

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at  
Chairperson

10:00 a.m./~~p.m.~~ on January 24, 1983 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Feleciano, Gaines, Hein, Mulich, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes  
Mike Heim, Legislative Research Department  
Mark Burghart, Legislative Research Department

Conferees appearing before the committee:

Kathleen Sebelius, Kansas Trial Lawyers

Senator Werts moved that the minutes of January 21, 1983, be approved; Senator Mulich seconded the motion, and the motion carried.

The chairman inquired if anyone present had a presentation for consideration of introduction of committee bills.

Kathleen Sebelius presented a second draft of a proposal dealing with the private right of action for individual action against unfair claims practices of an insurance company (See Attachment #1). This proposal was presented to the committee on January 18, and there were some questions with the first draft of the proposed amendment. She explained the proposed amendment to the committee. A committee member inquired if they would object to providing the prevailing party be allowed attorneys fees. Her reply was that the general feeling is that, that has a chilling effect on a plaintiff. Committee discussion followed. Another committee member inquired if there have been problems in this area with insurance companies; she replied, there have been problems and gave an example. She said the biggest problem is delays. A committee member inquired if there is a definition of "general business practice" in the law; she answered, no, there is not. A committee member inquired what is the technical reason for needing this bill; she replied this cause of action does not generally exist. Another committee member commented it might exist under the Consumer Protection Act. Following committee discussion, Senator Feleciano moved that the bill be introduced and referred to the appropriate committee; Senator Winter seconded the motion, and the motion carried.

Kathleen Sebelius presented a proposal dealing with a bill on prejudgment interest (See Attachment #2). She explained the proposal is a former house bill, House Bill 2150. Her organization feels there is a majority in favor of this bill in the Senate. Senator Feleciano moved that the bill be introduced and referred to the appropriate committee; Senator Winter seconded the motion, and the motion carried.

Kathleen Sebelius presented another proposal, the Uniform Comparative Fault Act, drafted by the National Conference of Commissioners on Uniform State Laws (See Attachment #3). She explained the draft is approved and recommended for enactment in all states. Senator Steineger moved that the bill be introduced and referred to the appropriate committee; Senator Winter seconded the motion, and the motion carried.

Kathleen Sebelius reported that the Civil Law Advisory Committee of the Kansas Judicial Council will meet February 25 to hear oral testimony. She will keep this committee informed if the civil law committee decides to undertake a study. The chairman announced hearings will not be held this year on the bill if a study is undertaken by the Civil Law Advisory Committee.

The chairman reminded the committee members this is the final day for requesting individual bills.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 24, 1983

Senate Bill 14 - Liability for local disaster emergency activities. Re Proposal No. 38.

The chairman reviewed the hearing held on the bill. During committee discussion, a committee member said he felt conceptually immunity should be given in emergency situations but not for criminal type actions. Considerable committee discussion followed regarding gross and wanton conduct in an emergency situation. Senator Steineger made a conceptual motion that was the second recommendation by the Kansas League of Municipalities; Senator Werts seconded the motion. Following further committee discussion, Senator Steineger made a revised motion that neither entity nor the employee to be liable in civil liability; Senator Werts seconded the revised motion. Considerable committee discussion followed. Senator Hein made a substitute motion to amend the bill to make it actual fraud or actual malice, the standard under the Tort Claims Act; Senator Mulich seconded the motion. Following further committee discussion, the motion carried. Senator Steineger moved to report the bill favorably as amended; Senator Werts seconded the motion, and the motion carried. Senator Feleciano asked to be recorded as voting "no".

Senate Bill 7 - Filing of security interests in farm products; Re Proposal No. 12.

The chairman reviewed the two days hearings held on the bill. Considerable discussion followed. The chairman announced discussion on the bill will continue whenever the committee has the opportunity.

The meeting adjourned.

