

HOUSE BILL No. 2332

By Committee on Judiciary

2-14

1 AN ACT concerning civil actions; relating to wrongful death and personal
2 injury actions; exemplary and punitive damages; amending K.S.A. 60-
3 1903 and 60-1904 and K.S.A. 2018 Supp. 60-1901 and repealing the
4 existing sections.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 60-1901 is hereby amended to read as
8 follows: 60-1901. (a) If the death of a person is caused by the wrongful act
9 or omission of another, an action may be maintained for the damages,
10 *including, but not limited to, exemplary or punitive damages*, resulting
11 therefrom if the former might have maintained the action had such person
12 lived, in accordance with the provisions of this article, against the
13 wrongdoer, or such wrongdoer's personal representative if such wrongdoer
14 is deceased.

15 (b) As used in article 19 of chapter 60 of the Kansas Statutes
16 Annotated, and amendments thereto, the term "person" includes an unborn
17 child.

18 (c) As used in this section, the term "unborn child" means a living
19 individual organism of the species homo sapiens, in utero, at any stage of
20 gestation from fertilization to birth.

21 (d) The provisions of this section shall not apply to a wrongful death
22 action if the death is of an unborn child by means of:

23 (1) Any act committed by the mother of the unborn child;

24 (2) any lawful medical procedure performed by a physician or other
25 licensed medical professional at the request of the pregnant woman or her
26 legal guardian;

27 (3) the lawful dispensation or administration of lawfully prescribed
28 medication; or

29 (4) a legal abortion.

30 (e) If any provision or clause of this act or application thereof to any
31 person or circumstance is held invalid, such invalidity shall not affect other
32 provisions or applications of the act which can be given effect without the
33 invalid provision or application, and to this end the provisions of this act
34 are declared to be severable.

35 Sec. 2. K.S.A. 60-1903 is hereby amended to read as follows: 60-
36 1903. (a) In any wrongful death action, the court or jury may award such

1 damages as are found to be fair and just under all the facts and
2 circumstances, but the damages, other than pecuniary loss sustained by an
3 heir at law, *exclusive of any exemplary or punitive damages*, cannot exceed
4 in the aggregate the sum of \$250,000 and costs.

5 (b) If a wrongful death action is to a jury, the court shall not instruct
6 the jury on the monetary limitation imposed by subsection (a) upon
7 recovery of damages for nonpecuniary loss. If the jury verdict results in an
8 award of damages for nonpecuniary loss which, after deduction of any
9 amounts pursuant to K.S.A. 60-258a, and amendments thereto, exceeds the
10 limitation of subsection (a), the court shall enter judgment for damages of
11 \$250,000 for nonpecuniary loss.

12 (c) In any wrongful death action, the verdict shall be itemized by the
13 trier of fact to reflect the amounts, if any, awarded for:

- 14 (1) Nonpecuniary damages;
 - 15 (2) expenses for the care of the deceased caused by the injury; and
 - 16 (3) pecuniary damages other than those itemized under subsection (c)
- 17 (2).

18 (d) Where applicable, the amounts required to be itemized pursuant to
19 subsections (c)(1) and (c)(3) shall be further itemized by the trier of fact to
20 reflect those amounts awarded for injuries and losses sustained to date and
21 those awarded for injuries and losses reasonably expected to be sustained
22 in the future.

23 (e) In any wrongful death action, the trial court shall instruct the jury
24 only on those items of damage upon which there is some evidence to base
25 an award.

26 (f) *The court shall determine the amount of exemplary or punitive*
27 *damages if awarded by the trier of fact in accordance with K.S.A. 60-*
28 *3702, and amendments thereto.*

29 Sec. 3. K.S.A. 60-1904 is hereby amended to read as follows: 60-
30 1904. (a) Damages may be recovered for, but are not limited to:

- 31 (1) Mental anguish, suffering or bereavement;
- 32 (2) loss of society, companionship, comfort or protection;
- 33 (3) loss of marital care, attention, advice or counsel;
- 34 (4) loss of filial care or attention;
- 35 (5) loss of parental care, training, guidance or education; ~~and~~
- 36 (6) reasonable funeral expenses for the deceased; *and*
- 37 (7) *exemplary or punitive damages awarded pursuant to K.S.A. 60-*
38 *3702, and amendments thereto.*

39 (b) If no probate administration for the estate of the deceased has
40 been commenced, expenses for the care of the deceased which resulted
41 from the wrongful act may also be recovered by any one of the heirs who
42 paid or became liable for them. Those expenses and any amount recovered
43 for funeral expenses shall not be included in the limitation of K.S.A. 60-

1 1903, and amendments thereto.

2 Sec. 4. K.S.A. 60-1903 and 60-1904 and K.S.A. 2018 Supp. 60-1901
3 are hereby repealed.

4 Sec. 5. This act shall take effect and be in force from and after its
5 publication in the statute book.