

Approved 4-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

10:00 a.m./~~p.m.~~ on March 30, 1989 in room 514-S of the Capitol.

All members were present except: Senators Winter, Yost, Moran, Bond, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

- Mike Heim, Legislative Research Department
- Jerry Donaldson, Legislative Research Department
- Gordon Self, Revisor of Statutes
- Jane Tharp, Committee Secretary

Conferees appearing before the committee:

- Brad Smoot, Kansas Coalition For Tort Reform

Senate Concurrent Resolution 1610 - Constitutional amendment to limit noneconomic damages on claims for personal injury.

The chairman stated there are constitutional concepts concerning case law in looking at the resolution. This resolution is different from others that I have seen in this legislature. It is presented to the public as a particular public policy, and not the same as, "should we allow liquor by the drink". In my view this is significantly different than that. This measure does not set caps on any kinds of damage. The decision will establish the policy of this legislature. If this resolution is approved than it can be expected this issue to be considered in the future. This has nothing to do with affordability and availability of insurance and cost of premiums. The policy question is who should make the decision, one made by the issue or by the Supreme Court. The chairman said I asked the trial lawyers, the bar association and the medical society how they would amend this. The medical society did amend this. The attachment is mostly the work of the medical society, not the bar and trial lawyers.

Brad Smoot, Kansas Coalition For Tort Reform, explained the attached balloon with the proposed amendments (See Attachment I). The second handout is their explanation of the amendments (See Attachment II). Mr. Smoot explained the proposed amendments. Following the explanation, Senator D. Kerr moved to amend the balloon in line 33 to read "no authority conferred by this section" and make the resolution a substitute. Senator Bond seconded the motion. The motion carried. Senator Yost moved to adopt the suggested amendment with exception of the change from Senator from Reno to make it a substitute to the resolution. Senator Bond seconded the motion. The motion carried.

The chairman announced the committee will meet immediately upon adjournment to vote on the resolution.

The meeting adjourned.

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

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.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-30-89

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
CARY Robbins	Topeka	Ks. Opt 955A
AROLD E. FIERMAN	Topeka	KAOOM
RG FREY	Topeka	KTLA
Paul Shelby	Topeka	OJA
Bon Smith	"	KDA
Don Lindsey	OSAWATOMIE	UTU
Patrick Murphy	Manhattan	KTLA
Chip Wheeler	Topeka	Ks Medical Soc.
Nancy Macy	Salina	visitor
Walter H. Mason	Topeka	KTLA
Connie Riggs	Topeka	
FRANK WALKER	Topeka	KWU
Met Travel	Topeka	AP
PAT BARNES	Topeka	Ks Motor Car Dealers Ass'n
Kevin Allen	Topeka	Ks Motor Car Dealers Ass'n
M. Haver	"	Central-Journal
Lori Callahan	Topeka	AIA
John Peters	Topeka	Ks Assoc of Nat Ins Agency
Bud Smith	Topeka	KCTR
Janis Lee	Lansington	Senator

Senate Concurrent Resolution No. 1610

By Committee on Judiciary

2-8

A PROPOSITION to amend article 2 of the constitution of the state of Kansas by adding a new section thereto, authorizing the legislature to limit the amount of recovery for noneconomic damages in ~~any~~ claim for personal injury.

S

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-thirds of the members elected (or appointed) and qualified to the House of Representatives concurring therein.

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Article 2 of the constitution of the state of Kansas is amended by adding a new section thereto to read as follows:

"§31. Limitation on noneconomic damages. (a) ~~The legislature~~ in claims for personal injury. may enact laws limiting the amount of noneconomic damages awarded for any claim for personal injury. ~~No provision of this constitution shall limit the powers of the legislature herein conferred,~~ no authority conferred herein shall permit ~~except that the legislature may not limit noneconomic damages awarded against a party causing the injury if such party has been convicted of a crime arising from the conduct causing the injury.~~ to felony or misdemeanor

"(b) Noneconomic damages are losses for which there is no unit value, mathematical formula or rule of calculation and include but shall not be limited to pain and suffering, disability, disfigurement, inconvenience, mental anguish, humiliation, loss of capacity to enjoy life, bereavement, loss of society, loss of companionship, loss of consortium, loss of reputation and other

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43 losses which are intangible in nature."

