

Approved March 4, 1988
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 February 22, 1988 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:

Representative Wells requested Committee introduce a bill addressing the restrictions of release, after a person has been committed to an institution after a plea of innocent due to insanity.

The Committee voted to introduce the bill requested by Representative Wells.

Representative Vancrum requested the Committee introduce a bill concerning insufficient checks, (see Attachment I).

The Committee voted to introduce the bill requested by Representative Vancrum.

Representative Snowbarger requested the Committee introduce a bill amending KSA 38-555, dealing with management of juvenile detention homes.

The Committee voted to introduce the bill requested by Representative Snowbarger.

Representative Douville requested the Committee introduce a bill regarding the crime of blacklisting, (see Attachment II).

The Committee voted to introduce the bill requested by Representative Douville.

Representative Adam requested the Committee introduce a bill regarding the open meetings law as it applies to the Supreme Court Nominating Commission in their meetings on the Court of Appeals and the Supreme Court.

The Committee voted to introduce the bill requested by Representative Adam.

Representative Solbach requested the Committee introduce a bill allowing or requiring a deductible in malpractice insurance and a bill putting a premium tax on each company writing insurance in the state of Kansas which would be used to assist doctors in underserved areas or doctors in high risk specialties.

The Committee voted to introduce the bills requested by Representative Solbach.

The Committee considered H.B. 2693 - Collateral source benefits admissible, revised 2-18-88, (see Attachment III).

Representative Vancrum submitted amendments to H.B. 2693, (see Attachment IV). He explained his amendment would change reasonably expected to reasonably certain on lines 26 and 43 and in Sec. 4.

There was considerable Committee discussion on whether the bill as amended was divisible.

The Chairman ruled it was not.

Representative Solbach challenged the ruling of the chairman by moving "shall the chair be sustained?" The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 22, 1988

Representative Vancrum moved and Representative O'Neal seconded to adopt H.B. 2693, as revised 2-18-88, and to change the words reasonably expected wherever it appears to reasonably certain. The motion passed.

Representative Vancrum moved and Representative Sebelius seconded to change the language in New Sec 6 from "The provisions of this act shall apply to any action pending or brought on or after July 1, 1988 to "The provisions of this act shall apply to any action after July 1, 1988." The motion failed.

Representative Vancrum moved and Representative Solbach seconded to report this bill without recommendation. The motion failed.

Representative Snowbarger moved and Representative Douville seconded to report H.B. 2693 favorably, as amended. The motion passed.

The Committee considered S.B. 258 and H.B. 2690 - Concerning periodic payments.

Steve R. Fabert explained the practical applications of S.B. 258 and H.B. 2690 to the Committee.

The Chairman announced amendments will be prepared from the recommendations received from Mr. Fabert. The amendments will be available to the Committee members by 7:00 a.m. Tuesday February 23, 1988. The Chairman adjourned the meeting at 5:40 p.m. until 7:30 a.m., Tuesday, February 23, 1988, in room 313-S.

GUEST REGISTER

DATE Feb. 22, 1988

NAME

ORGANIZATION

ADDRESS

Bernard Metz

KCCI

Topeka

Bub Asbutler

KTLA

Topeka

Sara Sanders

KTLA

Topeka

Lou Callahan

am. vns. assoc.

Topeka

HOUSE BILL NO. _____

By

AN ACT concerning insufficient checks; providing for an insufficient check fee to be charged to the drawer by the payee when an insufficient check is given in payment, in whole or in part, for preexisting indebtedness.

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

Section 1. for the purposes of this act:

(a) "Insufficient check" means any check, order or draft drawn on any bank, credit union, savings and loan association, or other financial institution for the payment of money and delivered in payment, in whole or in part, of preexisting indebtedness of the drawer or maker, which is refused payment by the drawee because the drawer or maker does not have sufficient funds in or credits with the drawee to pay the amount of the check, order or draft upon presentation, provided that any check, order or draft which is postdated or delivered to a payee who has knowledge at the time of delivery that the drawer or maker did not have sufficient funds in or credits with the drawee to pay the amount of the check, draft or order upon presentation shall not be deemed an insufficient check.

