

Approved _____ Date _____

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

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

3:30 ~~xxx~~/p.m. on February 17, 19 88 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

Jill Wolters, Revisor of Statutes Office

Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Committee discussion and possible action on bills previously heard.

The Chairman announced the Committee would consider H.B. 2731 and amendments and H.B. 2691 concerning punitive damages. Amendments to H.B. 2731 are (Attachment I).

Representative Snowbarger moved to adopt the amendments to H.B. 2731. Representative O'Neal seconded and the motion passed.

Representative Sebelius moved to strike in the amendments the last sentence in the first paragraph of New Section 4 "copy". The motion was seconded. The motion failed.

Representative Adams moved to change the language in New Section 4 in the 4th and 5th lines in the second sentence to "that the plaintiff has established by a preponderance of the evidence that the". Representative Sebelius seconded the motion. The motion was withdrawn.

A motion was made by Representative Vancrum to delete in New Section 4 the language in the last sentence "within two years after the petition or initial pleading is filed". The motion was seconded by Representative Whiteman. The motion was withdrawn.

Representative Solbach moved to change the last sentence in New Section 4 to reflect that for good cause shown the restrictions can be lifted. Representative Shriver seconded the motion. The motion failed.

Representative Solbach moved to amend the language to include absent, excuseable neglect. Representative Wagon seconded the motion. The motion failed.

Representative Douville moved and Representative O'Neal seconded to report H.B. 2731 favorably, as amended. The motion passed.

The Chairman announced the Committee would consider H.B. 2692. H.B. 2692 places a cap on noneconomic loss.

Representative Sebelius moved to strike the words noneconomic loss wherever they appear in the bill and substitute the words pain and suffering. The motion was seconded by Representative Whiteman. The motion failed.

A motion was made by Representative Shriver and seconded by Representative Peterson to report H.B. 2692 adversely. The motion failed.

Representative Snowbarger moved and Representative Douville seconded to report favorably H.B. 2692. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 17, 1988

The Chairman announced the Committee would consider H.B. 2693.

Representative Shriver moved to offer Substitute for H.B. 2693 for Committee consideration. Representative Whiteman seconded the motion. The motion passed.

Substitute for H.B. 2693 was distributed to the Committee, (see Attachment II).

Representative Shriver moved and Representative Bideau seconded to strike the \$100,000 threshold on page 4, Section 3, (c), (3), and introduce it as a separate bill. The motion was seconded by Representative Bideau, and the motion passed.

Representative Shriver moved to report favorably, as amended, Substitute for H.B. 2693. The motion was seconded and the motion failed.

A letter dated February 16, 1988, received from Beechcraft Aircraft Corporation, Wichita, supporting H.B. 2690, H.B. 2691, H.B. 2692 and H.B. 2693 was distributed to the Committee, (see Attachment III).

A letter dated February 17, 1988, received from Kansas Association of Broadcasters, Topeka, supporting tort reform measusres in H.B. 2690 and H.B. 2693 was distributed to the Committee, (see Attachment IV).

The Committee meeting was adjourned at 5:30 p.m.

The next meeting will be Thursday, February 18, 1988 at 3:30 p.m. in room 313-S.

GUEST REGISTER

DATE Feb 17, 1988

NAME

ORGANIZATION

ADDRESS

GERHARD METZ

KCCI

TOPEKA

DEVIN ROBERTSON

The Consulting Group

Topeka

Robert Walker

Alliance Ins Companies

McPherson

Soni Callahan

AM. UNO. ASSOC.

Topeka

HOUSE BILL No. 2731

By Committee on Judiciary

1-29

0017 AN ACT concerning civil procedure; relating to ~~exemplary~~ K.S.A. 60-209 and
0018 damages in civil actions; amending ~~K.S.A. 1987 Supp. 60-3402~~ 60-3401, and
0019 and 60-3701 and repealing the existing sections.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1987 Supp. 60-3402 is hereby amended to
0022 read as follows: 60-3402. (a) In any medical malpractice liability
0023 action in which exemplary or punitive damages are recoverable,
0024 the trier of fact shall determine, concurrent with all other issues
0025 presented, whether such damages shall be allowed. If such
0026 damages are allowed, a separate proceeding shall be conducted
0027 to the court to determine the amount of such damages to be
0028 awarded.

