

HOUSE BILL No. 2335

By Committee on Judiciary

2-9

1 AN ACT concerning civil actions; relating to wrongful death and personal
2 injury actions; exemplary and punitive damages; limitation on
3 damages; amending K.S.A. 60-1903, 60-1904 and 74-7319 and K.S.A.
4 2016 Supp. 60-1901 and repealing the existing sections; also repealing
5 K.S.A. 60-19a01 and K.S.A. 2016 Supp. 60-19a02.
6

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

8 Section 1. K.S.A. 2016 Supp. 60-1901 is hereby amended to read as
9 follows: 60-1901. (a) If the death of a person is caused by the wrongful act
10 or omission of another, an action may be maintained for the damages,
11 *including, but not limited to, exemplary or punitive damages,* resulting
12 therefrom if the former might have maintained the action had such person
13 lived, in accordance with the provisions of this article, against the
14 wrongdoer, or such wrongdoer's personal representative if such wrongdoer
15 is deceased.

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

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

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

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

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

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

30 (4) a legal abortion.

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

36 Sec. 2. K.S.A. 60-1903 is hereby amended to read as follows: 60-

1 1903. (a) In any wrongful death action, the court or jury may award such
 2 damages as are found to be fair and just under all the facts and
 3 circumstances, ~~but the damages, other than pecuniary loss sustained by an~~
 4 ~~heir at law, cannot exceed 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 ~~(e)~~—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 ~~(e)~~
 17 ~~(b)~~(2).

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

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

26 (e) *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 New Sec. 4. When exemplary or punitive damages are awarded in an
3 action brought seeking damages for personal injury or death, following the
4 payment of all allowable costs pursuant to article 20 of chapter 60 of the
5 Kansas Statutes Annotated, and amendments thereto, expenses of
6 litigation, attorney fees and all applicable federal and state taxes, from the
7 collected proceeds of any judgment or settlement, of the remainder, 50%
8 of an exemplary or punitive damage award shall be remitted by the party
9 recovering such award to the state treasurer in accordance with the
10 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
11 each such remittance, the state treasurer shall deposit the entire amount in
12 the state treasury to the credit of the state general fund.

13 Sec. 5. K.S.A. 74-7319 is hereby amended to read as follows: 74-
14 7319. (a) Any individual, partnership, corporation or association which
15 contracts with any person accused or convicted of the commission of a
16 crime in this state, or with a representative or assignee of such a person, to
17 use the crime committed or alleged to have been committed by such
18 person or the expression of such person's thoughts, feelings, opinions or
19 emotions regarding the crime in any book, magazine or other publication
20 or in any movie, radio, television presentation or live entertainment shall
21 pay to the crime victims compensation board all moneys which would
22 otherwise by the terms of the contract be owed to the person who
23 committed or is alleged to have committed the crime, or such person's
24 representatives or assignees, provided, such book, magazine or other
25 publication, movie, radio or television presentation or live entertainment of
26 any kind deals principally with the crime for which the person is accused
27 and convicted. If any person is accused and convicted of the commission
28 of two or more crimes, the crimes shall, for purposes of determining
29 whether such publication, presentation or entertainment deals principally
30 with the crime for which the person is accused and convicted, be combined
31 and considered as one crime.

32 (b) Upon receipt of such funds pursuant to subsection (a), the crime
33 victims compensation board immediately shall notify the victim of the
34 crime, as defined in K.S.A. 74-7301, and amendments thereto, of such
35 receipt. Within six months of such notification, the victim may file a claim
36 with the board for disbursement of such moneys. If proper application is
37 made and the victim can provide the board evidence of a money judgment
38 within two years of such notification of the victim by the board, and such
39 judgment is against the person accused or convicted of committing such
40 crime, the board shall pay such amount, plus accrued interest at the rate
41 imposed on civil money judgments, to the victim. Such amount shall not
42 exceed the lesser of the amount of the judgment or the amount of the funds
43 received by the board.

1 (c) In the event at the time of the notification provided in subsection
2 (b), the applicable civil statute of limitations on filing a civil action against
3 such person accused of or convicted of the crime shall have run, the victim
4 shall have six months from such notification to file a notice of claim as
5 provided in subsection (b) and a civil action against the person accused or
6 convicted of the crime.

7 ~~(d) For purposes of this section and a civil action for money damages~~
8 ~~filed hereunder, the limitations imposed on money damages in K.S.A. 60-~~
9 ~~1903, K.S.A. 1992 Supp. 60-19a01 and subsection (c) of K.S.A. 1992~~
10 ~~Supp. 60-3701, and amendments thereto, shall not apply.~~

11 Sec. 6. K.S.A. 60-1903, 60-1904, 60-19a01 and 74-7319 and K.S.A.
12 2016 Supp. 60-1901 and 60-19a02 are hereby repealed.

13 Sec. 7. This act shall take effect and be in force from and after its
14 publication in the statute book.