44 Sec. 2. The following statement shall be printed on the ballot
45 with the amendment as a whole:

46 "Explanatory statement: ~~This amendment would allow the leg-~~ and title
47 ~~islature to limit the amount of noneconomic damages a person~~
48 ~~could recover in a personal injury action.~~ Noneconomic damages claims for
49 include pain and suffering, disability, disfigurement, inconveni-
50 ence, mental anguish, loss of capacity to enjoy life, bereavement,
51 loss of reputation, loss of society, loss of companionship, loss of
52 consortium, humiliation, and other losses for which there is no
53 unit value, mathematical formula or known rule for calculation. A
54 "personal injury" includes all actionable injuries to an individual
55 as distinguished from injuries to the individual's property, and
56 includes bodily and emotional injuries as well as injuries to rep-
57 utation and character. The limitation would not apply if the con-
58 duct of a party causing the injury results in a ~~criminal~~ felony or misdemeanor

59 "A vote for this amendment would allow the legislature to limit
60 the amount of noneconomic damages a person could recover in
61 ~~any~~ claim for personal injury. s

62 "A vote against this amendment would continue the present
63 system of assessing and awarding damages for noneconomic losses." in claims for personal injury

64 Sec. 3. This resolution, if approved by two-thirds of the members
65 elected (or appointed) and qualified to the senate and two-thirds of
66 the members elected (or appointed) and qualified to the house of
67 representatives, shall be entered on the journals, together with the
68 yeas and nays. The secretary of state shall cause this resolution to
69 be published as provided by law and shall cause the proposed amend-
70 ment to be submitted to the electors of the state at the general
71 election in the year 1990 unless a special election is called at a
72 sooner date by concurrent resolution of the legislature, in which
73 case it shall be submitted to the electors of the state at the special
74 election.

BRAD SMOOT

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March 29, 1989

The Honorable Wint Winter, Jr.
State Senate
Capitol
Topeka, Kansas 66612

Dear Chairman Winter:

In response to your request for amendments to SCR 1610, enclosed please find a copy of SCR 1610 with "balloon" amendments. We trust that these changes will respond to questions and concerns raised by Committee members and opponents. Obviously, these changes, which are acceptable to Coalition members, are not likely to meet all the policy objections raised by opponents of the proposed constitutional amendment.

To assist you and your committee in reviewing these proposed amendments, I have briefly identified the proposed changes in the left hand column and provided an explanation of the reasons for each change in the right hand column, as follows:

<u>Proposed Amendment</u>	<u>Explanation</u>
1. Line 19. Delete word "any" and add "s" to word "claim".	1. Technical, since not all non-economic damages may be limited pursuant to this amendment, the word "any" should be deleted in the title to Resolution.
2. Line 29. After the word "damages" add the phrase "in claims for personal injury."	2. Technical. Addition of this language will clarify in the caption that the amendment applies only to personal injury claims.
3. Line 31. Add comma after the word "injury" and delete the remaining words of the line. Delete the entirety of line 32 and the partial word "ferred" in line 33.	3. In view of the clear grant of authority to the legislature as contained in lines 29-31, the preemptory language of lines 31-33 is probably unnecessary. This would have the incidental effect of resolving opponents concerns regarding Article II,

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Sections 13 and 14 which govern the procedural mandates for enactment of laws.

