House Judiciary Committee Meeting
Thursday, March 14, 1963

The House Judiciary Committee met Thursday, March 14, 1963, in Room 523 at 8:45 A.M. with Chairman Clyde Hill presiding. Fifteen members were present. Members Arthur, Davis, Krug, Van Cleave and Williams were absent. Present for a hearing concerning House Bills 427, 417, 286 and 291 were: Clarence Rupp, Manhattan, Kansas, Kansas Farm Bureau; W. O. Wanamaker, Topeka, Kansas, Kansas Association Independent Insurance Agents; Richard D. Rogers, Manhattan, Kansas; Bill Colvin, Manhattan, Kansas; Harry W. Colmery, Topeka, Kansas, Counsel for Kansas Domestic Stock and Mutual Casualty Companies Association of Casualty and Surety Companies; Ward Wright, Manhattan, Kansas, Representing Farm Bureau Companies, Domestic Casualty and Fire Companies and National Association of Independent Insurers; Clayton M. Davis, Attorney, Topeka, Kansas; Mark L. Bennett, Attorney, Topeka, Kansas; Ralph M. Hope, Wichita, Kansas; Eugene W. Hiatt, Topeka, Kansas; John C. Allen, Topeka, Kansas; Ed McKeithen, Fairway, Kansas; M. Jay Wanamaker, Topeka, Kansas; T. M. Murrell, Topeka, Kansas; Roy McCue, Topeka, Kansas and Robert Holliday, Topeka, Kansas.

Chairman Hill called the meeting to order. He stated that this hearing is in connection with bills involving insurance.

Harry W. Colmery, Counsel for Kansas Domestic Stock and Mutual Casualty Companies Association of Casualty and Surety Companies, was the first speaker. He introduced the gentlemen attending the meeting and stated that they are all interested in and in opposition to these bills. Mr. Colmery presented the members of the committee with a memorandum in connection with House Bill No. 291, an act repealing the "guest statute," being section 8-122b of the General Statutes of 1949. A copy of this memorandum is attached to these minutes. He went through the memorandum thoroughly with the members of the committee.

Chairman Hill asked if anyone else wanted to be heard concerning House Bill No. 291 or if there were any questions concerning this bill.

Mr. Skoog asked if Mr. Colmery had comparable figures between two large metropolitan states who have high rates. Mr. Colmery stated that he doesn't, but that the states which he mentioned are comparable to Kansas.

Mr. Liebert pointed out that there are other factors entering into the picture which govern these rates.

Chairman Hill asked if there were any other questions or comments. There were none.

Ralph M. Hope, Wichita, Kansas, spoke concerning House Bill No. 417, an act replacing the rule of "contributory negligence" with the rule of "comparative negligence"; concerning general rules of pleading in civil cases; amending section 60-208 of Senate Bill No. 140 of the 1963 regular session of the legislature of the state of Kansas, and repealing said original section. He stated that House Bill No. 417 seeks to amend the new code by providing that comparative negligence should be used as a standard instead of contributory negligence. He stated that this bill contains shorter and better language, but that it is basically Mississippi law. He went on to explain in detail just how both standards work. He gave several examples of cases. He stated that in effect the new code abolished special questions and that there is no way to find out whether a jury even considered if the amount should be apportioned or what percentage was considered. He stated that no one knows on which they based it. Mr. Hope wanted to know just what is wrong with the present rule and why it isn't good or proper as a defense. He stated that there isn't anything wrong with the present theory.

Mr. Smith gave reference to section 44-104 of the General Statutes of 1949 and stated that contributory negligence is no defense. He asked Mr. Hope if he has any argument against striking out "assumption of risk". Mr. Hope stated that he doesn't.

Chairman Hill asked if there were any other questions or if anyone else wanted to be heard concerning House Bill No. 417.

Mr. Crossan asked what about his old standby that this was a pure accident. He then stated that it is out any way. Mr. Hope said it is an entirely different breed.

Chairman Hill stated that if there were no further comments or discussion, House Bill No. 286, an act concerning actions for wrongful death; removing the limitations on damages therein, amending section 60-3203 of the General Statutes Supplement of 1961, and repealing said original section, and House Bill No. 427, an act increasing the maximum amount of damages in wrongful death cases to thirty-five thousand dollars and costs, amending section 60-1903 of Senate Bill No. 140 of the 1963 regular session of the legislature, would be taken up next.

