

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 January 20, 19 88 in room 514-S of the Capitol.

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

Committee staff present:

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

Conferees appearing before the committee:

Ron Smith, Kansas Bar Association
Gerald L. Goodell, Kansas Bar Association
Don Stumbaugh, Crime Victims Reparations Board
James M. Concannon, Washburn Law School

Ron Smith, Kansas Bar Association, presented requests for two committee bills. One proposal concerned allowing what is required of a trustee of a trust, and the second proposal concerned Charitable Trust Administration Act. Following the explanation of the proposals, Senator Winter moved to introduce the proposal concerning allowing what is required of a trustee of a trust. Senator Hoferer seconded the motion. The motion carried. Senator Winter then moved to introduce the proposal concerning Charitable Trust Administration Act. Senator Hoferer seconded the motion. The motion carried.

Senate Bill 270 - Capacity of partnership to sue or be sued.

Jerry Goodell representing the Kansas Bar Association explained the bill adds to the Uniform Partnership Act. Committee discussion with him followed.

Senate Bill 315 - Amount of funeral expenses payable by Crime Victims Reparations Board.

Don Stumbaugh, Crime Victims Reparations Board, explained this bill proposes to increase the funeral award limit from \$750 to \$1,500. Committee discussion with him followed. A copy of his handout is attached (See Attachment I).

House Bill 2475 - "John Doe" pleadings in civil actions for discovery purposes.

Ron Smith, Kansas Bar Association, introduced James M. Concannon, Washburn Law School.

Professor Concannon explained the bill is aimed at problems one frequently faces when the expiration of the statute of limitations is eminent. A copy of his testimony is attached (See Attachment II). Professor Concannon suggested the effective date should be changed either to July 1 or January 1, 1989. Considerable committee discussion was held on the bill.

The meeting adjourned.

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

S.B. 315

CRIME VICTIMS REPARATIONS BOARD

BILL BRIEFI. Summary:

The Crime Victims Reparations Board is statutorily authorized to award victims of violent crime financial compensation for medical expenses, funeral expenses, and wage loss. The current per award limit is \$10,000, with a \$750 limit set on awards for funeral expenses. The limit set on the other award categories is \$10,000. This bill proposes to increase the funeral award limit from \$750 to \$1,500.

II. Supplemental Information:

A. Information obtained from claim files indicates that funeral costs to victims whose claims were awarded during FY 87 averaged approximately \$3,130.00.

B. Information obtained from local funeral homes indicates that minimum costs for a funeral, including cemetery expenses, total approximately \$2,830.

C. The Kansas SRS limit for for funeral reimbursement is \$1,150.

III. Fiscal Impact:

Based on a projection of 24 - 28 funeral awards for FY 89, the total fiscal impact would be \$18,000 to 21,000.

Crime Victims Reparations Board
 Claims for Funeral Expense
 FY 87

	Claim #	Award	Cost of Funeral	
July 86	8110-86	\$750.00	\$3,317.60	
August 86	8130-85	750.00	1,940.25	
	8224-86	578.38	578.38	(Cremation)
	8277-86	750.00	2,768.83	
	8315-86	750.00	1,899.30	
	8316-86	750.00	3,332.75	
		<u>3,578.38</u>		
Sept. 86	9069-87	69.77		Misc. out-of-pocket not covered by insurance
Oct. 86	9014-87	750.00	1,403.18	
	9061-87	750.00	5,412.35	
	9083-87	750.00	4,969.00	
	9029-87	395.00	395.00	(Cremation)
			<u>2,645.00</u>	
Nov. 86	8320-86	750.00	1,824.00	
	9109-87	341.72	341.72	
	8287-86	750.00	8,523.32	
	9079-87	750.00	3,294.60	
	9068-87	750.00	750.00	Total
		<u>3,341.72</u>		
Dec. 86	9123-87	750.00	3,708.25	
Jan. 87	9152-87	750.00	4,192.10	
Feb. 87	9202-87	678.38	678.30	
	9226-87	750.00	2,816.50	
		<u>1,428.38</u>		
March 87	9290-87	750.00	2,256.16	
	9154-87	750.00	4,921.25	
		<u>1,500.00</u>		
April 87	9278-87	750.00	2,283.75	
	9059-87	750.00	3,014.89	
		<u>1,500.00</u>		
TOTALS		<u>\$16,313.25</u>	<u>\$63,871.48</u>	

