

Approved March 16, 1987  
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at  
Chairperson

3:30 ~~am~~/p.m. on March 5, 1987 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson, Legislative Research Department  
Mike Heim, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Mary Jane Holt, Secretary

Conferees appearing before the committee:

The Committee met to consider final action on bills that have been previously heard.

H.B. 2320-Release of persons unable to make bond under municipal court procedure

Representative Bideau moved to change line 48 to read 18 hours instead of 12 hours. Representative Whiteman seconded and the motion passed.

A motion was made by Representative Bideau to report H.B. 2320, as amended, favorably for passage. The motion was seconded by Representative Whiteman. The motion passed.

H.B. 2474-Removal of guardian or conservator

A motion was made by Representative Duncan and seconded by Representative Walker to report H.B. 2474 favorably for passage, and be placed on the consent calendar. The motion passed.

H.B. 2535-Fees for County Law Libraries

Representative Sebelius moved to report H.B. 2535 favorably for passage. Representative Kennard seconded.

Representative Duncan moved to amend H.B. 2535 to allow public access to Kansas statute books. The motion was seconded and the motion failed.

A vote was taken on the motion by Representative Sebelius, and the motion passed.

H.B. 2025-Punitive damage awards in civil actions

Representative Sebelius moved to report H.B. 2025 favorably for passage. Representative O'Neal seconded the motion.

A motion was made by Representative Douville to strike the word "wanton" from the bill. The motion was seconded by Representative Duncan. After committee discussion the motion was withdrawn.

Representative Fuller moved to strike the word "wanton" and to change the language in lines 52 and 53 to "defendant acted toward the plaintiff with intent to hurt, defraud or with malice". Representative Douville seconded. The motion failed.

A motion was made by Representative Vancrum and seconded by Representative O'Neal to amend line 25 to replace the words "trier of fact" with "court". The motion failed.

A vote was taken on the motion by Representative Sebelius, and the motion passed.

Representative Douville requested to be recorded as voting no.

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.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,

room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 5, 1987

H.B. 2471-Consideration of payments from collateral sources in certain liability actions

Representative O'Neal explained the amendments. The definition section was reworded but not changed. Section 2 states "evidence of the collateral source benefits received, or evidence of the collateral source benefits which are reasonably expected to be received in the future, shall be admissible in any personal action, except as set forth in Section 3". Section 3 is similar to subsection (b) of H.B. 2471, which sets forth the procedure at the pretrial conference to take care of those collateral source benefits that are subject to reimbursement by subrogation or otherwise, and makes it clear that if there is any obligation on the part of the plaintiff to repay any collateral benefits, that evidence is inadmissible. In Section 4 in regard to the evidence that is allowed to go to the jury, the claimant may present evidence of the cost of such collateral source benefit. Section 5 covers the jury instructions. The damages awarded shall not include any amounts paid by collateral source benefits, however the award may include the cost of securing the collateral source benefit. The collateral source benefits listed in Section 1 (b) should be numbered, (see Attachment I).

Representative O'Neal moved to approve the amendments to H.B. 2471. Representative Snowbarger seconded.

Representative Peterson moved to conceptually amend the bill to reflect that the defendant or defendants resources and policies and their limits be included. Representative Wagnon seconded.

Representative Peterson withdrew his motion.

A vote was taken on Representative O'Neal's motion, and the motion failed, 9 yeas, 10 nays.

Representative Solbach moved to table H.B. 2471. Representative Peterson seconded the motion. The motion passed, 10 yeas, 9 nays.

Representative Duncan moved to take H.B. 2471 from the table. The motion was seconded, and the motion passed, 11 yeas, 10 nays

Representative O'Neal moved to change "may" to "shall" in Section 5, third line from the end of the section, in the amendments he submitted, and that the amendments be approved. Representative Douville seconded, and the motion passed, 11 yeas, 10 nays.

Representatives Whiteman, Peterson, Sebelius, Solbach, Adam and Kennard requested to be recorded as voting no.

Representative Duncan moved to report Substitute H.B. 2471 favorably for passage. Representative Crowell seconded.

Representative Peterson moved conceptually to amend the bill by allowing disclosure by defense at pretrial, and at the Judge's discretion at the jury trial, the resources and policies of insurance which exist for the defendant's protection, and their limits. Representative Roy seconded the motion. The motion failed, 9 yeas, 11 nays.