4/83

GUESTS

SENATE JUDICIARY COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
Jim Maag	Topeka	ICBA
Larry Jones	Staff	Steineger
Chris McKenzi	Topeka	League of Municipalities
Michael Jones	Topeka	AIA
Carol Beard	Topeka	Sec of State
Verney Jantola	Topeka	Ke Co-op Council
John [unclear]	Meriden	KAFD
Marjorie Vanburen	Topeka	OJA
Jon JASSERAND	Topeka	Sec of State
Mervyn Thuholtz	Topeka	KEML
William C. Schelins	"	KTLD
Henry D. Cozsmice	Topeka	Ke. Assn of Professional Services
Shawn Appelbaum	Lawrence	Wint Wmtr
Jeth Sharp	LAWRENCE	Bill Mulich
Becky Crenshaw	Topeka	CSFO
M. Hawver	"	Capital - January

K.S.A. 40-2404

Subsection (10)

A private individual may bring suit against an insurance company for engaging in the practices (a) through (~~y~~<sup>N</sup>) contained in subsection (9). For the purposes of a private action, it is not necessary to prove that the act was done with such frequency as to indicate a general business practice.

If such person prevails in the action, he/she will be entitled to reasonable attorney fees, settlement of the claim and other damages which the law would allow.

Existing subsections 10-13 need renumbering.

1-24-83

# 2

[As Amended by House Committee of the Whole]

Session of 1981

# HOUSE BILL No. 2150

By Committee on Judiciary

(By Request)

1-28

0019 AN ACT relating to interest rates or charges; concerning judg-  
0020 ments on interest-bearing contracts; amending K.S.A. 1980  
0021 ~~Supp.~~ 16-205 and repealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. ~~1980 Supp.~~ 16-205 is hereby amended to  
0024 read as follows: 16-205. (a) When a rate of interest or charges is  
0025 specified in any contract, that rate shall continue until full pay-  
0026 ment is made, and any judgment rendered on ~~any such the~~  
0027 contract shall bear the same rate of interest or charges mentioned  
0028 in the contract, ~~which and such~~ rate shall be specified in the  
0029 judgment; but in no case shall such rate or charges exceed the  
0030 maximum rate or amount authorized by law; ~~and~~. Any bond, note,  
0031 bill, or other contract for the payment of money, which in effect  
0032 provides that any interest or charges or any higher rate of interest  
0033 or charges shall accrue as a penalty for any default, shall be void  
0034 as to any such provision.

0035 (b) Judgments taken in accordance with the provisions of  
0036 subsection (a) shall be expressed as follows:

0037 (1) Judgments upon interest-bearing contracts shall provide  
0038 (i) the unpaid principal balance, (ii) the date to which interest is  
0039 paid, (iii) the contract rate of interest and (iv) that the unpaid  
0040 principal balance shall draw the contract rate of interest from the  
0041 date to which interest is paid until payment in full.

0042 (2) Judgments upon precomputed interest-bearing contracts  
0043 shall provide: (i) The unpaid principal balance shall be ascer-  
0044 tained by deducting from the remaining total of payments owed  
0045 on the contract that portion of the precomputed finance charges

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0046 that are unearned as of the date of acceleration of the maturity of  
0047 the contract, as provided in K.S.A. 16a-2-510 for computing the  
0048 unearned portion of precomputed finance charges in the event of  
0049 prepayment in full. Any delinquency or deferral charges added to  
0050 the unpaid balance subsequent to the date of acceleration shall be  
0051 first deducted from the unpaid balance prior to any such acceler-  
0052 ation. The contract shall be accelerated as of the date provided for  
0053 in the provisions of the contract, or if the contract does not  
0054 provide for the date on which the contract shall be accelerated, it  
0055 shall be accelerated as of the actual date of any such acceleration;  
0056 (ii) the date to which interest is paid, which date shall be the  
0057 maturity date of the next installment due after the date of accel-  
0058 eration, except those contracts which are accelerated on an in-  
0059 stallment due date which shall be the date of acceleration; the  
0060 date to which interest is paid for those contracts that have ma-  
0061 tured prior to judgment shall be calculated from maturity date of  
0062 the contract; (iii) the contract rate of interest; and (iv) that the  
0063 unpaid principal balance shall draw the contract rate of interest  
0064 from the date to which interest is paid until payment in full.