0029 (b) At a proceeding to determine the amount of exemplary or
0030 punitive damages to be awarded under this section, the court
0031 shall hear evidence of the financial condition of any party against
0032 whom such damages have been allowed. Such evidence may
0033 include the party's gross income earned from professional ser-
0034 vices as health care provider but shall not include any such
0035 income for more than five years immediately before the act for
0036 which such damages under this section are awarded. At the
0037 conclusion of the proceeding, the court shall determine the
0038 amount of exemplary or punitive damages to be awarded, but not
0039 exceeding the amount provided by subsection (d), and shall
0040 enter judgment for that amount.

0041 (c) In any medical malpractice liability action where claims
0042 for punitive damages are included, the plaintiff shall have the
0043 burden of proving by clear and convincing evidence in the initial
0044 phase of the trial, that the defendant acted toward the plaintiff
0045 with willful conduct, wanton conduct, fraud or malice.

Attachment I

0046 (d) No award of exemplary or punitive damages shall exceed
0047 the lesser of: (1) Twenty-five percent of the annual gross income
0048 earned by the party against whom the damages are awarded from
0049 professional services as a health care provider, as determined by
0050 the court based upon the party's highest gross annual income
0051 earned from such services for any one of the five years immedi-
0052 ately before the act for which such damages are awarded; or (2)
0053 three million dollars.

0054 (e) If exemplary or punitive damages are awarded pursuant
0055 to this section, 50% of such damages recovered and collected
0056 shall be paid to the party awarded them and 50% shall be paid to
0057 the state treasurer for deposit in the state treasury and shall be
0058 credited to the health care stabilization fund established pursu-
0059 ant to K.S.A. 40-3403 and amendments thereto.

0060 (f) In no case shall punitive damages be assessed pursuant to
0061 this section against:

0062 (1) A principal or employer for the acts of an agent or em-
0063 ployee unless the questioned conduct was authorized or ratified
0064 by a person expressly empowered to do so on behalf of the
0065 principal or employer; or

0066 (2) a professional corporation for the acts of a shareholder of
0067 that corporation unless such professional corporation authorized
0068 or ratified the questioned conduct.

0069 (g) The provisions of this section shall apply only to an action
0070 based upon a cause of action accruing on or after July 1, 1985 *and*
0071 *before July 1, 1988.*

0072 Sec. 2. K.S.A. 1987 Supp. 60-3701 is hereby amended to read
0073 as follows: 60-3701. (a) In any civil action in which exemplary or
0074 punitive damages are recoverable, the trier of fact shall deter-
0075 mine, concurrent with all other issues presented, whether such
0076 damages shall be allowed. If such damages are allowed, a sepa-
0077 rate proceeding shall be conducted by the court to determine the
0078 amount of such damages to be awarded.

0079 (b) At a proceeding to determine the amount of exemplary or
0080 punitive damages to be awarded under this section, the court
0081 may consider:

0082 (1) The likelihood at the time of the alleged misconduct that

0083 serious harm would arise from the defendant's misconduct;
0084 (2) the degree of the defendant's awareness of that likeli-
0085 hood;

0086 (3) the profitability of the defendant's misconduct;

0087 (4) the duration of the misconduct and any intentional con-
0088 cealment of it;

0089 (5) the attitude and conduct of the defendant upon discovery
0090 of the misconduct;

0091 (6) the financial condition of the defendant; and

0092 (7) the total deterrent effect of other damages and punish-
0093 ment imposed upon the defendant as a result of the misconduct,
0094 including, but not limited to, compensatory, exemplary and
0095 punitive damage awards to persons in situations similar to those
0096 of the claimant and the severity of the criminal penalties to
0097 which the defendant has been or may be subjected.

