

# 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.