

Approved February 18, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./p.m. on February 6, 1986 in room 514-S of the Capitol.

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

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Hack, Office of Revisor of Statutes

Conferees appearing before the committee:

Professor William E. Westerbeke, Kansas University School of Law
Jerry Palmer, Kansas Trial Lawyers
Kathleen Sebelius, Kansas Trial Lawyers

The chairman presented a request for a bill relating to rights of the terminally ill. Following the explanation, Senator Feleciano moved to introduce the bill. Senator Winter seconded the motion, and the motion carried.

Senate Bill 414 - An act concerning civil procedure; relating to certain negligence actions.

Professor William Westerbeke, Kansas University School of Law, explained he played a large role to introduce Senate Bill 35. He said there were a few provisions in Senate Bill 35 that were viewed by some as controversial; those provisions were taken out and there is still some opposition. He explained the bill seeks to codify procedures and is developed around the original comparative negligence statute. He said procedural rules ought to be set up statutorily for guidelines. Section 1 is the section they receive the most commentary on, and the opposition will argue this. Professor Westerbeke explained the provisions in the bill. He stated the bill is good public policy and good for the citizens of Kansas.

Kathleen Sebelius, Kansas Trial Lawyers, was recognized, and she introduced Jerry Palmer.

Jerry Palmer, Kansas Trial Lawyers, stated their basic position is that they endorse the bill. The primary benefits are it eliminates phantom defendants and extends the statute of limitation. Section 4 that permits defendants to settle up and go after co-defendants is good. He pointed out they are concerned with the language in lines 118 and 119 of the bill when comparison of fault is determined whether the person will be getting anything. He suggested inserting the language "against all other parties to the action". Mr. Palmer stated with respect to bankrupts I would hope that the committee through its expertise would be able to give some relief where a bankrupt is brought into the proceedings so that it will not jeopardize the further progress of the proceedings, given consideration to the automatic stay provisions of the Federal Bankruptcy Law and the probability that these devices will be used more in the future to avoid liability on the part of defendants who face numerous lawsuits. Committee discussion with Mr. Palmer followed. A copy of his proposed amendments is attached (See Attachment I).

The meeting adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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Copy of guest list attached (See Attachment II)

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-6-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tom Bell	Topeka	KWA
George Barbee	Topeka	KCE
William E. Westubeke	Lawrence	Kansas Judicial Council
Mark Bennett	Topeka	Qui Sur Area
David Johnson	"	KCCI
John Arden	Wichita	Wichita
Matt Lynch	Topeka	Judicial Council
Richard Harmon	Topeka	KS ASSN. OF PROP. CASUALTY Cos.
William SNEED	Topeka	KS ASSN. OF DEFENSE COUNSEL
Don Smith	Topeka	KBSA
Ed Johnson	Topeka	KTLA
William Sedelius	"	"
M. Hawver	"	Cap. Journal
LARRY MAGILL	"	IND. INS. AGENTS OF KS.
JANET STURB	"	NRBAK
Lee WRIGHT	MISSION KS	Farmers Ins. Group
Randy Barber	Columbus	Empire Electric
Benjamin Wood	Topeka	IDS
Ron Hills	"	"
J. Volter	"	KCTV

CATCH II

JERRY R. PALMER
MARTHA M. SNYDER

*CERTIFIED CIVIL TRIAL ADVOCATE
BY THE NATIONAL BOARD OF TRIAL ADVOCACY

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Jerry R. Palmer, P.A.

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MEMORANDUM

TO: CHAIRMAN BOB FREY, SENATE JUDICIARY COMMITTEE
FROM: JERRY R. PALMER
DATE: FEBRUARY 6, 1986
SUBJECT: SB414 - POSSIBLE AMENDMENTS

1. Line 118-119: Delete "against whom claim for recovery is made" and insert "all other parties to the action." I am concerned that with the reclassification of parties under Section 1A and 1B that inadvertently a class of plaintiffs will be discriminated against who have rights under current comparative negligence law but who will lose them under this law.

An example I would use is: a plaintiff is 40 percent at fault, an employer is 20 percent at fault, and a product manufacturer is 40 percent at fault and the damages are \$100,000.00. Under current law the plaintiff would receive \$40,000.00. It is a possible construction of this law that he recovers nothing. I think that what I am suggesting simply conforms to the existing state of the law and does not add anything new but does clarify and avoid any problems that we might encounter.

2. I would suggest an insertion after line 112 a new Section 6 and renumber the following sections which would read as follows:

New Sec. 6: If a party is found to be at fault and it is determined by the court that the party cannot be collected from, either by operation of law or is unable to satisfy a judgment, then the court shall reassess that party's fault to all of the other parties to the action pro rata. Each party to the extent of this reassessment of fault shall be subrogated to the judgment against said uncollectible party.

The affect of this is to rebalance the impact of the uncollectible party. Under Joint and Several the impact was entirely upon the remaining defendants. Under Kansas Comparative as it has been interpreted by our Supreme Court the burden is entirely

Attach I
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on the plaintiff. This would rebalance it proportionately.

3. With respect to bankrupts I would hope that the Committee through its expertise would be able to give some relief where a bankrupt is brought into the proceedings so that it will not jeopardize the further progress of the proceedings, given consideration to the automatic stay provisions of the Federal Bankruptcy Law and the probability that these devices will be used more in the future to avoid liability on the part of defendants who face numerous lawsuits. Likewise, it could be used as a defense strategy to slow down the entire lawsuit by adding a party who may have a very small proportion of fault but be in bankruptcy; since we do not have prejudgment interest there is always incentive for the defendants to delay the ultimate judgment. Since it is the obligation of the defense counsel to operate in the best interests of their clients this is more than a hypothetical concern.

Once again, thank you for inviting us to participate and comment upon legislation before your committee.

cc: Kathleen Sebelius
Gene Ralston
Brad Post