4. Line 33. After the word "that", add the phrase "no authority conferred herein shall permit". Delete the words "may not" and add the word "to" after the word "legislature."
5. Line 35. Delete the word "crime" and replace it with the phrase "felony or misdemeanor"
4. Addition of this language would make it clear that the "exception" clause is intended to limit only the powers conferred by this amendment. Other legislative authority having separate constitutional foundations would be unaffected by the restrictions in the "exception" clause. Consequently, limits on wrongful death, punitive damages, no-fault and various other statutory limits and immunities are not affected by the amendment, even where criminal conduct is involved.
5. Although the Coalition has no strong feeling on this subject, we believe the phrase "felony or misdemeanor" would clarify that the exception clause of paragraph (a) would not apply to minor traffic infractions. This change would solve most of opponents objections to the effect of the amendment on no-fault insurance. However, the Coalition does not support permitting limits on damages resulting from traffic offenses which have been designated by the Legislature as felonies or misdemeanors, such as drag racing (K.S.A. 8-1565); reckless driving (K.S.A. 1988 Supp. 8-1566); drunk driving (K.S.A. 1988 Supp. 8-1567); vehicular battery (K.S.A. 21-3405b and vehicular homicide (K.S.A. 21-3405a). Under such felony or misdemeanor situations, nothing in this amendment would permit the Legislature to limit non-economic damages.

6. Line 46. After the word "statement," add the phrase "and title"
6. Technical. Article 14, Section 1 requires the title to contain the explanatory information. Although the opponents did not raise this issue in their criticism of the explanatory statement, it appears that the explanatory statement is considered to be the "title" which is required to appear on the ballot. Although this has not been done in past amendments, it would resolve some apparent confusion on this issue.
7. Line 48. Delete the words "a" and "action" and add after the word "in," the phrase "claims for."
7. Technical. See item 2, supra.
8. Line 58. Delete the word "criminal" and add the phrase "felony or misdemeanor."
8. Technical. See item 5, supra. This change is necessary for agreement with changes previously proposed.
9. Line 61. Delete the word "any" and add "s" to the word "claim."
9. Technical. See item 1, supra. Necessary for agreement with changes previously proposed.
10. Line 63. Add after the word "losses" the phrase "in claims for personal injury."
10. Technical. See item 2, supra. Necessary for agreement with changes previously proposed.

Finally, allow me to clarify two concerns raised at the hearings on SCR 1610 regarding the scope of the proposed amendment.

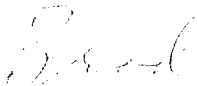
A. There seems to be some concern regarding whether punitive damages are to be included in the definition of non-economic damages. It is to be remembered that SCR 1610 is only made necessary by recent Kansas court cases concerning non-economic damage caps. At this time statutory limits on punitive damages (K.S.A. 1988 Supp. 60-3702) remain in effect and are presumed constitutional. We believe the constitutional and common law basis for limits on punitive damages is distinct from that of any limitation on non-economic damages. Consequently, this amendment as proposed should have little effect on the issue of punitive damages, whether it is adopted or fails. Frankly, we would not want the failure of this amendment to negatively impact (through negative implications) punitive damage limits previously enacted. Consistent with this reasoning, we have drafted the definition of non-economic damages in terms of "losses" (see line 37) rather

than penalties or punishment. In short, we do not believe it is necessary for SCR 1610 to contain a specific reference to punitive damages since limits on such awards continue to have constitutional validity and statutory effect.

B. Opponents assert that the amendment will negate legislative limits on wrongful death actions where criminal convictions are involved. Frankly, the Coalition is not overly concerned that such may be the result since we do not wish to condone criminal behavior in any circumstance. In addition, such an interpretation would likely effect only a few cases. However, we believe the opponents suggestion is based on a faulty premise, namely that claims for personal injury include wrongful death actions. As you know, actions for wrongful death have a statutory foundation in the law rather than a "common law" basis. Moreover, such actions are specifically pleaded and historically subject to separate limitations under the law. It has certainly been our intention that wrongful death claims not be included in the definitions or language of the proposed amendment. Obviously, it would have been easy to include the phrase "or death" after references to personal injury in the text. This was not done because we believe current statutory limits on wrongful death awards are constitutional and effective. Simply put, inclusion of such authority in the amendment is unnecessary at this time.

I trust that this information has been helpful to you and if I may provide additional assistance in the future, please feel free to contact me at your convenience.

Sincerely,



Brad Smoot, Coordinator
Kansas Coalition for Tort Reform