

HOUSE BILL No. 2399

By Committee on Federal and State Affairs

3-12

1 AN ACT concerning civil actions; relating to civil action for damages for
2 criminal act; trespass and liability.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Any person injured in person or property by a criminal
6 act shall have a civil cause of action unless specifically prohibited by law,
7 and such person may recover: (1) Actual damages; (2) punitive damages;
8 and (3) reasonable attorneys' fees and other litigation costs reasonably
9 incurred.

10 (b) (1) Except as provided in subsection (b)(2), a final judgment of a
11 court that has not been reversed on appeal or otherwise set aside, entered
12 after a trial or upon a plea of guilty, but not upon a plea of nolo contendere
13 or the equivalent plea from another jurisdiction, that adjudges an offender
14 guilty of any felony, when entered as evidence in any subsequent civil
15 proceeding based on the criminal act, shall preclude the offender from
16 denying in the subsequent civil proceeding any fact essential to sustaining
17 that judgment.

18 (2) Subsection (b)(1) shall not apply if the offender can demonstrate
19 that extraordinary circumstances prevented the offender from having a full
20 and fair opportunity to litigate the issue in the criminal proceeding or other
21 extraordinary circumstances justify affording the offender an opportunity
22 to relitigate the issue.

23 (3) The offender may introduce evidence of a pending application for
24 rehearing or pending appeal of the final judgment, if applicable, and the
25 court may consider such evidence in determining the liability of the
26 offender.

27 (c) Any civil cause of action brought under this section shall be
28 subject to the provisions of K.S.A. 74-7312, and amendments thereto.

29 Sec. 2. (a) For the purposes of this section, "tort action" means a civil
30 action for damages for injury, death or loss to person or property other
31 than a civil action for damages for a breach of contract or another
32 agreement between persons.

33 (b) Recovery on a claim for relief in a tort action is barred to any
34 person or the person's legal representative if the person:

35 (1) Has been convicted of or has pleaded guilty to a felony, or to a
36 misdemeanor that is an offense of violence, arising out of criminal conduct

1 that was a proximate cause of the injury or loss for which relief is claimed
2 in the tort action; or

3 (2) engaged in conduct that, if prosecuted, would constitute a felony,
4 a misdemeanor that is an offense of violence, an attempt to commit a
5 felony or an attempt to commit a misdemeanor that is an offense of
6 violence, and such conduct was a proximate cause of the injury or loss
7 which relief is claimed in the tort action, regardless of whether the person
8 has been convicted of or pleaded guilty to or has been charged with
9 committing the felony, the misdemeanor or the attempt to commit the
10 felony or misdemeanor.

11 (c) Recovery against a victim of conduct that, if prosecuted, would
12 constitute a felony, a misdemeanor that is an offense of violence, an
13 attempt to commit a felony or an attempt to commit a misdemeanor that is
14 an offense of violence, on a claim for relief in a tort action is barred to any
15 person or the person's legal representative if the conduct the person
16 engaged in against that victim was a proximate cause of the injury or loss
17 for which relief is claimed in the tort action and that conduct, if
18 prosecuted, would constitute a felony, a misdemeanor that is an offense of
19 violence, an attempt to commit a felony or an attempt to commit a
20 misdemeanor that is an offense of violence, regardless of whether the
21 person has been convicted of or pleaded guilty to or has been charged with
22 committing the felony, the misdemeanor, or the attempt to commit the
23 felony or misdemeanor.

24 (d) This section shall not apply to civil claims based upon alleged
25 willful or wanton misconduct or intentionally tortious conduct, alleged
26 violations of the United States constitution or alleged violations of federal
27 statutes pertaining to civil rights. For the purposes of this section, a
28 person's lawful act pursuant to immunities or defenses described in K.S.A.
29 2012 Supp. 21-5220 et seq., and amendments thereto, does not constitute
30 intentionally tortious conduct.

31 Sec. 3. (a) For the purposes of this section, "trespasser" means a
32 person who enters or remains on the property of another without
33 permission and without an invitation, express or implied.

34 (b) A possessor of real property, including an owner, lessee, or other
35 occupant, or an agent of such person or entity, owes no duty of care to a
36 trespasser except to refrain from willfully or wantonly injuring the
37 trespasser. A possessor may use justifiable force to repel a trespasser who
38 has entered the land or a building with the intent to commit a crime.

39 (c) Notwithstanding subsection (b), a possessor of real property may
40 be subject to liability for physical injury or death to a trespasser if the
41 trespasser was a child, the injury resulted from a dangerous artificial
42 condition on the land, and:

43 (1) The possessor knows, or in the exercise of ordinary care should

1 know, that young children are likely to trespass upon the land;

2 (2) the possessor knows, or in the exercise of ordinary care should
3 know, that the condition exists and that it involves an unreasonable risk of
4 bodily harm to young children;

5 (3) the injured child, because of such child's youth, did not discover
6 the condition or realize the risk involved in intermeddling with it or in
7 coming within the area made dangerous by it; and

8 (4) a possessor using ordinary care would not have maintained the
9 condition when taking into consideration the usefulness of the condition
10 and whether or not the expense or inconvenience to the possessor in
11 remedying the condition would be slight in comparison to the risk of harm
12 to children.

13 (d) (1) This section does not create or increase the liability of any
14 possessor of real property.

15 (2) This section does not affect any immunities from or defenses to
16 liability established by any other section of the Kansas Statutes Annotated,
17 including, but not limited to, immunities or defenses described in K.S.A.
18 2012 Supp. 21-5220 et seq., and amendments thereto.

19 (3) This section does not affect any immunities from or defenses to
20 liability available at common law to which a possessor of real property
21 may be entitled under circumstances not covered by this section.

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