

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

12:30 ~~am~~/p.m. on March 6, 1985 in room 519-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department

Conferees appearing before the committee:

Senate Bill 110 - Medical malpractice procedures and limitations.

The chairman explained the motion pending on the bill. During committee discussion it was pointed out the language "outside the record" should be "on the record"; Senator Talkington asked to include this proposal in his motion. It was also pointed out in subparagraph (d), page 2, striking the last sentence; Senator Talkington made that part of his motion.

Following considerable committee discussion, Senator Talkington made a substitute motion to amend the bill in Section 1 by adding "and any health care provider" and limit it to medical malpractice. Senator Winter seconded the motion.

Following further discussion, Senator Talkington withdrew his motion.

Senator Gaines made a substitute motion to amend the substitute bill by striking Subsection (d) of Section 1 and adopting the rest of Section 1, except "outside the record" which appears in Section 1(b), and a cap on punitive damages of 25% annual gross income up to three million dollars or whichever is less. Senator Talkington seconded the motion. The motion carried.

Senator Talkington moved to amend the bill by providing a cap on pain and suffering not to exceed \$250 thousand and limited to medical malpractice. Senator Yost seconded the motion.

Senator Gaines made a substitute motion to amend the bill to apply the \$250 thousand cap on pain and suffering across the board. Senator Winter seconded the motion. With a vote of four voting in favor of the motion, and six in opposition, the motion failed.

Senator Talkington moved to amend the bill in Section 1 to apply only to malpractice actions against health care providers. Senator Yost seconded the motion.

Senator Winter made a substitute motion to provide Section 1 apply to everybody. The chairman rejected the motion because it was voted on before.

The motion pending to amend Section 1 to limit to medical malpractice cases was voted on with five voting in favor of the motion and six voting in opposition, the motion failed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 519-S, Statehouse, at 12:30 ~~am~~/p.m. on March 6, 1985

Senate Bill 110 continued

Senator Talkington moved to amend the bill to include the definition of medical malpractice found in lines 51 through 53 of Senate Bill 110. Senator Steineger seconded the motion. The motion carried.

Senator Talkington presented his proposal concerning collateral source and read the proposed language.

Senator Talkington moved to amend the bill by adopting his proposal. Senator Gaines seconded the motion.

Following committee discussion, Senator Frey explained his alternative proposal. (See Attachment I).

Senator Steineger made a substitute motion to adopt the chairman's alternative proposal. Senator Parrish seconded the motion. The substitute motion failed.

The original motion made by Senator Talkington, seconded by Senator Gaines passed.

Senator Winter moved to amend the bill by defining collateral source as proposed by Senator Talkington, and limit it to life insurance companies. Senator Steineger seconded the motion.

Senator Talkington made a substitute motion to report Substitute for Senate Bill 110 favorably as amended. Senator Gaines seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list attached (See Attachment II).



PROPOSED SUBSTITUTE for SENATE BILL NO. 110

By Committee on Judiciary

AN ACT concerning civil procedure; relating to procedures for assessment of exemplary or punitive damages; concerning procedures for consideration of collateral sources of reimbursement or indemnification for damages; repealing K.S.A. 60-471.

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

Section 1. (a) In any action in which exemplary or punitive damages are recoverable, the trier of fact shall determine, concurrent with all other issues presented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted to the court to determine the amount of such damages to be awarded.

(b) At a proceeding to determine the amount of exemplary or punitive damages to be awarded, the court shall hear evidence on the issue of whether the party against whom such damages are allowed is liable for such damages under subsection (d), including evidence of any assessment of exemplary or punitive damages or criminal or civil penalty in this state or in any other jurisdiction. If liability is not precluded by subsection (d), the court shall also hear evidence, <sup>10</sup>outside the record, of the financial condition of any party against whom such damages have been allowed. Such evidence may include the party's gross income earned from the activity from which liability for exemplary or punitive damages are awarded but shall not include any such income for more than five years before the act for which such damages are awarded. At the conclusion of the proceeding, the court shall determine the amount of exemplary or punitive damages to be awarded, but not exceeding the amount provided by subsection (c), and shall enter judgment for that amount.

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Attach. I

(c) No award of exemplary or punitive damages shall exceed 25% of the annual gross income earned by the party against whom the damages are awarded from the activity from which liability for such damages arises, as determined by the court based upon the party's highest gross annual income earned from such activity for any one of the five years before the act for which such damages are awarded.

(d) Exemplary or punitive damages shall not be levied against a person more than once for any single wrong regardless of the duration of the act for which liability for such damages arise or the number of claimants. Exemplary or punitive damages shall not be assessed against a person for a wrong for which the defendant has been convicted of a crime and sentenced to pay a fine or serve a term of imprisonment or has been required to pay a civil penalty.

(e) This section shall be part of and supplemental to the code of civil procedure.

Sec. 2. (a) In any action in which damages are awarded for personal injury or death, upon motion of any party, a separate proceeding shall be conducted to the court to determine the amount by which the party to whom the damages are awarded has been or will be otherwise reimbursed or indemnified for such damages, or has or will receive services of a health maintenance organization to treat such injury or to treat the injury resulting in such death. At such proceeding, evidence of reimbursement or indemnification paid or to be paid under, and services rendered or to be rendered by, the following shall be admissible: (1) Medical, life, disability or other insurance coverage; (2) workers' compensation, military service benefit plan, social welfare benefit program or other benefit plan or program provided by law; or (3) a health maintenance organization. The court shall consider such evidence and, based thereon, shall determine the amount by which the damages awarded by the trier of fact shall be modified, if any, and shall enter judgment in the amount determined.

*Attch. I*

(b) At a proceeding under this section, a party to whom damages are awarded for personal injury or death may present evidence of any amounts paid to secure a right to the reimbursement, indemnification or services with respect to which evidence is admitted pursuant to subsection (a).

(c) Any collateral source of reimbursement or indemnification for damages arising out of personal injury or death, or any health maintenance organization providing services to treat such injury or to treat the injury resulting in such death, shall be permitted to intervene in a proceeding under this section for the purpose of claiming the right of subrogation to any portion of the award of damages notwithstanding any contrary provision of any contract between the collateral source and the party awarded the damages.

(d) This section shall be part of and supplemental to the code of civil procedure.

Sec. 3. K.S.A. 60-471 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.