0098 At the conclusion of the proceeding, the court shall determine
0099 the amount of exemplary or punitive damages to be awarded and
0100 shall enter judgment for that amount.

0101 (c) In any civil action where claims for exemplary or punitive
0102 damages are included, the plaintiff shall have the burden of
0103 proving, by clear and convincing evidence in the initial phase of
0104 the trial, that the defendant acted toward the plaintiff with
0105 willful conduct, wanton conduct, fraud or malice.

0106 (d) In no case shall exemplary or punitive damages be as-
0107 sessed pursuant to this section against:

0108 (1) A principal or employer for the acts of an agent or em-
0109 ployee unless the questioned conduct was authorized or ratified
0110 by a person expressly empowered to do so on behalf of the
0111 principal or employer; or

0112 (2) an association, partnership or corporation for the acts of a
0113 member, partner or shareholder unless such association, part-
0114 nership or corporation authorized or ratified the questioned
0115 conduct.

0116 (e) Except as provided by subsection (f), no award of exem-
0117 plary or punitive damages pursuant to this section shall exceed
0118 the lesser of:

0119 (1) The annual gross income earned by the defendant, as

0120 determined by the court based upon the defendant's highest
0121 gross annual income earned for any one of the five years imme-
0122 diately before the act for which such damages are awarded; or
0123 (2) \$5 million.

0124 (f) In lieu of the limitation provided by subsection (e), if the
0125 court finds that the profitability of the defendant's misconduct
0126 exceeds or is expected to exceed the limitation of subsection (e),
0127 the limitation on the amount of exemplary or punitive damages
0128 which the court may award shall be an amount equal to 1½ times
0129 the amount of profit which the defendant gained or is expected to
0130 gain as a result of the defendant's misconduct.

0131 (g) The provisions of this section shall not apply to any action
0132 governed by another statute establishing or limiting the amount
0133 of exemplary or punitive damages, or prescribing procedures for
0134 the award of such damages, in such action.

0135 (h) As used in this section the terms defined in K.S.A. 60-
0136 3401 and amendments thereto shall have the meaning provided
0137 by that statute.

0138 (i) The provisions of this section shall apply only to an action
0139 based upon a cause of action accruing on or after July 1, 1987 *and*
0140 *before July 1, 1988.*

0141 New Sec. 3. (a) In any civil action in which exemplary or
0142 punitive damages are recoverable, the trier of fact shall deter-
0143 mine, concurrent with all other issues presented, whether such
0144 damages shall be allowed. If such damages are allowed, a sepa-
0145 rate proceeding shall be conducted by the court to determine the
0146 amount of such damages to be awarded.

0147 (b) At a proceeding to determine the amount of exemplary or
0148 punitive damages to be awarded under this section, the court
0149 may consider:

0150 (1) The likelihood at the time of the alleged misconduct that
0151 serious harm would arise from the defendant's misconduct;

0152 (2) the degree of the defendant's awareness of that likeli-
0153 hood;

0154 (3) the profitability of the defendant's misconduct;

0155 (4) the duration of the misconduct and any intentional con-
0156 cealment of it;

0157 (5) the attitude and conduct of the defendant upon discovery
0158 of the misconduct;

0159 (6) the financial condition of the defendant; and

0160 (7) the total deterrent effect of other damages and punish-
0161 ment imposed upon the defendant as a result of the misconduct,
0162 including, but not limited to, compensatory, exemplary and
0163 punitive damage awards to persons in situations similar to those
0164 of the claimant and the severity of the criminal penalties to
0165 which the defendant has been or may be subjected.

0166 At the conclusion of the proceeding, the court shall determine
0167 the amount of exemplary or punitive damages to be awarded and
0168 shall enter judgment for that amount.

0169 (c) In any civil action where claims for exemplary or punitive
0170 damages are included, the plaintiff shall have the burden of
0171 proving, by clear and convincing evidence in the initial phase of
0172 the trial, that the defendant acted toward the plaintiff with
0173 willful conduct, ~~wanton conduct~~, fraud or malice.