A vote was taken on Representative Duncan's motion to report Substitute H.B. 2471 favorable for passage. The motion passed, 11 yeas, 8 nays.

H.B. 2472-Limit on non-economic damages in personal injury actions

Representative Shriver made a conceptual motion that the cap be removed on non-economic loss if the economic loss exceeds \$250,000. Representative Wagnon seconded. The motion failed, 10 yeas, 10 nays.

Representative Duncan moved to report H.B. 2472 favorably for passage. The motion was seconded by Representative O'Neal. The motion passed, 11 yeas, 9 nays.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,  
room 313-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on March 5, 19 87

H.B. 2452-Venue of personal injury actions against utilities

A motion was made by Representative Douville to report H.B. 2452 favorably for passage. Representative Buehler seconded and the motion passed, 11 yeas, 8 nays.

Representative Bideau moved to remove H.B. 2081 from the table. Representative O'Neal seconded. The motion failed, 9 yeas, 9 nays.

Representative Vancrum moved that H.B. 2228 and H.B. 2536 be tabled and recommended for an interim study. The motion was seconded and the motion passed.

H.B. 2419-Pretrial screening panels, liability actions against professionals.

A motion was made by Representative Walker and seconded by Representative Fuller to report H.B. 2419 favorably for passage. The motion passed.

H.B. 2409-Expert witness qualifications, liability actions against design professionals

Representative Whiteman moved to table H.B. 2409. Representative Sebelius seconded and the motion passed, 11 yeas, 5 nays.

The meeting was adjourned at 6:00 p.m.

The next meeting will be Friday, March 6, 1987, at 7:30 a.m. in room 313-S.



HOUSE BILL 2471

An act concerning civil procedure; concerning certain evidence; repealing K.S.A. 1986 Supp. 60-3403.

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

Section 1. As used in this Act:

- (a) "personal injury action" means any action for personal injury or death.
- (b) "Collateral source benefits" means any benefit received as a result of any medical, disability or other insurance coverage or any benefit in the nature of insurance coverage except life insurance coverage, and any worker's compensation benefit, military service benefit plan, employment wage continuation plan, welfare benefit program or other publicly funded benefit plan or program provided by law, which benefits were or are reasonably expected to be received by a claimant, or by someone for the benefit of a claimant, for expenses incurred or reasonably expected to be incurred as a result of the occurrence upon which the personal injury action is based.

Attachment I  
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(c) "Claimant" means any person seeking damages in a personal injury action, and includes the heirs at law, executor or administrator of a decedent's estate.

(d) "Cost of the collateral source benefit" means the amount paid to secure such collateral source benefit by the claimant or by anyone on behalf of the claimant.

Section 2. Evidence of the collateral source benefits received, or evidence of the collateral source benefits which are reasonably expected to be received in the future, shall be admissible in any personal injury action, except as set forth in Section 3.

Section 3. As a condition precedent to presenting evidence of collateral source benefits pursuant to Section 2, the party against whom claim is made in any personal injury action shall make disclosure of such evidence at a pretrial conference. Upon such disclosure, the claimant shall be allowed an opportunity to show that an obligation exists to reimburse the person or entity which has paid or will be paying such collateral source benefit from any damages awarded in such action. The claimant shall specify in such showing the amount of any such obligation. If the court determines that there is an obligation to reimburse some person or entity then the court shall order that any evidence of the receipt of such collateral source benefit shall not be admissible.

**Section 4.** When evidence of collateral source benefits is admitted pursuant to Section 2, the claimant may present evidence of the cost of such collateral source benefit. Such evidence of the cost of such collateral source benefit may cover whatever period of time is found by the court to be reasonably related to securing the collateral source benefit obtained.

**Section 5.** In any case in which evidence of the receipt of collateral source benefits is admitted, the jury shall be instructed that such evidence, together with the evidence of the cost of the collateral source benefit shall be considered by it in determining the amount of damages sustained by the claimant. The jury shall further be instructed that the damages awarded shall not include any amounts paid by collateral source benefits, however the award may include the cost of securing the collateral source benefit. In trials to the court the court shall make similar findings.

**Section 6.** The provisions of this section shall apply to any action pending or brought on or after July 1, 1987, regardless of when the cause of action accrued.

**Section 7.** K.S.A. 1986 Supp. 60-3403 is hereby repealed.

**Section 8.** This action will take effect and be in force from and after its publication in the statute book.