

House Judiciary Committee Meeting  
Friday, March 5, 1965

The House Judiciary Committee met Friday, March 5, 1965, in Room 523 at 8:45 A.M. with Chairman Jack R. Euler presiding. Seventeen members were present. Members Davis, Fatzer, Hill and Howard were absent.

Chairman Euler called the meeting to order. He introduced Mark Bennett, Topeka American Insurance Association, who then introduced the other gentlemen appearing in regard to House Bills 600, 627, 686 and 848.

Mr. Bennett spoke in opposition to House Bill No. 600, an act to regulate the granting of releases in personal injury cases. He explained the bill and the background concerning it. He went on to explain how the companies presently operate in regard to releases and that any abuses under the release as it is now may be set away by the court. There was some discussion by the members of the committee in this regard.

Harry Colmery, Kansas Domestic Insurance Companies and Kansas Life Insurance Executives Association, then spoke in opposition to House Bill No. 627, an act repealing the "guest statute," being existing K.S.A. 8-122b. He read the statute and also decisions in regard to this statute. Mr. Colmery then read statistics in this regard concerning the other states. He said that he thinks it is sound public policy to protect the public and that this statute should remain on the books. Mr. Roberts asked if the trend in the other states is to enact or repeal the guest statute. Mr. Colmery said that he thought it was static. There was some discussion in this regard by the members of the committee.

Clarence Rupp, Kansas Farm Bureau, then presented the members of the committee with copies of a statement in opposition to House Bill No. 686, an act relating to actions for wrongful death, pertaining to the amount of damages, amending existing K.S.A. 60-1903, and repealing said existing section. A copy of this statement is attached. Mr. Rupp read this statement to the committee. Mr. Woodworth then asked Mr. Rupp if it is a fair statement to say that

the purpose of insurance is to pay claims and the purpose of a judgment is to make restitution. Mr. Rupp said that this is true. Mr. Woodworth continued by saying that if a murder is committed, a serious penalty is implied and if you negligently kill somebody wouldn't it be proper to make restitution. Mr. Rupp agreed. Mr. Woodworth then stated that he had no personal interest in any organized group representing one segment of the legal profession as was stated in the statement of opposition presented to the committee.

Mr. Amrein then asked the gentlemen appearing if they had any idea of incident in Kansas which actually get to court. Harold Gregg, Kansas Claims Association, Inc. stated that out of about 600 deaths, generally speaking, 5% to 10% get into an attorney's hands and about 2% go into trial. This percentage probably would be higher with wrongful death. There were additional comments by the members of the committee in regard to the reference that this bill is sponsored by an organized group. They also questioned the raising of rates in this regard. No exact figures were available.

Mr. Amrein then asked if they are in favor of legislation requiring licensing of insurance adjustors. Mr. Rupp stated that the adjustors are not strongly in favor of this type of legislation, but that if it becomes an issue, they have some requirements they would like to suggest.

Ralph M. Hope, Missouri Pacific Railroad Company, then spoke in opposition to House Bill No. 848, an act relating to the rules of civil procedure; establishing rules for jury verdicts in certain cases; prescribing the number of jurors, the necessary number to reach a verdict and the duties of jurors and certain court officials; amending existing K.S.A. 60-248 and repealing said existing section. He stated that this is unconstitutional and went on to read a number of supreme court decisions in this regard.

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Representative Unruh of Harvey then explained and gave the background to House Bill No. 795, an act relating to crimes and offenses; declaring certain acts to be larceny and attempt to commit larceny, and providing for penalties in connection therewith.

Clyde Simon, Wichita, then acted as spokesman for a group of rental agencies appearing in favor of House Bill No. 795. They explained their problem in regard to this and there was some discussion by the members of the committee.

The meeting adjourned at 10:00 A.M.

Respectfully submitted,  
Jack R. Euler  
Chairman

Minutes approved:



OPPOSITION TO HOUSE BILL NO. 686

House Bill No. 686 seeks to waive the statutory limits as to the amount that may be recovered for a wrongful death from the present \$25,000 to a maximum of \$100,000 for the head of a family and \$50,000 as to all other persons.

Under the common law there was no right to recover for a wrongful death, the concept being that it was impossible to reimburse the person who had suffered the injury. The right, as it now exists, is a product of statutory law, created by legislative action; and in creating this right the legislators were careful to specify limits on the amount that could be recovered.

