

As Amended by Senate Committee

Session of 2014

SENATE BILL No. 311

By Committee on Judiciary

1-27

1 AN ACT concerning civil procedure and civil actions; relating to
2 noneconomic damages cap; expert or other testimony; collateral source
3 benefits; amending K.S.A. 60-456, 60-457, 60-458, 60-19a02, **60-3801**
4 and 60-3802 and repealing the existing sections; **also repealing K.S.A.**
5 **60-3803, 60-3804, 60-3805, 60-3806 and 60-3807.**

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 60-19a02 is hereby amended to read as follows: 60-
9 19a02. (a) As used in this section "personal injury action" means any
10 action seeking damages for personal injury or death.

11 (b) In any personal injury action, the total amount recoverable by
12 each party from all defendants for all claims for noneconomic loss shall
13 not exceed a sum total of:

14 (1) \$250,000 for causes of action accruing on or after July 1, 1988,
15 and before July 1, 2014;

16 (2) \$300,000 for causes of action accruing on or after July 1, 2014,
17 and before July 1, 2018;

18 (3) \$325,000 for causes of action accruing on or after July 1, 2018,
19 and before July 1, 2022; or

20 (4) \$350,000 for causes of action accruing on or after July 1, 2022.

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

23 (d) If a personal injury action is tried to a jury, the court shall not
24 instruct the jury on the limitations of this section. If the verdict results in
25 an award for noneconomic loss which exceeds the limit of this section, the
26 court shall enter judgment for ~~\$250,000~~ for all the party's claims for
27 noneconomic loss *in the amount of:*

28 (1) \$250,000 for causes of action accruing on or after July 1, 1988,
29 and before July 1, 2014;

30 (2) \$300,000 for causes of action accruing on or after July 1, 2014,
31 and before July 1, 2018;

32 (3) \$325,000 for causes of action accruing on or after July 1, 2018,
33 and before July 1, 2022; or

34 (4) \$350,000 for causes of action accruing on or after July 1, 2022.

35 Such entry of judgment by the court shall occur after consideration of
36 comparative negligence principles in K.S.A. 60-258a, and amendments

1 thereto.

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

5 (f) The provisions of this section shall apply only to personal injury
6 actions which are based on causes of action accruing on or after July 1,
7 1988.

8 Sec. 2. K.S.A. 60-456 is hereby amended to read as follows: 60-456.

9 (a) If the witness is not testifying as an expert ~~his or her~~, the testimony in
10 the form of opinions or inferences is limited to such opinions or inferences
11 as the judge finds ~~(a): (1) May be~~ **Are** rationally based on the perception of
12 the witness; ~~and (b) (2) are helpful to a clearer understanding of his or her~~
13 ~~testimony the testimony of the witness; and (3) are not based on~~
14 **scientific, technical or other specialized knowledge within the scope of**
15 **subsection (b).**

16 (b) ~~If the witness is testifying as an expert, testimony of the witness in~~
17 ~~the form of opinions or inferences is limited to such opinions as the judge~~
18 ~~finds are (1) based on facts or data perceived by or personally known or~~
19 ~~made known to the witness at the hearing and (2) within the scope of the~~
20 ~~special knowledge, skill, experience or training possessed by the witness. If~~
21 ~~scientific, technical or other specialized knowledge will help the trier of~~
22 ~~fact to understand the evidence or to determine a fact in issue, a witness~~
23 ~~who is qualified as an expert by knowledge, skill, experience, training or~~
24 ~~education may testify thereto in the form of an opinion or otherwise if: (1)~~
25 ~~The testimony is based on sufficient facts or data; (2) the testimony is the~~
26 ~~product of reliable principles and methods; and (3) the witness has~~
27 ~~reliably applied the principles and methods to the facts of the case.~~

28 (c) Unless the judge excludes the testimony ~~he or she~~, the judge shall
29 be deemed to have made the finding requisite to its admission.

30 (d) Testimony in the form of opinions or inferences otherwise
31 admissible under this article is not objectionable because it embraces the
32 ultimate issue or issues to be decided by the trier of the fact.

33 Sec. 3. K.S.A. 60-457 is hereby amended to read as follows: 60-457.

34 (a) *If a witness is not testifying as an expert*, the judge may require that a
35 witness before testifying in terms of opinion or inference be first examined
36 concerning the *facts or data* upon which the opinion or inference is
37 founded.