Clarence Rupp, Manhattan, Kansas, representing Kansas Farm Bureau, presented the members of the committee with a memorandum in connection with House Bill No. 286. A copy of this memorandum is attached to these minutes. He stated that this memorandum is addressed to House Bill No. 286, but that you may make any implications you care to as to its application to House Bill No. 427. Mr. Rupp went through the memorandum with the members

of the committee. He stated that the committee is threatening the whole concept under which they have been operating for years. He stated that they may be forced to go to a compensation system. He also stated that our rates are still comparatively low because we have adheared to the old concept. He gave examples of costs in New York. Mr. Rupp stated that he wanted to take a moment to refresh the committee on some of the circumstances of how this language was brought into our statute. He then gave the background concerning the history of this inclusion.

Mr. Crossan stated that he takes exception to the last sentence in this brief. He wanted to know why shouldn't it be a heavier penalty. Mr. Rupp stated that Mr. Crossan is right. He then said that you don't recover money from a criminal. Mr. Crossan asked why not.

Mr. Skoog gave reference to the bottom of page two, the last paragraph, of the memorandum. He asked Mr. Rupp to explain just what the facts are on that statement. Mr. Crossan stated that some states have a punitive act with a $10,000 limit.

Mr. Griffith stated that from reading the memorandum he gets the general feeling that this cause of action should be eliminated completely. He also wanted to know what the magic is to the $25,000 figure as far as they are concerned. He asked if there is any substantial difference between $25,000 and $35,000. He also asked Mr. Rupp if his position remains the same in regard to the $35,000 limit as it is in regard to removing the limitations.

Mr. Skoog wanted to know just how many states have limits. Mr. Rupp couldn't answer this question off hand. He stated that the only figure he had was that $30,000 was the highest limit listed in 1962 - 1963.

Mr. Liebert asked if his company has done any work on the rates which would occur if this $35,000 limit was put on. Several gentlemen said no. Ward Wright stated that in his own company they have reached this $25,000 on only one occasion.

Mr. Rupp asked Mr. Wright how many cases have been involved in wrongful death. Mr. Wright stated that he couldn't say.

Mr. Liebert asked if there is anything in his policy which covers him if he drives a few miles to Oklahoma. Mr. Wright stated that indirectly it becomes a factor. Mr. Liebert asked if losses that occur in other states have to be included in the rates. He said then we are paying premiums also based on laws of other states. Mr. Wright explained just how this works.

Mr. Crossan stated that the rates couldn't be contributed completely to wrongful death. He went on to state that most cases are $5,000 to $10,000. Mr. Wright stated that Mr. Crossan was correct.

Mr. Griffith stated that from the discussion he gatheres that in Mr. Wright's opinion this raising from $25,000 to $35,000 would have very little difference in raising the rates. Mr. Wright stated that this is incorrect. It would have a definite influence.

Mr. Wanamaker gave examples of how rates vary within the state depending upon the location. There was some discussion concerning this matter by the members of the committee.

Mr. Skoog asked just whom Mr. Rupp was inditing by the statement in paragraph three of page one. Mr. Rupp stated that there is one group of people, he believed they go by the name NAPA, who are pushing this law. Mr. Skoog stated that if this is so and this is their sole objective, then you would say that the sole objective of the gentlemen present concerning these bills today is to represent the insurance companies and not just the people as a whole. Mr. Rupp stated that he is present concerning the insurance companies' interests, but that he represents a company which is a mutual company and their attention is directed at all times to maintaining services at lowest possible costs. He stated that he doesn't want to see this service disrupted.

Mr. Smith stated that he doesn't like the reference in the memorandum to the Soviet Civil Code. He gave his opinion concerning this.

Mr. Colmery again gave short reference to his memorandum and then thanked the committee for allowing all present to appear.

Mr. Crossan asked if there is any thought among the gentlemen that the committee isn't studying these matters very carefully. He stated that they were reminded of their oath the other day.