0174 (d) In no case shall exemplary or punitive damages be as-
0175 sessed pursuant to this section against:

0176 (1) A principal or employer for the acts of an agent or em-
0177 ployee unless the questioned conduct was authorized or ratified
0178 by a person expressly empowered to do so on behalf of the
0179 principal or employer; or

0180 (2) an association, partnership or corporation for the acts of a
0181 member, partner or shareholder unless such association, part-
0182 nership or corporation authorized or ratified the questioned
0183 conduct.

0184 (e) Except as provided by subsection (f), no award of exem-
0185 plary or punitive damages pursuant to this section shall exceed
0186 the lesser of:

0187 (1) The annual gross income earned by the defendant, as
0188 determined by the court based upon the defendant's highest
0189 gross annual income earned for any one of the five years imme-
0190 diately before the act for which such damages are awarded; or

0191 (2) \$5 million.

0192 (f) In lieu of the limitation provided by subsection (e), if the
0193 court finds that the profitability of the defendant's misconduct

0194 exceeds or is expected to exceed the limitation of subsection (e),
0195 the limitation on the amount of exemplary or punitive damages
0196 which the court may award shall be an amount equal to 1½ times
0197 the amount of profit which the defendant gained or is expected to
0198 gain as a result of the defendant's misconduct.

0199 (g) As used in this section the terms defined in K.S.A. 60-
0200 3401 and amendments thereto shall have the meaning provided
0201 by that statute.

0202 (h) The provisions of this section shall apply only to an action
0203 based upon a cause of action accruing on or after July 1, 1988.

0204 ~~Sec. 4. K.S.A. 1987 Supp. 60-3402 and 60-3701 are hereby~~
0205 ~~repealed.~~

0206 ~~Sec. 5. This act shall take effect and be in force from and~~
0207 ~~after its publication in the statute book.~~

← Insert Sec. 4, 5 and 6 attached
7. K.S.A. 60-209 and
60-3401,

New Section 4. No tort claim for punitive damages shall be included in a petition or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to K.S.A. 60-209, and amendments thereto. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the petition or initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier.

Sec. 5. K.S.A. 60-209 is hereby amended to read as follows: 60-209. (a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of any party to sue or be sued in a representative capacity, the party raising the issue shall do so by specific negative averment which shall include such supporting particulars

as are peculiarly within the pleader's knowledge.

(b) Fraud, mistake, conditions of the mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

(c) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official document or act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special damage. When items of special damage are claimed, their nature shall be specifically stated. In actions where exemplary or punitive damages are recoverable, the amended

petition shall not state a dollar amount for damages sought to be recovered but shall state whether the amount of damages sought to be recovered is in excess of or not in excess of ~~ten-thousand dollars-(\$10,000)~~ \$10,000.

(h) Pleading written instrument. Whenever a claim, defense or counterclaim is founded upon a written instrument, the same may be pleaded by reasonably identifying the same and stating the substance thereof or it may be recited at length in the pleading, or a copy may be attached to the pleading as an exhibit.

(i) Tender of money. When a tender of money is made in any pleading, it shall not be necessary to deposit the money in court when the pleading is filed, but it shall be sufficient if the money is deposited in the court at the trial, unless otherwise ordered by the court.

(j) Libel and slander. In an action for libel or slander, it shall not be necessary to state in the petition any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the claim arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff; and if such allegation be not controverted in the answer, it shall not be necessary to prove it on the trial; in other cases it shall be necessary. The defendant may, in his--or--her such defendant's answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances admissible in evidence to reduce the amount of damages; and whether the defendant proves the

justification or not, the defendant may give in evidence any mitigating circumstances.

Sec. 6. K.S.A. 1987 Supp. 60-3401 is hereby amended to read as follows: 60-3401. As used in this act:

(a) "Claimant" means any person asserting a claim for damages in a medical malpractice liability action.