0065 (3) Judgments upon contracts where the finance charges are  
0066 computed in dollars per hundred and added on to the original  
0067 balance to be financed shall provide: (i) The unpaid principal  
0068 balance shall be ascertained by deducting from the remaining  
0069 total of payments owed on the contract that portion of the pre-  
0070 computed finance charges that are unearned as of the date of  
0071 acceleration of the maturity of the contract as provided in K.S.A.  
0072 16a-2-510 for computing the unearned portion of precomputed  
0073 finance charges in the event of prepayment in full. Any delin-  
0074 quency or deferral charges added to the unpaid balance subse-  
0075 quent to the date of acceleration shall be first deducted from the  
0076 unpaid balance prior to any such acceleration. The contract shall  
0077 be accelerated as of the date provided for in the provisions of the  
0078 contract, or if the contract does not provide for the date on which  
0079 the contract shall be accelerated, it shall be accelerated as of the  
0080 actual date of any acceleration; (ii) the date to which interest is  
0081 paid, which date shall be the maturity date of the next installment  
0082 due after the date of acceleration, except those contracts which

0083 are accelerated on an installment due date which shall be the date  
 0084 of acceleration; the date to which interest is paid for those  
 0085 contracts that have matured prior to judgment shall be calculated  
 0086 from the maturity date of the contract; (iii) the contract rate of  
 0087 interest expressed as an annual percentage figure, which may be  
 0088 taken from the contract if it discloses the annual percentage rate,  
 0089 or it shall be ascertained in accordance with the constant ratio  
 0090 method which is mathematically expressed as follows:

0091 
$$R = \frac{2mc}{p(n + 1)}$$
 where  
 0092  
 0093

- 0094 R = rate of charge  
 0095 m = number of payment periods in one year  
 0096 n = number of payments to discharge the debt  
 0097 c = charge in dollars  
 0098 p = principal or cash advanced

0099 and (iv) that the unpaid principal balance shall draw the contract  
 0100 rate of interest as determined herein from the date to which  
 0101 interest is paid until payment in full.

0102 (c) *Upon the entry of any judgment after June 30, ~~1981~~ [1982],*  
 0103 *in which a claimant shall be adjudged to recover money, or be*  
 0104 *entitled to a setoff or counterclaim, the claimant shall be entitled*  
 0105 *to have simple interest at the rate of 10% per annum added to the*  
 0106 *amount of the compensatory portion of the recovery or credit in*  
 0107 *accordance with the following conditions:*

0108 (1) *No interest shall be added pursuant to this subsection if*  
 0109 *interest on the claimant's recovery or credit is otherwise provided*  
 0110 *by law or contract.*

0111 (2) *Interest pursuant to this subsection shall be allowed to the*  
 0112 *claimant only if the claimant shall have served on the party*  
 0113 *adjudicated to be liable a written offer of settlement of the claim,*  
 0114 *setoff or counterclaim, in an amount no greater than the amount of*  
 0115 *the recovery or allowance as thereafter adjudicated. The offer*  
 0116 *shall be served either personally or by restricted mail if made*  
 0117 *before suit is filed, or pursuant to K.S.A. 60-205 if made after suit*  
 0118 *is filed. The offer shall not be subject to revocation for a period of*  
 0119 *30 days after service thereof on the party claimed to be liable, but*

0120 *shall be automatically deemed to be withdrawn unless accepted*  
0121 *and payment made or credit given within such period of 30 days.*

0122 (3) *Interest to be added pursuant to this subsection shall be*  
0123 *allowed by the court from 30 days after the date the claimant*  
0124 *served such offer to the date of judgment.*

0125 (4) *An offer made hereunder but not accepted shall not be*  
0126 *filed in the case until relevant to the entry of judgment, and*  
0127 *neither the offer nor a failure to accept shall be an admission*  
0128 *against interest nor be evidence in the case until effect is to be*  
0129 *given thereto in the entry of judgment by the court.*