(b) "Written notice" shall be presumed to have been given a drawer or maker of an insufficient check when notice is deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on the insufficient check.

Sec. 2. When an insufficient check has been given to a payee, the payee may charge and collect a \$10 insufficient check fee from the drawer or maker providing the payee has given the drawer or maker oral or written notice of demand that the amount of the insufficient check plus the \$10 insufficient check fee be

Attachment I

paid to the payee within seven days from the giving of notice.

Sec. 3. If the drawer or maker of an insufficient check does not pay the amount of the insufficient check plus the insufficient check fee provided for in section 2 to the payee within seven days from the giving of notice as provided in section 2, the payee may add the \$10 insufficient check fee to the outstanding balance of the preexisting indebtedness of the drawer or maker, including those contracts entered into pursuant to K.S.A. 16a-1-101 through 16a-9-102, and amendments thereto, to draw interest at the contract rate applicable to the preexisting indebtedness.

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

*Call Hank
Goff*

HOUSE BILL NO. _____

AN ACT concerning employment; relating to the crime of blacklisting; privileged communications; providing immunity for certain persons; prescribing certain penalties; repealing K.S.A. 44-117, 44-118 and 44-119.

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

Section 1. (a) Blacklisting is knowingly exchanging, soliciting or giving out any employee blacklist.

(b) As used in this act: "Blacklist" means any understanding or agreement, whether written or oral, whereby the names of any person or persons, list of names, descriptions or other means of identification shall be spoken, written, printed or implied for the purpose of being communicated or transmitted between two or more employers of employees, such employee's supervisors, superintendents, managers, officers or other agents, whether acting individually or for some company, corporation, syndicate, partnership, association or society, whereby the employee is prevented or prohibited from engaging in a lawful occupation.

(c) As used in this act, the term "employer" shall mean the state, or any state agency, a labor organization, a company, corporation, syndicate, partnership, association or society.

(d) It is not unlawful for an employer or former employer, or agents acting in such employer or former employer's behalf, to provide to a requesting employer or agent's acting in such requesting employer's behalf, information concerning a person's education, training, experience, qualifications, job performance or reason for termination to be used for the purpose of evaluating the person for employment. Upon written request by the former employee requesting a copy of any written communication regarding employment, a copy of such written

Attachment II

communication must be sent by the employer providing the information to the former employee's last known address.

(e) An employer or former employer making a communication directly or indirectly pursuant to subsection (d) is immune from civil liability unless the information communicated is false and defamatory and is acted on to the harm of the employee by the prospective employer and the communicator knows the information is false or acts with reckless disregard of the information's truth or falsity.

(f) Communications concerning employees or prospective employees which are made by an employer or prospective employer, or by a labor organization, to a government body or agency and which are required by law or which are furnished pursuant to written rules and regulations of the government body or agency are privileged.

(g) An employer is not civilly liable for privileged communications pursuant to subsection (f).

(h) Blacklisting is a misdemeanor punishable by a fine not to exceed \$750.

Sec. 2. K.S.A. 44-117, 44-118 and 44-119 are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Attachment III

HOUSE BILL No. 2693

By Committee on Judiciary

1-22

0017 AN ACT concerning civil procedure and evidence; relating to
0018 collateral source benefits; repealing K.S.A. 1987 Supp. 60-
0019 3403.

amending K.S.A. 1987 Supp. 60-258a and repealing the existing section; al

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

0021 Section 1. As used in this act:

New

0022 (a) "Claimant" means any person seeking damages in an
0023 action for personal injury or death, and includes the heirs at law,
0024 executor or administrator of a decedent's estate.

0025 (b) "Collateral source benefits" means ~~any of the following~~
0026 ~~benefits which were or are reasonably expected to be received~~
0027 ~~by a claimant, or by someone for the benefit of a claimant, for~~
0028 ~~expenses incurred or reasonably expected to be incurred as a~~
0029 ~~result of the occurrence upon which the personal injury action is~~
0030 ~~based: (1) Any benefits received as a result of any medical or~~
0031 ~~other insurance coverage, or any benefit in the nature of insur-~~
0032 ~~ance coverage, except life or disability insurance coverage, and~~
0033 ~~(2) any workers compensation benefit, military service benefit~~
0034 ~~plan, employment wage continuation plan, welfare benefit pro-~~
0035 ~~gram or other publicly funded benefit plan or program provided~~
0036 ~~by law.~~

certains

benefits or benefits gratuitously bestowed on the claimant. Such term shall not include services or benefits for which a valid lien or subrogation interest exists; however, nothing in this act shall be construed to create or modify lien or subrogation interests not otherwise allowed by law.