(b) "Fraud" means an intentional misrepresentation, deceit or concealment of material fact known to the defendant to deprive a person of property or legal rights or otherwise cause injury.

(c) "Health care provider" has the meaning provided by K.S.A. 40-3401 and amendments thereto.

(d) "Malice" means a state of mind characterized by an intent to do a harmful act without a reasonable justification or excuse or conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(e) "Medical malpractice liability action" means any action for damages for personal injury or death arising out of the rendering of or failure to render professional services by a health care provider.

~~(f) "Wanton conduct" means an act performed with a realization of the imminence of danger and a reckless disregard or complete indifference to the probable consequences of the act.~~

~~(g)~~ (f) "Willful conduct" means an act performed with a designed purpose or intent on the part of a person to do wrong or to cause injury to another.

Substitute for HB 2693

AN ACT concerning civil procedure; concerning certain evidence; repealing K.S.A. 1987 Supp. 60-3403 and K.S.A. 1987 Supp. 60-2103.

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

Section 1.. As used in this act the following terms shall apply: (a) "Plaintiff" means any person or party seeking damages for any claim.

(b) "Claim" means any civil claim and may include counterclaims, crossclaims or third party claims when otherwise required or allowed by law.

(c) "Collateral source benefits" means payments or services that (1) were provided prior to the commencement of trial to the plaintiff for the same injury, damage, claim or death, (2) are paid or obligated to be paid from prepaid health insurance, health maintenance organizations providing services to their members, publicly funded benefit programs, private medical programs, or state unemployment insurance, and (3) plaintiff has qualified for such benefits by reason of the injury suffered in the occurrence which is the subject of the claim.

The term may include future payments or services if such benefits are of the type listed in subsection (c)(2) of this section and the right

Attachment II

to receive such benefit is vested and certain. Such term shall not include life or disability insurance nor benefits for which a valid lien or subrogation interest exists; however, nothing in this act shall be construed to create or modify subrogation or lien interests not otherwise allowed by law.

(d) "Cost of the collateral source benefit" shall include but not be limited to the amount paid by, or on behalf of a plaintiff in order to secure the right to receive a collateral source benefit, and may include amounts that an employer has paid or would have paid for benefits in lieu of additional salary or wages. Such costs may cover whatever period of time is found by the court to be reasonably related to securing the collateral source benefit obtained.

(e) "Net collateral source benefit" means a sum equal to total collateral source benefits received by or owed to the plaintiff, less the cost of securing such collateral source benefits.

(f) "Publicly funded benefit" means any program authorized and funded by law from a federal, state or municipal government or a taxing subdivision thereof for which proceeds or benefits have been paid to, or on behalf of, the plaintiff. Such term includes but is not limited to county health care programs, aid to families with dependent children where medical care is part of the payments, a crime victim's reparation board recovery, or medical benefits from the department of social and rehabilitation services, or services and benefits from a federal, state, municipal or county eleemosynary hospital.

(h) "Defendant" means a person or party who is defending a claim.

(i) "Unentitled Defendant" means a person or party who is (1) a phantom defendant under provisions of K.S.A. 1987 Supp. 60-258a, and amendments thereto, for reasons other than plaintiff's deliberate

choice not to assert a claim against such person or party, (2) immune in whole or in part from liability by operation of law, (3) insolvent or bankrupt, or (4) for any other reason is unlikely to pay a full or proportionate judgment awarded pursuant to law, to the extent such defendant cannot pay such full or proportionate judgment.

(j) "Person" means any individual person, partnership, corporation, governmental agency, or other lawful entity, and includes the heirs at law, executor or administrator of a decedent's estate.

Section 2. (a) Any defendant may by interrogatory request from any plaintiff a list of the names and addresses of any providers of collateral source benefits affected by this act and may make such request in writing at the pretrial conference if through discovery such provider is not known to the defendant. The reply shall state whether such collateral source payments were made directly to or on behalf of the plaintiff and the amount provided to the plaintiff from each collateral source. If the request is made at the pretrial conference, the plaintiff shall produce such list within 30 days of the request and proof of service of any request or response under this section shall be filed with the court and a copy served on all parties to the action.