Chairman Hill thanked the gentlemen for appearing. He asked how many members of the committee are planning to attend the dinner given for them this evening. Members Skoog, Liebert, Edwards, Euler, Cram, Tillotson, Malone and Hill plan to attend. Mr. Griffith will let them know by noon. Any other members planning to attend will contact Ivan Krug.

Chairman Hill announced that the Welfare people will appear tomorrow concerning House Bills 342, 346, 347 and 348.

Mr. Griffith moved House Bill No. 427 be reported favorably for passage. Mr. Malone seconded. Chairman Hill asked for any discussion. Mr. Liebert stated that he doesn't see how this can be a big factor in insurance. Chairman Hill asked the members of the committee if they would prefer to wait and vote tomorrow. The committee decided to vote on this bill at today's meeting. Chairman Hill asked if the members wanted to give any consideration to the possibility of raising the limit to $30,000 as some of the members suggested. There was no further discussion. Eight members of the committee were in favor of the motion and three opposed. Motion carried.

Respectfully submitted,
Clyde Hill, Chairman

Minutes approved:

MEMORANDUM
in opposition to

Memo No. 17

House Bill No. 291
repealing the "guest statute"-Sec. 8-122b, G.S. 1949

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House Bill No. 291 repeals Section 8-122b, G. S. 1949, which provides:

> "That no person who is transported by the owner or operator of a motor vehicle, as his guest, without payment for such transportation, shall have a cause of action for damages against such owner or operator for injury, death or damage, unless such injury, death or damage shall have resulted from the gross and wanton negligence of the operator of such motor vehicle."

The statute was enacted in 1931 (L 1931, Chap. 81)-32 years ago - on the theory that a person who accepts a ride in an automobile as a guest - and not as a paying passenger - should assume the risks incident to his host's operation of the automobile, and should have a right of action against his host where the latter's conduct goes beyond that of ordinary negligence.

With respect to this statute and the reason for its enactment, our Kansas Supreme Court said in Stout v. Gallemore, 138 Kan. 385:

> "This statute is the outgrowth of a thought which had become common among our people, that it was too easy under our law relating to liability for negligence for one riding in an automobile as a guest of the driver to recover damages for injuries sustained in an automobile casualty **** such statutes have been upheld in the courts of the several states which have them, and by the Supreme Court of the United States (Silver v Silver 280 U.S. 117), as being an appropriate exercise of legislative power designed to remedy a recognized evil" (389)

Shortly thereafter, in Koster v. Matson 139 Kan 124, the court made this pertinent comment:

> "In the course of what we call progress, the motor vehicle appeared, was prefected, and its use became universal. Complaisant hosts invited of permitted guests to ride. Accidents occasioned by faulty driving occurred. Like Satan, the automobile damage suite industry came also. Also came insurance, leading to lawsuits between husband and wife, father and daughter, and mother and daughter. So it became necessary to adopt the law to the conditions created by the radical change in method of travel and transportation" (129)

"Guest Statutes" are designed to restrict the liability of a motor vehicle owner by requiring his "guests", in order to recover damages against such owner, to prove more than ordinary negligence on his part. Such laws have been enacted and are now law in 27 states.* Only one state which has at any time enacted a guest law has repealed it (the Kentucky law was declared unconstitutional)

The basic reasons for such laws may be summarized as follows:

1. Many claims by automobile guests are fraudulent and are used as a ready means of collecting "easy money"

The Supreme Court of the United States recognized this situation in Silver v Silver 280 U.S. 117, where it said:

> "We are not unaware of the increasing frequency of litigation in which passengers carried gratuitously in automobiles, often casual guests or licensees, have sought the recovery of large sums for injuries alleged to have been due to negligent operation."

Guest cases fall into two classes: In one class are the cases resulting from giving a "lift" to strangers on the road. Any such courtesy extended to pedestrians because of their age, seeming infirmities, exposure to bad weather, etc., subjects the motorist to risk of gross imposition. Any injury or simulated injury to the guest, because of jolts in the road, sudden braking, falls when alighting, as well as more serious accidents for which the motorist really is not responsible, exposes him to a liability for damages. Moreover, many of such cases are fabricated in advance, others are "cooked up" later. Multitudes of such claims, entirely without merit, are being made against responsible motorists and are subjecting them or their insurance carriers to blackmail by facing them with the alternative of the cost of a "nuisance settlement" or the expense of careful preparation for the attendance at trials.