0130 Sec. 2. K.S.A. ~~1080 Supp.~~ 16-205 hereby repealed.

0131 Sec. 3. This act shall take effect and be in force from and after  
0132 its publication in the statute book.



1-24-83

# 3

**UNIFORM COMPARATIVE FAULT ACT**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-SIXTH YEAR  
IN VAIL, COLORADO

JULY 29-AUGUST 5, 1977

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The committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the **Uniform Comparative Fault Act** was as follows:

JOHN W. WADE, Vanderbilt University, School of Law, Nashville, TN 37240; Chairman.

FRANCIS BERGAN, 5 Circle Lane, Albany, NY 12203.

WINDSOR DEAN CALKINS, 1163 Olive Street, Eugene, OR 97401.

FLOYD R. GIBSON, 837 United States Courthouse, Kansas City, MO 64106.

ELMER R. OETTINGER, Institute of Government, University of North Carolina, Chapel Hill, NC 27514.

JAMES H. CLARKE, 800 Pacific Building, Portland, OR 97204; Chairman, Division F, Ex Officio.

JAMES M. BUSH, 363 North First Avenue, Phoenix, AZ 85003; President, Ex Officio.

VICTOR E. SCHWARTZ, University of Cincinnati, College of Law, Cincinnati, OH 45221; Consultant.

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Copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from

National Conference of Commissioners  
on Uniform State Laws  
645 North Michigan Avenue, Suite 510  
Chicago, Illinois 60611

01 SECTION 1. [Effect of Contributory Fault.]

02 (a) In an action based on fault seeking to recover damages for  
03 injury or death to person or harm to property, any contributory fault  
04 chargeable to the claimant diminishes proportionately the amount  
05 awarded as compensatory damages for an injury attributable to the  
06 claimant's contributory fault, but does not bar recovery. This rule  
07 applies whether or not under prior law the claimant's contributory  
08 fault constituted a defense or was disregarded under applicable legal  
09 doctrines, such as last clear chance.

10 (b) "Fault" includes acts or omissions that are in any measure  
11 negligent or reckless toward the person or property of the actor or  
12 others, or that subject a person to strict tort liability. The term  
13 also includes breach of warranty, unreasonable assumption of risk not  
14 constituting an enforceable express consent, misuse of a product for  
15 which the defendant otherwise would be liable, and unreasonable fail-  
16 ure to avoid an injury or to mitigate damages. Legal requirements of  
17 causal relation apply both to fault as the basis for liability and to  
18 contributory fault.

19 SECTION 2. [Apportionment of Damages.]

20 (a) In all actions involving fault of more than one party to the  
21 action, including third-party defendants and persons who have been  
22 released under Section 6, the court, unless otherwise agreed by all  
23 parties, shall instruct the jury to answer special interrogatories or,  
24 if there is no jury, shall make findings, indicating:

25 (1) the amount of damages each claimant would be entitled

01 to recover if contributory fault is disregarded; and,

02 (2) the percentage of the total fault of all of the parties  
03 to each claim that is allocated to each claimant, defendant, third-  
04 party defendant, and person who has been released from liability under  
05 Section 6. For this purpose the court may determine that two or more  
06 persons are to be treated as a single party.

07 (b) In determining the percentages of fault, the trial of fact  
08 shall consider both the nature of the conduct of each party at fault  
09 and the extent of the causal relation between the conduct and the  
10 damages claimed.

11 (c) The court shall determine the award of damages to each  
12 claimant in accordance with the findings, subject to any reduction  
13 under Section 6, and enter judgment against each party liable on the  
14 basis of rules of joint-and-several liability. For purposes of con-  
15 tribution under Sections 4 and 5, the court also shall determine and  
16 state in the judgment each party's equitable share of the obligation  
17 to each claimant in accordance with the respective percentages of  
18 fault.