(b) The plaintiff shall have a continuing duty to disclose to the court the name and address of any provider of a collateral source payment affected by this act but not disclosed in plaintiff's original response. Failure of plaintiff to provide the names of collateral source providers affected by this section and known to the plaintiff shall subject plaintiff or plaintiff's attorney to sanctions allowed in K.S.A. 1987 Supp. 60-211, K.S.A. 1987 Supp. 60-216, or K.S.A. 60-237.

Section 3. (a) In any trial of a claim, the common law in effect at the effective date of this act regarding admissibility of evidence of collateral sources of benefits shall apply, unless otherwise modified by statute or court decision.

(b) After the court has entered judgment based on the verdict pursuant to K.S.A. 1987 Supp. 60-258a, any defendant may by a motion served upon all parties and filed with the court request a hearing for a reduction of the verdict against such defendant by the amount of net collateral source payments. The motion shall be served within the time for serving a motion for new trial pursuant to K.S.A. 60-259. Copies of such motion shall be sent by the moving party to all collateral source providers.

(c) Such motion is not in order unless: (1) a verdict awarding money damages for actual damages is rendered on behalf of a plaintiff;

(2) the verdict awards damages which duplicate collateral source benefits; and

(3) the total of the collateral source benefits is greater than \$100,000.

Section 4. (a) At such hearing requested pursuant to section 4, the court shall first determine all other post-trial motions, if any, that have been made pursuant to K.S.A. 60-259, 60-250 and 60-252. If the motion filed under Section 4 has not been rendered moot, then, in its discretion and on terms which are just and equitable, the court shall hear evidence and determine the amount of any pending lien and subrogation right in the verdict. The court shall further determine what portion of collateral source benefits should be deducted from the judgment and what portion should accrue to the benefit of the plaintiff.

(b) In determining whether there is to be a reduction from the judgment, the following provisions shall apply. (1) The court shall determine the net collateral source benefit for each such collateral source.

(2) Where the trier of fact has assessed a percentage of fault to plaintiff or to any additional person or party which is later determined to be an unentitled defendant, the court shall determine the total amount of the damages awarded that are attributed to the fault of the plaintiffs and any such additional unentitled defendant, and this aggregate sum shall be termed the "comparison amount." In determining a comparison amount when a codefendant is the plaintiff's employer and otherwise immune from liability by workers compensation statutes, the comparison amount shall further include the difference between the total damages of the plaintiffs apportioned to the responsibility of the employer which exceed the workers compensation benefits provided to the plaintiff.

(3) The comparison amount shall be adjusted by the court by adding an amount, if any, equal to the aggregate amount awarded by the trier of fact for present and future pain and suffering, noneconomic or nonpecuniary damages minus any statutory limit on such such loss.

(4) For each plaintiff for which the motion for reduction of judgment is filed pursuant to section 4, the final adjusted comparison amount shall be arrived at by adding the amount in section 4(c)(3).

(5) If the final adjusted comparison amount computed in subsections (b)(1) through (b)(4), inclusive, exceeds the total of net collateral source benefits, the court shall not reduce the judgment to benefit any codefendant. If the final adjusted comparison amount is less

than the net collateral source benefits, the difference shall be the "net defendant reduction." The court shall reduce the judgment that was entered against any defendant who is not otherwise an unentitled defendant by the amount of the net defendant reduction in proportion to the fault of such defendant.

Section 5. K.S.A. 1987 Supp. 60-2103 is hereby amended to read as follows: [[REVISOR NOTE: Existing K.S.A. 60-2103 is amended to add to the end of the first paragraph the following]]:

"or, granting or denying in whole or in part a motion to reduce a judgment pursuant to sections 1 through 9 inclusive."

Section 6. A copy of each judgment affected by this act shall be filed with the Office of Judicial Administration along with any post-trial modification of such judgment by agreement of the parties.