In the second class fall cases arising out of injuries to guests who are members of the family, relatives or friends of the host. Where the host is insured, injuries to such guests are the subjects of multitudes of suits for the purpose of recovering the insurance money only. The incentives for fraud and the difficulties in combatting fraud in such cases are self-evident. At the best, the insured motorist is reluctant to contradict the misrepresentations of a friend or relative; whereas, when the injured guest is a member of his family, collusion is the rule rather than the exception, and the motorist commonly "swears his case away" so that his family

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* Alabama, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wyoming.

can get his insurance carrier's money. For the insurance carriers, such cases are exceptionally difficult to investigate, dangerous to try and expensive to settle. They cause a large fraudulent drain on the insurance funds which is reacting to boost the cost of insurance for honest motorists, and they add greatly to the congestion in the courts.

2. Guest actions frequently involve collusion, perjury, and consequent fraud upon the court. If for no other reason, they should be discouraged because of their evil influence on public morality. The automobile guest case places an unwarranted burden upon the insuring public which is not only reflected in the rates for automobile insurance but also discourages the purchase of insurance.

3. A guest law discourages collusive suits for the purpose of collecting from the insurance company and thus tends to lower rates for automobile liability insurance.

The standard form of automobile liability policy provides the assured with complete protection including insurance against claims brought by guests who may be injured while riding in his car. The cost for automobile liability insurance is determined from the losses incurred by the companies. If guests may sue their host and if they are successful in obtaining recovery, then the losses incurred by the companies are, obviously, reflected in the total amount of losses incurred on the automobile liability insurance policies issued in the state and in each territory. Since the cost of insurance is determined from these losses, it will naturally be greater where the losses include guest payments.

4. It is most unjust that a person carried because of his solicitation or solely for his accommodation should be permitted to recover from his host because of some slight infraction or deviation from the exercise of due care.

In the case of Heinman v. Kloizner (Washington) 247 P. 1034, the court said:

"Justice requires that one who undertakes to perform a duty gratuitously should not be under the same measure of obligation as one who enters upon the same undertaking for pay."

5. Motorists hesitate to take neighbors for a ride or to assist a weary traveler because of this potential liability. When a motorist is protected by a guest law, he will not hesitate to offer ride to friends and neighbors. A slight mishap will not expose him to the dangers of a lawsuit.

6. Ordinary negligence is not hard to prove if guest and host cooperate to that end.

7. The right of a guest to recover for ordinary negligence can not be justified on any grounds of public welfare.

In Russell v. Parlee (Connecticut) 163 A. 404, the court said:

"It may well have appeared to the legislature that there were sound social reasons for denying a recovery for negligence against one who was transporting in his own automobile a member of his family or a social guest or casual invitee."

and in Perozzi v. Ganiere (Oregon) 40 P. (2nd) 1009, the court said:

"Guest statutes have merely placed in statutory form what some courts and the public generally have recognized as just and salutory rules concerning the liability of a host toward an invited passenger in his automobile."

In the case of Crawford v. Foster (California) 293 P. 841, the court said:

"As the use of automobiles became almost universal, the proverbial ingratitude of the dog that bites the hand that feeds him, found a counterpart in the many cases that arose, where generous drivers having offered rides to guests, later found themselves defendants in cases that often turned upon close questions of negligence. Undoubtedly, the legislature in adopting this act (California Guest Law) reflected a certain natural feeling as to the injustice of such a situation."

CONCLUSION

The purposes of the "guest statute" are (1) to protect the owner of an automobile from being imposed upon by claims for damages which are unfair and unwarranted; and (2) thereby protect the insuring public against increased and excessive costs for the necessary protection against the hazards arising from public liability in the operation of the automobile.

For these reasons, the "Guest Statute" performs an important function, should be preserved, and House Bill No. 291 should not be recommended for passage.

Harry W. Colmery
Counsel
Kansas Domestic Stock and Mutual Casualty Companies
Association of Casualty and Surety Companies

14 March 1963

Statement in Opposition to House Bill No. 286

Two dangerous trends are revealed in the bills we are opposing here today: (1) an effort to broaden the concept of liability, and (2) an effort to remove all limits on judgments which may be awarded in actions at law.