19 (d) Upon motion made not later than [one year] after judgment is  
20 entered, the court shall determine whether all or part of a party's  
21 equitable share of the obligation is uncollectible from that party,  
22 and shall reallocate any uncollectible amount among the other parties,  
23 including a claimant at fault, according to their respective percent-  
24 age of fault. The party whose liability is reallocated is nonetheless  
25 subject to contribution and to any continuing liability to the claim-

01 ant on the judgment.

02 SECTION 3. [Set-off.] A claim and counterclaim shall be set  
03 off, and only the difference between them is recoverable in the judg-  
04 ment. However, if either or both of the claims are covered by liabil-  
05 ity insurance and an insurance carrier's liability under its policy is  
06 reduced by reason of the set-off, the insured is entitled to recover  
07 from the carrier the amount of the reduction. Amounts so recovered  
08 shall be credited against pertinent liability policy limits. For pur-  
09 poses of uninsured-motorist and similar coverages, the amounts so  
10 recovered shall be treated as payment of those amounts to the insured  
11 by the party liable.

12 SECTION 4. [Right of Contribution.]

13 (a) A right of contribution exists between or among two or more  
14 persons who are jointly and severally liable upon the same indivisible  
15 claim for the same injury, death, or harm, whether or not judgment has  
16 been recovered against all or any of them. It may be enforced either  
17 in the original action or by a separate action brought for that pur-  
18 pose. The basis for contribution is each person's equitable share of  
19 the obligation, including the equitable share of a claimant at fault,  
20 as determined in accordance with the provisions of Section 2.

21 (b) Contribution is available to a person who enters into a set-  
22 tlement with a claimant only (1) if the liability of the person  
23 against whom contribution is sought has been extinguished and (2) to  
24 the extent that the amount paid in settlement was reasonable.

25 SECTION 5. [Enforcement of Contribution.]

01 (a) If the proportionate of the parties to a claim for contribu-  
02 tion has been established previously by the court, as provided by Sec-  
03 tion 2, a party paying more than his equitable share of the obliga-  
04 tion, upon motion, may recover judgment for contribution.

05 (b) If the proportionate fault of the parties to the claim for  
06 contribution has not been established by the court, contribution may  
07 be enforced in a separate action, whether or not a judgment has been  
08 rendered against either the person seeking contribution or the person  
09 from whom contribution is being sought.

10 (c) If a judgment has been rendered, the action for contribution  
11 must be commenced within [one year] after the judgment becomes final.  
12 If no judgment has been rendered, the person bringing the action for  
13 contribution either must have (1) discharged by payment the common  
14 liability within the period of the statute of limitations applicable  
15 to the claimant's right of action against him and commenced the action  
16 for contribution within [one year] after payment, or (2) agreed while  
17 action as pending to discharge the common liability and, within [one  
18 year] after the agreement, have paid the liability and commenced an  
19 action for contribution.

20 SECTION 6. [Effect of Release.] A release, covenant not to sue,  
21 or similar agreement entered into by a claimant and a person liable  
22 discharges that person from all liability for contribution, but it  
23 does not discharge any other persons liable upon the same claim unless  
24 it so provides. However, the claim of the releasing person against  
25 other persons is reduced by the amount of the released persons equit-

01 able share of the obligation, determined in accordance with the provi-  
02 sions of Section 2.

03 SECTION 7. [Uniformity of Application and Construction.] This  
04 Act shall be applied and construed so as to effectuate its general  
05 purpose to make uniform the law with respect to the subject of this  
06 Act among states enacting it.

07 SECTION 8. [Short Title.] This Act may be cited as the Uniform  
08 Comparative Fault Act.

09 SECTION 9. [Severability.] If any provision of this Act or  
10 application of it to any person or circumstances is held invalid, the  
11 invalidity does not affect other provisions or applications of the Act  
12 that can be given effect without the invalid provision or application,  
13 and to this end the provisions of this Act are severable.

14 SECTION 10. [Prospective Effect of Act.] This Act applies to  
15 all [claim for relief] [causes of action] accruing after its effective  
16 date.

17 SECTION 11. [Repeal.] The following acts and parts of acts are  
18 repealed.