0037 (c) "Cost of the collateral source benefit" means the amount
0038 paid or to be paid in the future to secure a collateral source
0039 benefit by the claimant or by anyone on behalf of the claimant.

New

0040 Sec. 2. In any action for personal injury or death, evidence of
0041 collateral source benefits received, or evidence of collateral
0042 source benefits which are reasonably expected to be received in
0043 the future, shall be admissible.

certains

New

0044 Sec. 3. When evidence of collateral source benefits is ad-
0045 mitted into evidence pursuant to section 2, evidence of the cost

If the amount of any benefit paid or to be paid encompasses amounts paid over a period of time, thus making the benefit greater than it would be without such amounts paid, then evidence of such amounts paid shall be admissible in determining the "cost of the collateral source benefit."

(d) "Net collateral source benefits" means the sum of collateral source benefits after subtracting the cost of the collateral source benefit.

0046 of the collateral source benefit and the extent to which the right
0047 to recovery is subject to a lien or subrogation shall be admissible. New

0048 ~~Sec. 4. In determining damages in any action for personal~~
0049 ~~injury or death, the trier of fact shall consider: (a) The extent to~~
0050 ~~which damages awarded will duplicate collateral source benefits~~
0051 ~~and (b) the cost of the collateral source benefit and any lien or~~
0052 ~~subrogation right.~~ New

0053 Sec. 5. The provisions of this act shall apply to any action New
0054 pending or brought on or after July 1, 1988, regardless of when 6
0055 the cause of action occurred. 7

0056 ~~Sec. 6: K.S.A. 1987 Supp. 60-3403 is hereby repealed.~~ 7

0057 Sec. 7. This act shall take effect and be in force from and
0058 after its publication in the statute book. 8 60-258a and 60-3403 are

In determining damages in an action for personal injury or death, the trier of fact shall determine the net collateral source benefits received and the net collateral source benefits reasonably expected to be received in the future. If the action for personal injury or death is tried to a jury, the jury will be instructed to make such determination by itemization of the verdict.

Sec. 5 (attached)

Sec. 5. K.S.A. 1987 Supp. 60-258a is hereby amended to read as follows: 60-258a. (a) The contributory negligence of any party in a civil action shall not bar such party or such party's legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if such party's negligence was less than the causal negligence of the party or parties against whom claim for recovery is made, but the award of damages to any party in such action shall be diminished in proportion to the amount of negligence attributed to such party. If any such party is claiming damages for a decedent's wrongful death, the negligence of the decedent, if any, shall be imputed to such party.

(b) Where the comparative negligence of the parties in any such action is an issue, the jury shall return special verdicts, or in the absence of a jury, the court shall make special findings, determining the percentage of negligence attributable to each of the parties, and determining the total amount of damages sustained by each of the claimants, and the entry of judgment shall be made by the court. No general verdict shall be returned by the jury. With respect to the actions to which 1988 House Bill No. 2693 relates, the amount of the judgment for past damages shall be reduced by the amount of net collateral source benefits received, but only to the extent that such benefits exceed the amount by which such judgment was reduced pursuant to subsection (a), above, and the amount by which the legal right to recover such judgment was limited by the application of subsections (c) and (d), below, other than by virtue of claimant's settlement with or decision not to assert a legally enforceable claim against a named or an unnamed party. In the same manner, the amount of the judgment for future damages, if any, shall be reduced by the amount of net collateral source benefits found to be receivable in the future.

(c) On motion of any party against whom a claim is asserted for negligence resulting in death, personal injury, property damage or economic loss, any other person whose causal negligence is claimed to have contributed to such death, personal injury, property damage or economic loss, shall be joined as an additional party to the action.

