

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton

Date: February 20, 2019

Re: HB 2332 relating to wrongful death; exemplary and punitive damages -- SUPPORT

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am pleased to testify on behalf of KTLA in support of HB 2332.

HB 2332 amends KSA 60-1901, which is part of Article 19, Chapter 60 establishing wrongful death actions, to permit the recovery of exemplary or punitive damages in a cause of action for wrongful death.

Kansas case law holds that punitive damages are not recoverable in a wrongful death action because the Legislature did not expressly provide for their recovery in statute. The Supreme Court concluded that because the wrongful death cause of action is a creature of statute, the Legislature must expressly authorize punitive damages to allow their recovery. The current law produces illogical results because punitive damages may be available to Kansans when a wrongdoer causes injury, but not when a wrongdoer's actions cause death.

HB 2332 does not amend the punitive damage statutes found in Article 37 of Chapter 60; these statutes would apply in wrongful death cases where punitive damages are claimed. Under the current law, the trier of fact must determine whether punitive damages are allowed, and in a separate proceeding, determine the amount of such damages based on the following factors:

- likelihood at the time of the alleged misconduct that serious harm would arise
- degree of the defendant's awareness of that likelihood;
- profitability of the defendant's misconduct;
- duration of the misconduct and any intentional concealment of it;
- attitude and conduct of the defendant upon discovery of the misconduct;
- financial condition of the defendant; and
- total deterrent effect of other damages and punishment, including but not limited to compensatory, exemplary and punitive damage awards to persons in similar situations, and the severity of criminal penalties to which the defendant may face.

Punitive damages are capped at \$5 million or if the court finds the profitability of the defendant's misconduct exceeds \$5 million, the court may award 1 ½ times the amount of profit the defendant gained or is expected to gain as a result of their misconduct.

HB 2332 provides a remedy for extreme misconduct and cures an inequitable and disproportionate result for Kansas families with wrongful death claims. Only the Legislature may fix the inequity and grant families access to exemplary and punitive damages by enacting HB 2332.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request the Committee's support for HB 2332.



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February 19, 2019

To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Matthew Bretz on behalf of Brenda Sue Caselton - Widow of Charles Caselton

Date: February 20, 2019

Re: HB 2332 – An Act concerning civil actions; relating to wrongful death and personal injury actions; exemplary and punitive damages; amending K.S.A. 60-1903 and 60-1904 and K.S.A. 2018 Supp. 60-1901 and repealing the existing sections

Chairman Patton and Members of the House Judiciary Committee:

I am here to testify in support of HB 2332.

On the morning of Saturday, January 21, 2017, Jane Hart, a wealthy socialite started mixing herself margaritas, adding extra tequila to each glass. She did not keep track of how much tequila she drank, but later noted that there were multiple empty bottles on her kitchen countertop. At around noon the socialite decided that she needed trash bags so got in her car and drove to the grocery store. After buying trash bags she got back in her car. As she was driving home she turned in front of an oncoming motorcyclist causing a wreck.

The socialite did not get out of her car to check on the motorcyclist and did not call 911 to summon medical help. By the time other people arrived at the scene the motorcyclist was dead. When law enforcement arrived neighbors told them that the socialite was known to be a heavy drinker. The neighbors were proved right as blood drawn an hour and forty minutes after the wreck showed a .174 BAC - more than twice the legal limit.

The socialite was arrested but was released from jail on bond before the motorcyclist's wife was notified that she was now a widow, and before his kids learned that their father had been killed.

This was not an isolated instance of drinking and driving. In 1986 this same person rear-ended a family while driving drunk. Ironically, the day she killed the motorcyclist she twice drove past the intersection where the 1986 drunk driving wreck and arrest occurred. During a deposition the socialite admitted to driving drunk regularly for years.

In Kansas punitive damages may be assessed a person who engages in willful or wanton conduct as a way to punish the wrongdoer and to deter others from similar behavior. So, if a person gets drunk and drives and injures someone else, the drunk driver can be assessed with punitive damages.

But Kansas law has a strange quirk. The way the statute is written, if the person behaves so recklessly that she kills someone, then punitive damages cannot be assessed. So the way the law currently is written if someone gets really drunk and drives so recklessly that she kills someone, then punitive damages cannot be assessed. There is no logical reason why a drunk driver who injures someone should be assessed with punitive damages, while a drunk driver who kills someone should not. Not only is this illogical, but this is confusing, unjust, and disproportionate.

It should be noted that juries do not determine the amount of punitive damages. Rather, juries determine whether punitive damages should be awarded and then a separate hearing is conducted by the court and the judge determines the amount of punitive damages. This two-step process is not changed by HB 2332.

On behalf of the widow whose husband was killed by a repeat offender who valued trash bags over the lives of other members of the community, we ask that you fix this statute and allow punitive damages to be assessed in wrongful death cases. This amendment will carry out the public policy of this state, punishing those who act in a willful or wanton manner causing injuries, and deterring others from similar conduct.

Sincerely,

Matthew L. Bretz
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