" Thus, the "owner or operator of the commercial motor vehicle involved" gets the benefit of a six (6) year statute of limitations. So if two semi-trucks run into each other hauling produced water in Watford City, both parties will have a six-year statute of limitations. However, if a New Jersey semi-truck driver collides at a stop sign with a Minot high school student, the New Jersey semi-truck driver gets the benefit of a six-year statute of limitations, but the Minot resident must bring her claim in two-years. There is simply no justification for this special treatment.

B. The seat belt amendment does not make sense.

The amendment regarding the seat belt language is largely unintelligible. The first subpart states that a failure to wear a seat belt "may be considered evidence of comparative negligence." This confuses the concept of "negligence" with "causation." Normally, a failure to wear a seat belt is not evidence of "negligence"—it has never been the law that a person has a duty to wear a seat belt or be responsible for damages. This was addressed by the compulsory seat belt law during the last session. Instead, a defendant was able to offer evidence of a failure to wear a seat belt on the issue of causation of injuries. This amendment tries to elevate the passive conduct of the victim to the active negligence of the negligent driver—this would be quite a coup for the insurance industry.

The third subpart makes no sense. It appears that a jury may reduce an award by 1% if they find that a person was not wearing a seatbelt. This appears to be a tax on an injury, except the party getting the benefit of the tax is the person that caused the accident. I don't know what to say.

C. The proposed cap on non-economic damages is unreasonable.

The bill also seeks to create a new cap on damages limiting the non-economic damages "a person" may recover at $500,000. This limitation must be placed into its proper context. In a jury trial, a judge has an obligation to instruct a jury on the law. This is done through jury instructions. In North Dakota, we have a collection of pattern jury instructions that are used in almost every case.

In a typical car accident case, a North Dakota jury will be instructed they cannot award damages unless the jury first determines that a claimant is entitled to

damages, and the damages must be proportionate to the harm or loss suffered. *See* North Dakota Jury Instruction C-70.01. The jury is also instructed:

> A person who is injured or has property damaged because of another's fault may recover money damages for past and future loss. Future damages must be proved with reasonable certainty. The evidence need not show conclusively or without a shadow of a doubt that future damages will be incurred. While absolute certainty is not required, an award of future damages cannot be based on conjecture or mere possibility.

C - 70.04 Damages Defined 2015 (North Dakota Jury Instructions - Civil (2024 Edition)). The jury is also instructed that the claimant has the burden of proof, and that "[d]amages, if allowed, should be adequate to fairly compensate the Plaintiff for all detriment proximately caused by the acts or omissions of those you find to be at fault, whether or not the detriment could have been anticipated. Damages in all cases must be reasonable." N.D.J.I. C - 70.10 Adequate Compensation (Tort). In fact, the jury is told that an injured person "has the duty to exercise ordinary care to avoid loss or minimize the resulting damages. One who fails to do so cannot recover damages for any injury that could have been prevented by the exercise of reasonable care." N.D.J.I. C-74.25.

When deciding the amount of "non-economic damages," a jury is told it may award the following:

> Compensation for non-economic damages which are damages arising from [pain,] [suffering,] [inconvenience,] [physical impairment,] [disfigurement,] [mental anguish,] [emotional distress,] [fear of injury, loss, or illness,] [loss of society and companionship,] [loss of consortium,] [injury to reputation,] [humiliation,] and other nonpecuniary damages."

N.D.J.I. C - 70.38 Elements of Damages (Wrongful Death) 2016 (North Dakota Jury Instructions - Civil (2024 Edition)).

As you can see, a defendant in a personal injury case—including a commercial motor carrier—hardly goes into a trial without the protection of law. Instead, the opposite is true. I have tried injury and death cases to juries in North Dakota. I have never been involved in a case where a jury did not closely scrutinize the instructions from the judge. Furthermore, North Dakota juries are smart and very conservative when awarding money. This amendment is not about fighting "crazy liberal juries" in North Dakota. It is about limiting the recovery of people who are badly hurt and shifting it to private health insurers and public assistance.

Finally, over the road drivers travel to North Dakota from all over the United States. Putting a cap on damages only limits the exposure of a California truck driver when he or she is in North Dakota. The minute the truck driver crosses the state line in Minnesota, he or she is responsible for all the damages he or she causes. North Dakotans should not be penalized for living in North Dakota.

Trucking accidents often involve severe injuries. It is a simple physics equation. However, $500,000 would be considered far below fair compensation for many kinds of injuries even in conservative North Dakota juries, such as severe burns, amputations, facial scarring, paralysis, and death. Shifting the burden of those damages from the responsible party will only add to the burden on the injured, public health resources, and private insurers. Most commercial truck drivers are the safest operators on the roads. Trying to shield the bad apples from responsibility hardly encourages safety or protects North Dakotans.

The people who will ultimately bear the burden of SB 2206—the victims of future trucking collisions—are silent. The legislature should resist the temptation to only listen to paid insurance lobbyists seeking to shift the burden of negligence onto the public.

For these reasons, I respectfully ask that the Committee reject SB 2206.

Respectfully yours,

By:_____
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