There is little doubt House Bill No. 686 is being urged by an organized group representing one segment of the legal profession whose sole objective is to promote legislation which will permit higher awards with complete disregard for those who must pay for those awards. Those seeking the higher limits are taking advantage of the fact that the average citizen can make himself financially responsible by purchasing liability insurance. They seem to think there should be no public concern about limits on awards in wrongful death actions so long as insurance is available. They completely disregard the fact that the average citizen must pay the cost of insurance. They refuse to recognize that in many areas of the United States today the cost of liability insurance has become highly burdensome; and in a few areas where there are no limits as to a wrongful death, the cost is prohibitive.

Without liability insurance, 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 the loss suffered. To put the average citizen in a situation in which the cost of insurance is burdensome, to say nothing of prohibitive, would only serve to force some of those now carrying liability insurance to disregard our financial responsibility laws, thus putting more financially irresponsible drivers on the highways. The end result would be the destruction of our present system in which a moderate sum may be awarded for a wrongful death, and in

the majority of cases satisfied through an insurance program. Higher and higher limits will take away the protection of the policy because an individual either will refuse to purchase because of the burden of premium rates or he will be unable to purchase because of the prohibitive premium rate. We would then find a lawful judgment in an exorbitant amount going unsatisfied.

Of those states having a statutory limit as to a wrongful death, only four have higher limits than those of Kansas; and in each the amount is \$30,000.

House Bill No. 686 would help to place an intolerable burden on the average citizen for a limited number of unfortunate deaths. The victim of disease, drowning or other unfortunate circumstances leaves 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 the law as a wrongful death. Neither his inability nor refusal to adequately afford his family with one of these protective measures should become a problem of all the people for the benefit of a few.

The answer cannot lie in placing more of a burden on society which, because of local, state and federal activities, is already burdened to such an extent that any further out of pocket expense becomes in many cases prohibitive.

All causes of action do not arise in connection with the use and operation of motor vehicles on streets and highways. In addition to carrying public liability insurance covering the use and operation of his automobile, the average tax paying citizen would be required to carry high-limit insurance covering his home, farm, store or other place of business, motor boats, equipment and other personal activities. In determining whether there should be an increased limit of liability under the Wrongful Death Act, consideration should appropriately be given other areas as to the dollar amounts recoverable or payable.

Under the Kansas Workmen's Compensation Law, the maximum limit of recovery because of death is in the amount of \$15,000. The Motor Vehicle Safety Responsibility Act provides that one must have the ability to respond in damages in the amount

of \$5,000 for the death of any one person, or \$10,000 for the death of two or more persons in any one accident. Consideration should be given to the amounts paid under annuities, pensions, social security, old age assistance, unemployment and similar acts. The average amount of personal life insurance should be considered. The point being that a person might be required to pay a high verdict while the decedent valued the loss to his dependents at a minimum since he provided only that much life insurance. Perhaps the most important is whether the people upon being informed of the burdens as well as the benefits, really want an increased limit.

The limitation in the Act should not be increased on the mere basis of general accusations that it is arbitrary, unfair, inconsistent and old fashioned. Nor should it be abolished by a partial consideration only of those whom the act is intended to benefit. We all are required to live under the act all the time, not merely when we may receive the benefits, but equally when we have the burdens of paying the cost.

Mark Bennett <sup>1900</sup> *Tapeka Assoc Ins. Assoc*  
 Harold E. Gregg *Kansas Claims Assoc. Inc.*  
 W. B. *Assoc. - Kans Assn of Mut. Chrs. Co's*  
 Sam Heller *- Kansas Domestic Ins. Co's*  
 Harry Helms <sup>62</sup> *{ Kansas Domestic Insurance Company*  
   *{ Kansas Life Insurance Trustees Assn*

Frank Dunkley *- Kans Assn. Ind. Ins. Agts.*  
 Wm D. Cogwell *- Kansas Domestic Insurance Co's.*  
 Ralph M. Hope <sup>22</sup> *- Missouri Pacific Railroad Company*  
 Eugene W. Hunt *- Ex Assn. Indp. Ins. Agts.*  
 Clarence Rupp <sup>51</sup> *Kansas Farm Bureau*  
 John C. Allen *AT & S F Ry Co.*  
 O B. Edson *U. P. Ry. Co.*

Martin E. Warranaber. *Sunflower Rents Topeka Ks*  
 A. Z. Redburn *Spaville Rentals - Wichita Ks.*  
 Marvin Livand *Abbey Rents - Wichita, Ks*  
 Gene Bispline *Hertz Lic. - Topeka Ks*  
 Harry L. Snowden *U. Rent all - Topeka, Kans*  
 Joel L. Chambers *Blessed Rental Inc Overland Park Kansas*  
 Marty Zwego *101 Rental Co Inc - K. C. Kansas*  
 Theo. L. Perry *4415 Bellview - K C Mo.*