(d) Where the comparative negligence of the parties in an action is an issue and recovery is allowed against more than one party, each such party shall be liable for that portion of the total dollar amount awarded as damages to any claimant in the proportion that the amount of such party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed.

(e) The provisions of this section shall be applicable to actions pursuant to this chapter and to actions commenced pursuant to the code of civil procedure for limited actions.

HOUSE BILL No. 2693

By Committee on Judiciary

1-22

Rob

Attachment IV

*Reasonably
Certain*

0017 AN ACT concerning civil procedure and evidence; relating to
0018 collateral source benefits; ~~repealing K.S.A. 1987 Supp. 60-~~
0019 ~~3403.~~

amending K.S.A. 1987 Supp. 60-258a and repealing the existing section; also

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

0021 Section 1. As used in this act:

New

0022 (a) "Claimant" means any person seeking damages in an
0023 action for personal injury or death, and includes the heirs at law,
0024 executor or administrator of a decedent's estate.

0025 (b) "Collateral source benefits" means ~~any of the following~~
0026 ~~benefits which were or are reasonably expected to be received~~
0027 ~~by a claimant, or by someone for the benefit of a claimant, for~~
0028 ~~expenses incurred or reasonably expected to be incurred as a~~
0029 ~~result of the occurrence upon which the personal injury action is~~
0030 ~~based: (1) Any benefits received as a result of any medical or~~
0031 ~~other insurance coverage, or any benefit in the nature of insur-~~
0032 ~~ance coverage, except life or disability insurance coverage; and~~
0033 ~~(2) any workers compensation benefit, military service benefit~~
0034 ~~plan, employment wage continuation plan, welfare benefit pro-~~
0035 ~~gram or other publicly funded benefit plan or program provided~~
0036 ~~by law.~~

benefits or benefits gratuitously bestowed on the claimant. Such term shall not include services or benefits for which a valid lien or subrogation interest exists; however, nothing in this act shall be construed to create or modify lien or subrogation interests not otherwise allowed by law

0037 (c) "Cost of the collateral source benefit" means the amount
0038 paid or to be paid in the future to secure a collateral source
0039 benefit by the claimant or by anyone on behalf of the claimant.

New

0040 Sec. 2. In any action for personal injury or death, evidence of
0041 collateral source benefits received, or evidence of collateral
0042 source benefits which are ~~reasonably expected~~ to be received in
0043 the future, shall be admissible. *Reasonably
Certain*

New

0044 Sec. 3. When evidence of collateral source benefits is ad-
0045 mitted into evidence pursuant to section 2, evidence of the cost

If the amount of any benefit paid or to be paid is greater by reason of continuous cost over a period of time than it would have been without such continuous cost, evidence of such continuous cost is admissible in determining the "cost of the collateral source benefit."

(d) "Net collateral source benefits" means the sum of collateral source benefits after subtracting the cost of the collateral source benefit.

0016 of the collateral source benefit and the extent to which the right
0017 to recovery is subject to a lien or subrogation ~~shall be admissible.~~ *^{???} New

0018 Sec. 4. In determining damages in any action for personal
0019 injury or death, the trier of fact shall consider: (a) The extent to
0050 which damages awarded will duplicate collateral source benefits
0051 and (b) the cost of the collateral source benefit and any lien or
0052 subrogation right. New

0053 Sec. 5. The provisions of this act shall apply to any action 6
0054 pending or brought on or after July 1, 1988, regardless of when
0055 the cause of action occurred. 7

0056 Sec. 6. K.S.A. 1987 Supp. 60-3403 ~~is hereby repealed.~~ 7

0057 Sec. 7. This act shall take effect and be in force from and
0058 after its publication in the statute book. 8 60-258a and

In determining damages in an action for personal injury or death,
the trier of fact shall determine the net collateral source
benefits received and the net collateral source benefits
reasonably expected to be received in the future. If the action
for personal injury or death is tried to a jury, the jury will be
instructed to make such determination by itemization of the
verdict.

Sec. 5 (attached)

certain

*accruing on or after
July 1, 1988.*