

HOUSE BILL No. 2198

By Representative Swenson

2-5

AN ACT concerning civil procedure; relating to limitations on damages; amending K.S.A. 60-19a02 and 60-3702 and K.S.A. 2002 Supp. 60-1903 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 60-1903 is hereby amended to read as follows: 60-1903. (a) In any wrongful death action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances, but the damages, other than pecuniary loss sustained by an heir at law, cannot exceed in the aggregate the sum of \$250,000 and costs.

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

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

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

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

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

(f) *In any wrongful death action, the court or jury may award such damages as are found to be fair and just under all the facts and circumstances.*

1 (g) *The provisions of subsections (a), (b), (c) and (d) shall apply only*
2 *to a wrongful death action based upon a cause of action accruing on or*
3 *before June 30, 2003. The provisions of subsection (f) shall apply only to*
4 *a wrongful death action based upon a cause of action accruing on or before*
5 *July 1, 2003.*

6 Sec. 2. K.S.A. 60-19a02 is hereby amended to read as follows: 60-
7 19a02. (a) As used in this section “personal injury action” means any
8 action seeking damages for personal injury or death.

9 (b) In any personal injury action, the total amount recoverable by
10 each party from all defendants for all claims for noneconomic loss shall
11 not exceed a sum total of \$250,000.

12 (c) In every personal injury action, the verdict shall be itemized by
13 the trier of fact to reflect the amount awarded for noneconomic loss.

14 (d) If a personal injury action is tried to a jury, the court shall not
15 instruct the jury on the limitations of this section. If the verdict results in
16 an award for noneconomic loss which exceeds the limit of this section,
17 the court shall enter judgment for \$250,000 for all the party’s claims for
18 noneconomic loss. Such entry of judgment by the court shall occur after
19 consideration of comparative negligence principles in K.S.A. 60-258a and
20 amendments thereto.

21 (e) The provisions of this section shall not be construed to repeal or
22 modify the limitation provided by K.S.A. 60-1903 and amendments
23 thereto in wrongful death actions.

24 (f) The provisions of this section shall apply only to personal injury
25 actions which are based on causes of action accruing on or after July 1,
26 1988, *and before July 1, 2003.*

27 Sec. 3. K.S.A. 60-3702 is hereby amended to read as follows: 60-
28 3702. (a) In any civil action in which exemplary or punitive damages are
29 recoverable, the trier of fact shall determine, concurrent with all other
30 issues presented, whether such damages shall be allowed. If such damages
31 are allowed, a separate proceeding shall be conducted by the court to
32 determine the amount of such damages to be awarded.

33 (b) At a proceeding to determine the amount of exemplary or punit-
34 tive damages to be awarded under this section, the court may consider:

35 (1) The likelihood at the time of the alleged misconduct that serious
36 harm would arise from the defendant’s misconduct;

37 (2) the degree of the defendant’s awareness of that likelihood;

38 (3) the profitability of the defendant’s misconduct;

39 (4) the duration of the misconduct and any intentional concealment
40 of it;

41 (5) the attitude and conduct of the defendant upon discovery of the
42 misconduct;

43 (6) the financial condition of the defendant; and

1 (7) the total deterrent effect of other damages and punishment im-
2 posed upon the defendant as a result of the misconduct, including, but
3 not limited to, compensatory, exemplary and punitive damage awards to
4 persons in situations similar to those of the claimant and the severity of
5 the criminal penalties to which the defendant has been or may be
6 subjected.

7 At the conclusion of the proceeding, the court shall determine the
8 amount of exemplary or punitive damages to be awarded and shall enter
9 judgment for that amount.

10 (c) In any civil action where claims for exemplary or punitive damages
11 are included, the plaintiff shall have the burden of proving, by clear and
12 convincing evidence in the initial phase of the trial, that the defendant
13 acted toward the plaintiff with willful conduct, wanton conduct, fraud or
14 malice.

15 (d) In no case shall exemplary or punitive damages be assessed pur-
16 suant to this section against:

17 (1) A principal or employer for the acts of an agent or employee
18 unless the questioned conduct was authorized or ratified by a person
19 expressly empowered to do so on behalf of the principal or employer; or

20 (2) an association, partnership or corporation for the acts of a mem-
21 ber, partner or shareholder unless such association, partnership or cor-
22 poration authorized or ratified the questioned conduct.

23 (e) Except as provided by subsection (f), no award of exemplary or
24 punitive damages pursuant to this section shall exceed the lesser of:

25 (1) The annual gross income earned by the defendant, as determined
26 by the court based upon the defendant's highest gross annual income
27 earned for any one of the five years immediately before the act for which
28 such damages are awarded, unless the court determines such amount is
29 clearly inadequate to penalize the defendant, then the court may award
30 up to 50% of the net worth of the defendant, as determined by the court;
31 or

32 (2) \$5 million.

33 (f) In lieu of the limitation provided by subsection (e), if the court
34 finds that the profitability of the defendant's misconduct exceeds or is
35 expected to exceed the limitation of subsection (e), the limitation on the
36 amount of exemplary or punitive damages which the court may award
37 shall be an amount equal to 1 ½ times the amount of profit which the
38 defendant gained or is expected to gain as a result of the defendant's
39 misconduct.

40 (g) As used in this section the terms defined in K.S.A. 60-3401, and
41 amendments thereto, shall have the meaning provided by that statute.

42 (h) The provisions of ~~this section~~ subsections (e) and (f) shall apply
43 only to an action based upon a cause of action accruing on or after July

1 1, 1988, *and before July 1, 2003.*

2 Sec. 4. K.S.A. 60-19a02 and 60-3702 and K.S.A. 2002 Supp. 60-1903
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.

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