House Bill 286 would remove from our statutes all limits on the award that could be made for a wrongful death.

Under the common law there was no right to recover for a death. The concept was that the person who sustained the "supreme damage" could not be reimbursed. The right to recover for a wrongful death is a product of statutory law. It is a right created by legislative action; and in creating this right, legislatures were careful to specify limits on the amount that could be recovered.

House Bill 286, and the other bills we are opposing here today, are being urged by an organized group representing one segment of the legal profession whose sole objective is to secure legislation which will permit higher awards with complete disregard for those who will pay the higher awards. Let's be completely frank! Those seeking the opportunity to gain higher awards are taking advantage of the fact that the average citizen can make himself financially responsible by purchasing liability insurance. They disregard the fact that the average citizen must pay the cost of this insurance.

Without liability it would be impossible for the average citizen to pay more than a few thousand dollars, regardless of the award which a jury decided was the measure of loss suffered. Let us then state in its true and proper form the thesis of those who support House Bill 286: "So long as Mr. Average Citizen can afford insurance, there should be no public concern about limits on awards in wrongful death actions."

But what happens when insurance premium rates become burdensome, or actually prohibitive for the average citizen? This condition is approaching in

some areas. In New York City, for example, the owner of a private passenger car with a young driver in the family must pay an annual premium of $300 for liability insurance with liability limits of $100,000 for one person and $300,000 for one accident. Recent verdicts in New York make these limits appear inadequate, and insurance companies will be forced to collect higher and higher premiums from average citizens. Throughout the nation, including Kansas, insurance companies have been forced to increase rates sharply in the last year because of higher costs, not the least of which is higher awards for liability claims. In a recent issue of U. S. News and World Report, liability claims are shown to be a major factor in higher insurance costs.

Without liability limits, how can any person ever be sure that he has adequate insurance coverage? Law suits for recovery in excess of insurance policy limits are an everyday occurrence. If House Bill No. 286 should become law, a farmer involved in an accident in which a death might occur would be in imminent peril of being sued for every dime he owned, even though he thought he had adequate insurance. By passing House Bill No. 286, the Kansas legislature would be asking every farmer to put his farm, his livestock and his other property into the car with him every time he ventured on a public highway.

Justice is the objective of our legal system. Justice is not served when awards in courts of law are based on the amount of property a defendant owns, or on the amount of insurance he carries. But HB 286 opens the door for such awards. This proposal sounds strangely akin to Section 411 of the Soviet Civil Code which reads:

> "In determining the amount of compensation to be awarded for an injury, the court in all instances must take into consideration the property status of the party injured and that of the party causing the injury."

It is true that many states have no limit on awards for wrongful death, but most of these states have not departed far from the old common law which permitted no recovery. Most of these states with no limit on recovery for wrongful death require

only $5,000 and $10,000 coverage in their financial responsibility laws. Among those states that do set limits of recovery for wrongful death, the ~~$25,000~~ $30,000 limit in Kansas is the highest.

But the important point is that the cost of higher awards in the courts must be charged to the average citizen. If those costs continue to mount, the day may not be far distant when we discard our negligence system for a compensation plan of compensating all accident victims regardless of fault. House Bill 286 would be a step in this direction.

Saskatchewan in Canada already has such a compensation plan. There a person who loses both arms or both feet or both eyes gets $2,000 regardless of negligence. The maximum death benefit is $3,000 to a primary dependent and $625 to each secondary dependent. Such a plan has advocates in the United States. Is this the system the advocates of House Bill 286 would encourage?

House Bill No. 286 would help to place an intolerable burden on the average citizen for a limited number of unfortunate deaths. The victim of disease, drowning, of a tornado or of other unfortunate circumstances can leave nothing to his family except such protection as he may provide through life insurance, health and accident insurance or property he has been able to accumulate. These same safeguards are available to the victim of what is described in law as "wrongful death".

When wrongful death is caused by criminal action, the penalties against the wrongdoer are severe. But the defendant in the wrongful death actions under consideration here is not a criminal. Yet House Bill 286 contemplates reprisal against the defendant in a civil case of wrongful death such as could not be taken against a person who willfully takes the life of another.