38 (b) *If a witness is testifying as an expert, upon motion of a party, the*
39 *court may hold a pretrial hearing to determine whether the witness*
40 *qualifies as an expert and whether the witness's testimony satisfies the*
41 *requirements of subsection (b) of K.S.A. 60-456, and amendments thereto.*
42 *The court shall allow sufficient time for a hearing. The court shall rule on*
43 *the qualifications of the witness to testify as an expert and whether or not*

1 *the testimony satisfies the requirements of subsection (b) of K.S.A. 60-456,*
2 *and amendments thereto. Such hearing and ruling shall be completed no*
3 *later than the final pretrial conference contemplated under subsection (d)*
4 *of K.S.A. 60-216, and amendments thereto.*

5 Sec. 4. K.S.A. 60-458 is hereby amended to read as follows: 60-458.
6 ~~Questions calling for the opinion of an expert witness need not be~~
7 ~~hypothetical in form unless the judge in his or her discretion so requires,~~
8 ~~but the witness may state his or her opinion and reasons therefor without~~
9 ~~first specifying data on which it is based as an hypothesis or otherwise; but~~
10 ~~upon cross-examination the witness may be required to specify such data.~~
11 *The facts or data in the particular case upon which an expert bases an*
12 *opinion or inference may be those perceived by or made known to the*
13 *expert at or before the hearing or trial. If of a type reasonably relied upon*
14 *by experts in the particular field in forming opinions or inferences upon*
15 *the subject, the facts or data need not be admissible into evidence in order*
16 *for the opinion or inference to be admitted. Facts or data that are*
17 *otherwise inadmissible shall not be disclosed to the jury by the proponent*
18 *of the opinion or inference unless the court determines that the probative*
19 *value of such facts or data in assisting the jury to evaluate the expert's*
20 *opinion substantially outweighs any prejudicial effect.*

21 Sec. 5. K.S.A. 60-3801 is hereby amended to read as follows: 60-
22 3801. ~~As used in this act~~ K.S.A. 60-3801 and 60-3802, and amendments
23 thereto:

24 (a) **"Claimant"** means any person seeking damages in an action for
25 personal injury or death, and includes the heirs at law, executor or
26 administrator of a decedent's estate.

27 (b) **"Collateral source benefits"** means benefits which were or are
28 reasonably expected to be received by a claimant, or by someone for the
29 benefit of a claimant, for expenses incurred or reasonably certain to be
30 incurred as a result of the occurrence upon which the personal injury
31 action is based, except life or disability insurance benefits or benefits
32 gratuitously bestowed on the claimant. Such term shall not include: (1)
33 Services or benefits for which a valid lien or subrogation interest exists;
34 however, nothing in this act shall be construed to create or modify lien
35 or subrogation interests not otherwise allowed by law; and

36 (2) amounts included as part of a criminal sentencing order or
37 pursuant to state programs of victims assistance incurred by virtue of the
38 defendant also committing a criminal act.

39 (c) ~~"Cost of the collateral source benefit"~~ means the amount paid or to
40 be paid in the future to secure a collateral source benefit by the claimant or
41 by anyone on behalf of the claimant. ~~If the amount of any benefit paid or~~
42 ~~to be paid encompasses amounts paid over a period of time, thus making~~
43 ~~the benefit greater than it would be without such amounts paid, then~~

1 evidence of such amounts paid shall be admissible in determining the "cost
2 of the collateral source benefit."

3 (d) ~~"Net collateral source benefits" means the sum of collateral source~~
4 ~~benefits after subtracting the cost of the collateral source benefit.~~

5 ~~Sec. 5. 6.~~ K.S.A. 60-3802 is hereby amended to read as follows: 60-
6 3802. In any action for personal injury or death, in which the claimant
7 demands judgment for damages ~~in excess of \$150,000~~, evidence of
8 collateral source benefits received or evidence of collateral source benefits
9 which are reasonably expected to be received in the future shall be
10 admissible.

11 ~~New Sec. 6. 7.~~ If any provision or clause of this act or the application
12 thereof to any person or circumstance is held to be invalid, such invalidity
13 shall not affect the other provisions or applications of the act, and to this
14 end the provisions of this act are declared to be severable.

15 ~~Sec. 7. 8.~~ K.S.A. 60-456, 60-457, 60-458, 60-19a02 ~~and 60-3802, 60-~~
16 ~~3801, 60-3802, 60-3803, 60-3804, 60-3805, 60-3806 and 60-3807~~ are
17 hereby repealed.

18 ~~Sec. 8. 9.~~ This act shall take effect and be in force from and after its
19 publication in the statute book.