Funeral Expense

	<u>Low</u>	<u>Medium</u>	<u>High</u>	<u>SRS</u>	<u>Worker's Comp</u>	<u>No Fault Auto</u>
Funeral Home Services	\$ 1,500	\$ 1,700	\$ 2,100	\$750 to		
Casket	500	950	5,000	850		
Vault (Outside Container)	300	700	7,000	150		
Cemetary Gravespace Rural	20	20	20			
Private	250	250	250			
Grave Opening	100	200	300	250		
Cemetary Tent & Equipment	60	80	120			
Marker	100	250	1,000			
TOTALS	\$ 2,830	\$ 4,150	\$ 15,790	\$ 1,150	\$3,200	\$2,000

Information provided by Kansas Funeral Director's Association

CVRB
Historical Data
Funeral Expense Awards

Mo.	#	FY 83 \$ Awarded	#	FY 84 \$ Awarded	#	FY 85 \$ Awarded	#	FY 86 \$ Awarded	#	FY 87 \$ Awarded	#	FY 88 \$ Awarded
July	1	\$750.00	0	0.00	4	\$3,000.00	2	\$1,500.00	1	\$750.00	1	\$750.00
Aug.	0	0.00	0	0.00	2	1,500.00	2	1,367.09	5	3,578.38	2	1,500.00
Sept.	0	0.00	1	\$750.00	0	0.00	0	0.00	1	69.77	0	0.00
Oct.	0	0.00	0	0.00	2	1,500.00	4	2,790.75	4	2,645.00	2	1,500.00
Nov.	0	0.00	3	1,992.50	0	0.00	3	2,250.00	5	3,341.72	0	.00
Dec.	2	500.00	2	884.80	0	0.00	0	0.00	1	750.00	3	2,250.00
Jan.	0	0.00	1	750.00	4	3,000.00	2	1,500.00	1	750.00	4	3,000.00
Feb.	0	0.00	0	0.00	5	3,759.99	1	364.00	2	1,428.38		
Mar.	1	750.00	0	0.00	2	1,500.00	1	750.00	2	1,500.00		
Apr.	0	0.00	0	0.00	0	0.00	1	750.00	2	1,500.00		
May	1	750.00	0	0.00	0	0.00	0	0.00	0	.00		
June	0	0.00	2	1,500.00	0	0.00	0	0.00	0	.00		
TOTALS	5	\$3,750.00	9	\$5,877.30	17	\$14,259.99	16	\$11,271.84	24	\$16,313.25		



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**TESTIMONY BEFORE SENATE JUDICIARY COMMITTEE ON HB 2475
PROFESSOR JAMES M. CONCANNON
WASHBURN LAW SCHOOL
JANUARY 20, 1988**

HB 2475 would permit "John Doe" pleadings making persons parties to a lawsuit for some purposes but not others.

It is aimed at problems one frequently faces when the expiration of the statute of limitations is eminent. For example, the lawyer for a claimant may not have been able to determine the exact names of persons the lawyer believes are liable for the claim, e.g. the name of a foreign corporation that is not registered in Kansas. There may be persons the lawyer believes might be liable for the claim but the lawyer has not been able to determine in good faith whether liability exists, either because of an inability to conduct discovery or because the client contacted the lawyer too late. In one case with which I am familiar, the lawyer could not determine which of several companies manufactured a defective product that had no identifying markings.

