

## HOUSE BILL No. 2708

By Committee on Judiciary

Requested by Representative Wasinger on behalf of Jeremiah Schumacher

2-6

1 AN ACT concerning civil actions; relating to wrongful death; eliminating  
2 the cap on nonpecuniary loss when the action is brought against a  
3 person convicted of murder; extending the statute of limitations in  
4 wrongful death actions from two years to five years; amending K.S.A.  
5 60-511, 60-513 and 60-1903 and repealing the existing sections.  
6

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

8 Section 1. K.S.A. 60-511 is hereby amended to read as follows: 60-  
9 511. The following actions shall be brought within five~~(5)~~ years:

10 ~~(1)~~(a) An action upon any agreement, contract or promise in writing.

11 ~~(2)~~(b) An action brought on any covenant of seizin contained in any  
12 deed of conveyance of land.

13 ~~(3)~~(c) An action brought on a covenant of warranty contained in any  
14 deed of conveyance of land, after there shall have been a final decision  
15 against the title of the covenantor in such deed.

16 ~~(4)~~(d) An action upon the official bond or undertaking of an executor,  
17 administrator, conservator, sheriff, or any other officer, or upon the bond or  
18 undertaking given in attachment, injunction, arrest, or in any case required  
19 by statute.

20 ~~(5)~~(e) An action for relief, other than the recovery of real property not  
21 provided for in this article.

22 (f) *An action for wrongful death.*

23 Sec. 2. K.S.A. 60-513 is hereby amended to read as follows: 60-513.

24 (a) The following actions shall be brought within two years:

25 (1) An action for trespass upon real property.

26 (2) An action for taking, detaining or injuring personal property,  
27 including actions for the specific recovery thereof.

28 (3) An action for relief on the ground of fraud, but the cause of action  
29 shall not be deemed to have accrued until the fraud is discovered.

30 (4) An action for injury to the rights of another, not arising on  
31 contract, and not herein enumerated.

32 ~~(5) An action for wrongful death.~~

33 ~~(6)~~ An action to recover for an ionizing radiation injury as provided  
34 in K.S.A. 60-513a, 60-513b and 60-513c, and amendments thereto.

35 ~~(7)~~(6) An action arising out of the rendering of or failure to render

1 professional services by a ~~health care~~ *healthcare* provider, not arising on  
2 contract.

3 (b) Except as provided in subsections (c) and (d), the causes of action  
4 listed in subsection (a) shall not be deemed to have accrued until the act  
5 giving rise to the cause of action first causes substantial injury, or, if the  
6 fact of injury is not reasonably ascertainable until some time after the  
7 initial act, then the period of limitation shall not commence until the fact  
8 of injury becomes reasonably ascertainable to the injured party, but in no  
9 event shall an action be commenced more than 10 years beyond the time  
10 of the act giving rise to the cause of action.

11 (c) A cause of action arising out of the rendering of or the failure to  
12 render professional services by a ~~health care~~ *healthcare* provider shall be  
13 deemed to have accrued at the time of the occurrence of the act giving rise  
14 to the cause of action, unless the fact of injury is not reasonably  
15 ascertainable until some time after the initial act, then the period of  
16 limitation shall not commence until the fact of injury becomes reasonably  
17 ascertainable to the injured party, but in no event shall such an action be  
18 commenced more than four years beyond the time of the act giving rise to  
19 the cause of action.

20 (d) A negligence cause of action by a corporation or association  
21 against an officer or director of the corporation or association shall not be  
22 deemed to have accrued until the act giving rise to the cause of action first  
23 causes substantial injury, or, if the fact of injury is not reasonably  
24 ascertainable until some time after the initial act, then the period of  
25 limitation shall not commence until the fact of injury becomes reasonably  
26 ascertainable to the injured party, but in no event shall such an action be  
27 commenced more than five years beyond the time of the act giving rise to  
28 the cause of action. All other causes of action by a corporation or  
29 association against an officer or director of the corporation or association  
30 shall not be deemed to have accrued until the act giving rise to the cause of  
31 action first causes substantial injury and there exists a disinterested  
32 majority of nonculpable directors of the corporation or association, or, if  
33 the fact of injury is not reasonably ascertainable until some time after the  
34 initial act, then the period of limitation shall not commence until the fact  
35 of injury becomes reasonably ascertainable and there exists a disinterested  
36 majority of nonculpable directors of the corporation or association, but in  
37 no event shall such an action be commenced more than 10 years beyond  
38 the time of the act giving rise to the cause of action. For purposes of this  
39 subsection, ~~the term "negligence cause of action" shall~~ *does* not include a  
40 cause of action seeking monetary damages for any breach of the officer's  
41 or director's duty of loyalty to the corporation or association, for acts or  
42 omissions not in good faith or which involve intentional misconduct or a  
43 knowing violation of law, for liability under K.S.A. 17-5812, 17-6410, 17-

1 6423, 17-6424 or 17-6603, and amendments thereto, or for any transaction  
2 from which the officer or director derived an improper personal benefit.

3 (e) The provisions of this section as it was constituted prior to July 1,  
4 1996, shall continue in force and effect for a period of two years from that  
5 date with respect to any act giving rise to a cause of action occurring prior  
6 to that date.

7 Sec. 3. K.S.A. 60-1903 is hereby amended to read as follows: 60-  
8 1903. (a) *(1) Except as provided in subsection (b), in any wrongful death*  
9 *action, the court or jury may award such damages as are found to be fair*  
10 *and just under all the facts and circumstances, but the damages, other than*  
11 *pecuniary loss sustained by an heir at law, cannot exceed in the aggregate*  
12 *the sum of \$250,000 and costs.*

13 ~~(b)(2)~~ If a wrongful death action is to a jury, the court shall not  
14 instruct the jury on the monetary limitation imposed by subsection ~~(a)~~ (a)  
15 (1) upon recovery of damages for nonpecuniary loss. If the jury verdict  
16 results in an award of damages for nonpecuniary loss which, after  
17 deduction of any amounts pursuant to K.S.A. 60-258a, and amendments  
18 thereto, exceeds the limitation of subsection ~~(a)~~ (a)(1), the court shall enter  
19 judgment for damages of \$250,000 for nonpecuniary loss.

20 (b) *The monetary limitation imposed by subsection (a) shall not apply*  
21 *in a wrongful death action brought against a person when the wrongful act*  
22 *or omission that caused the death results in such person being convicted*  
23 *of one of the following offenses:*

24 (1) *Capital murder as described in K.S.A. 21-5401, and amendments*  
25 *thereto;*

26 (2) *murder in the first degree as described in K.S.A. 21-5402, and*  
27 *amendments thereto; or*

28 (3) *murder in the second degree as described in K.S.A. 21-5403, and*  
29 *amendments thereto.*

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

32 (1) Nonpecuniary damages;

33 (2) expenses for the care of the deceased caused by the injury; and

34 (3) pecuniary damages other than those itemized under subsection (c)  
35 (2).

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

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

- 1       Sec. 4. K.S.A. 60-511, 60-513 and 60-1903 are hereby repealed.
- 2       Sec. 5. This act shall take effect and be in force from and after its
- 3       publication in the statute book.