

Approved _____ Date _____

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m./~~pm~~ on March 6, 1987 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senator Frey, Hoferer, Burke, Feleciano, Gaines, and Senator Talkington

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Professor Roger C. Henderson, Arizona University School of Law
Pat Hindert, Benefit Designs, Inc.
David Litwin, Kansas Chamber of Commerce and Industry
Jerry Hannah, Kansas Trial Lawyers
Reed Davis, Kansas Trial Lawyers

Senate Bill 258 - Periodic payment of judgments act.

Ron Smith, Kansas Bar Association, stated this is a bill that was requested by the bar. Some adjustments were made in our total law that will provide benefits for people who are injured. He said he feels this is very important legislation that has a good structured verdict law. Some technical changes need to be made to the bill. Mr. Smith asked the committee the option of working together to move the bill to the House to make appropriate amendments at that time. He said he has worked with the House Judiciary Committee, and they agree with this working arrangement.

Professor Roger C. Henderson, Arizona School of Law, testified this bill is a model periodic payment judgments act. In going through a period of crisis in medical malpractice and products liability and in looking at some of the problems, this approach is one of the ways to improve upon the system that we already have. He said about 14 states have some form of payment judgments on a periodic basis. About one-half of the states have some of this legislation, usually with medical malpractice. South Dakota passed this same bill last year. The bill tells the judge and the lawyers how to get the information so payments can be arranged. The bill tells the judge how to fashion the judgment. If you pay people in the future, you decide how much you are going to pay today, then you have to worry about inflation, and this bill takes care of that. He stated the greatest benefit is that it is a positive response that people will get paid for what they lost and people will not be paid for what is not lost. This is a more efficient system which will cut down on expense of insurance industry but won't take away rights of the people.

Pat Hindert, Benefit Designs, Inc., Cincinnati, Ohio, stated he is working on a consulting basis as an attorney, and since 1978 he has been full time in periodic payments and structured settlements. Most of his work is on behalf of insurance companies in helping them develop structured programs. He was asked to appear before

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 6, 1987

Senate Bill 258 continued

the committee by Insurance Commissioner Fletcher Bell. He said he is a proponent of periodic payments in general, which is a more cost efficient way of resolving settlements. Since 1978 the concept has developed largely in the periodic area. In 1978 \$15 million dollars of life insurance annuity payments were entered into structured settlements, now it is over three billion dollars. He pointed out a great deal of tax development has occurred since 1980 that relates to periodic payments. It is very important the tax rules be taken into the act. Increasing financial safety of periodic payments was added in new section to Internal Revenue Code. Constitutionality has been challenged in two states with periodic payment judgments statute, and some have been found unconstitutional. He recommended to make sure maximum opportunity is given to finding your statute is constitutional. There is limited experience with use of periodic payment of judgments. Try to make changes in agreement with the tax law, and try to take advantage of experience of your own state.

David Litwin, Kansas Chamber of Commerce and Industry, testified they do conceptually support this legislation. He said this is a study that is on their agenda of important legislation that will be enacted this year.

Jerry Hannah, Kansas Trial Lawyers, testified their organization is not opposed to this legislation but do have some concern about the provisions. They feel where the election is made, page 2, section 3(B) responding party makes the election at one hundred thousand dollars. He suggested this dollar amount be three million dollars so this is not overused. Another concern is concerning the inflation formula. As proposed on page 8, Section 10, the discount factor is three percent. We feel that would not be adequate in compensating for medical costs. In attempting to eliminate wind-fall situations, like brain damage in the baby cases or patient expires shortly, they are concerned this would cause undue increases in compensation. He recommended including those cases involving medical malpractice where there is substantial verdicts.

Reed Davis, Kansas Trial Lawyers, appeared in opposition to several aspects of the bill. He testified, in his opinion and based upon his experience, in many cases but not all, the claimant and society is well served by the use of structured settlements. He stated he is not opposed to the use of structured settlements. In subsection (b), the current wording would have serious impact on the equity of settlements determined under this proposed law. He suggested that the committee delete the reference to a specific discount rate or reduce the rate to a more realistic level. The historical average of the difference between inflation and interest rates is 1.6%. A copy of his testimony is attached (See Attachment I). During discussion, a committee member inquired if he is against the three percent discount factor, what would he suggest. Mr. Davis replied, to allow judicial discretion of the judge.

The meeting adjourned.

A copy of the guest list is attached (See Attachment II).

Reed W. Davis
2742 SE Bennett Drive
Topeka, KS 66605

3-6-87
10:00

March 6, 1987

TO: The Senate Committee on Judiciary
FROM: Reed W. Davis
RE: Senate Bill 258

Thank you Mr. Chairman, members of the Committee. My name is Reed W. Davis and I am a partner in two firms providing economic consulting to the legal profession, **The Institute for Forensic Economics and Baker, Eck and Davis.**

I appear before you this morning in opposition to several aspects of Senate Bill 258.

This bill provides for the imposition and control of structure settlements by the courts on actions for wrongful death and injury.

In my opinion, based upon my experience, in many cases but not all, the claimant and society is well served by the use of structured settlements. I am, therefore, not opposed to the use of structured settlements.

Section 4: A comparison of Section 4 with the "Model Periodic Payment of Judgments Act" indicates a problem with subsection (b). The current wording of bill would, in my opinion, have serious impact on the equity of settlements determined under this proposed law.

Section 10: Section 10 mandates the use of a 3% real interest rate to determine the present value of future damages, when those damages are stated in current dollars. This is the same as assuming that inflation will be zero percent (0%) and interest rates in the future will be three percent (3%). This assumption is not born out by the economic history of the country for the last 35 years. The historical average of the difference between inflation and interest rates is 1.6%. To mandate an interest rate difference greater than that average will result in a serious shortfall in the future payments to the claimant.

In addition, the rate of inflation for medical costs has exceeded the interest rate over the same period. If the court were to impose the rate in the bill. The claimant could not pay future medical bill.

I respectfully suggest that the Committee delete reference to a specific discount rate or reduce the rate to a more realistic level.

*Attach, I
Senate Judiciary
3-6-87*