Section 7. This act shall apply to causes of action accruing on or after July 1, 1988.

Section 8. K.S.A. 1987 Supp. 60-2103 and 60-3403 are hereby repealed.

Section 9. This act takes effect from and after its publication in the statute book.



February 16, 1988

The Honorable Robert S. Wunsch
State Representative
Room 175-W
State Capitol
Topeka, KS 66612

Dear Representative Wunsch:

We are writing to you in your capacity as Chairman of the House Judiciary Committee to indicate our support for House Bills 2690, 2691, 2692 and 2693.

Beech Aircraft is a major employer in Kansas with 5,600 employees in Sedgwick and Butler Counties and more than 300 in Saline County. We believe the package of bills referred to above will help restore some balance to our state's legal system.

In our judgement, these bills would have the following beneficial effects:

- ° Further enhance product liability laws in Kansas. While Beech has very little specific experience with Kansas product liability laws (because most of our products are sold outside the state), overall legal costs have dramatically increased the prices of aircraft we build, restricting their markets. We are pursuing a Federal solution to this problem and strong support in our home state for these bills would send helpful signals to other states and the U.S. Congress. We regard product liability as a near crisis situation with hundreds and thousands of jobs at stake for the state. Therefore, we are interested in positive action on these bills by our home state Legislature.
- ° Help contain health care costs. With nearly 6,000 employees in Kansas, we are concerned with rising health care costs for our employees and with respect to the employer-paid portion of health insurance premiums. Malpractice costs and defensive medicine are significant factors in these rising costs. During 1987 Beech experienced a 26% increase in our health care premiums, to \$13,350,000, from \$10,600,000. This situation was partially driven by rising health care costs and anxiety concerning anticipated future costs.

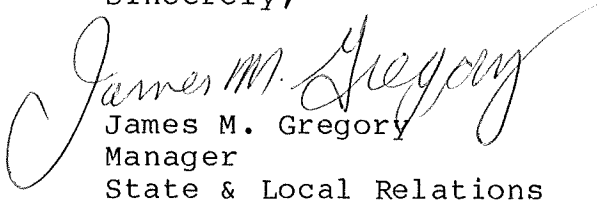
Attachment III

The Honorable Robert S. Wunsch
February 16, 1988
Page 2

° Help make health care available to rural areas. The medical malpractice crisis, specifically, has affected the provision of health care to our employees who reside in rural areas. Obstetric care, for example, is now more difficult, or impossible, to obtain in some areas of Kansas.

We have provided 25 copies of this letter and would ask that your staff distribute them to other members of the committee. Thank you for your consideration.

Sincerely,


James M. Gregory
Manager
State & Local Relations

cc: Richard R. Griffiths
Vice President - Industrial Relations



818 Merchants National Bank Bldg., Topeka, Kansas 66612

913/235-1307

February 17, 1988

Rep. Bob Wunsch, Chairman
House Judiciary Committee
175-W, Statehouse
Topeka, KS 66612

RE: HBs 2690, 2691, 2692, 2693

Dear Rep. Wunsch:

The Kansas Association of Broadcasters supports the tort reform measures currently embodied in House Bills 2690 through 2693.

The KAB conducted in mid-1986, a survey of Kansas radio and television stations to determine what broadcasters were experiencing in the way of costs for liability insurance. Of the 19 percent who responded, 44 percent had experienced a 10 to 50 percent increase in premiums during the previous two years; 39 percent had experienced a 50 to 100 percent increase; and 17 percent saw a 100 to 500 percent increase. And 95 percent of the respondents had been forced to accept either lower policy limits or increased deductible amounts.

We urge passage of House Bills 2690 through 2693. We feel these measures will have a positive effect on rates and will restore fairness and balance to the civil justice system.

Sincerely,

Harriet J. Lange
Executive Director

HJL/

cc: Members of the House Judiciary Committee

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KWCH TV, Wichita

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Attachment IV