A claimant in these case is in a quandary. If the claimant names persons to the action to guard against the limitations defense and it later turns out these persons are not liable, the action not only has been made more complex and costly than necessary but the claimant also risks the imposition of sanctions under K.S.A. 60-211 for filing unfounded claims. On the other hand, if the claimant omits a person from the action and it later turns out the person was liable, an attempt to add the person by amendment pursuant to K.S.A. 60-215(c)(2) will succeed only if the claimant shows that the person learned of the institution of the action before the limitations period expired [Schiavone v. Fortune a.k.a. Time, Inc., ___ U.S. ___, 106 S.Ct. 2379, 91 L.Ed.2d 18 (1986)] and should have realized there was a mistake in naming parties. The same requirements must be met even to correct a mistake in naming or describing a party the lawyer actually sues.

For yet another variation, in comparative fault and product liability cases, plaintiff may be able to describe other entities which might have been responsible for plaintiff's injuries, such as manufacturers of component parts, distributors and the like but be unable to identify precisely who they are because the named defendant is the only one who knows who they are and is unwilling to divulge their names. Plaintiff may obtain this

Attch. II

information through interrogatories shortly after commencing the action. Indeed, defendant in its answer may assert the fault of these entities. However, if the statute of limitations runs in the interim, plaintiff may be unable to amend the pleading to add the responsible party.

HB 2475 permits a claimant to use a fictitious name in the pleading to describe any of the categories of people I have referred to and to file a separate statement that identifies the person and explains the reason he or she should be involved in the action. These documents are to be mailed to the person when the person's identity is known already or when it is subsequently discovered. The action is deemed commenced for statute of limitations purposes if these documents are served upon the fictitious party within the time process could have been served had it been named as a full party in the action originally. The person's identity would not be disclosed in public unless the person later is made a full party to the action. This procedure would fully satisfy the policies of the statute of limitations which are to insure that a defendant is on notice to preserve evidence to defend the claim and to protect courts from the burden of litigating a stale claim. This procedure not only would eliminate embarrassment to the person but would also prevent the pendency of the action from operating as a lien upon the person's realty pursuant to K.S.A. 60-2202 before the person is made a full party to the action.

Subsection (b) also makes the person a party for purposes of discovery. Thus, all discovery devices could be directed to the person, not just the deposition, the subpoena for documents in connection with a deposition, and subpoena for business records that are currently available for non-parties. The main advantage would be the ability to serve interrogatories upon the person and simple requests for production of non-business records. The language in the original bill referred to the fictitious party being a party "for purposes of discovery" and this might have been broad enough to permit use against a person who later is made a full party to the action of depositions taken before the person was made a full party but of which the person was given notice. See K.S.A. 60-232. Such a result would save costs of having to re-do depositions after the person is made a party, but it would have the disadvantage of effectively forcing the person to bear the cost of being represented by counsel at the deposition even though he or she may never become a full party. For this reason, the House Committee changed lines 48 and 53 so these persons are parties not "for purposes of discovery" but only "for purposes of responding to requests for discovery."

The other changes made by the House Committee were technical only and merely corrected some drafting problems. It will be necessary to change the effective date either to July 1 or January 1, 1989. The January date was chosen in the original bill to provide time to do continuing legal education.

Perhaps I should mention one development since the bill was introduced last year. The Ninth Circuit Court of Appeals has held that the naming of "Doe" defendants under the expansive California "Doe" procedure precludes removal of an action to federal court prior to commencement of trial. This may or may not be a good thing but even if the Tenth Circuit were to adopt the same rule, it would not be as disruptive as in California. In California, large numbers of "Doe" defendants routinely are named as a matter of course; there is no requirement that plaintiff even have a reasonable basis to believe they exist and there is no way to determine if they are of diverse citizenship. The Kansas bill requires plaintiff to believe such persons exist and to describe them. In most cases it will be possible to determine the states of citizenship of these people. Moreover, the determination whether these persons will be made parties need not be deferred until trial since subsection (c) permits any party, including a defendant seeking to remove the action to federal court, to move to dismiss the action as to the fictitious party.