

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m. on January 29, 1990 in room 514-S of the Capitol.

All members were present except: Senator Moran, Feleciano and Oleen who were excused

Committee staff present:

- Mike Heim, Legislative Research Department
- Jerry Donaldson, Legislative Research Department
- Gordon Self, Office of Revisor of Statutes
- Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

- Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration
- John Johnson, Kansas Trail Lawyers Association
- Brad Smoot, Kansas Coalition for Tort Reform
- Bob Corkins, Director of Small Business Development, Kansas Chamber of Commerce and Industry
- David Hanson, Kansas Association of Property and Casualty Insurance Companies
- Tim Alvarez, Kansas Trial Lawyers Association
- Tom Wright, Kansas Bar Association
- Lori M. Callahan, Kansas Medical Mutual Insurance Company, KaMMCO
- Chip Wheelen, Kansas Medical Society
- Lee Wright, Farmers Insurance Groups

The Chairman called the meeting to order by recognizing Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration. Mr. Shelby was reporting the response, as requested by the committee, of the Supreme Court regarding:

SB 441 - concerning district courts; relating to district magistrate judge positions. Mr. Shelby reported on the issue of having a judge in every county, the Court respectfully responds:

- 1) The question is a political matter, therefore the decision is left to the legislature;
- 2) The Court does not oppose the elimination of the requirement for a judge in every county;
- 3) The Court still opposes a new district magistrate judge in Brown County.

The Chairman opened the hearing for:

SB 524 - concerning civil procedure; relating to wrongful death actions; amount of damages.

John Johnson, Kansas Trial Lawyers Association, testified in support of SB 524.  
(ATTACHMENT I)

Brad Smoot, Kansas Coalition for Tort Reform, testified in opposition of SB 524.  
(ATTACHMENT II)

Bob Corkins, Director of Small Business Development, Kansas Chamber of Commerce and Industry, testified in opposition to SB 524 and echoed statements of KCCI.  
(ATTACHMENT III)

David Hanson, Kansas Association of Property and Casualty Insurance Companies, testified in opposition of SB 524 stating his comments echo those of the two previous conferees.

The Committee requested information from the Kansas Trial Lawyers Association that outlines current laws from the states surrounding Kansas regarding caps on nonpecuniary damages in wrongful death actions.

This concluded the hearing for SB 524.

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.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~pm~~ on January 29, 1990.

The Chairman opened the hearing for SB 525.

SB 525 - concerning certain rates of interest; relating to interest on judgments.

Tim Alvarez, Kansas Trial Lawyers Association, testified in support of SB 525.  
(ATTACHMENT IV)

Tom Wright, Kansas Bar Association, testified in opposition of SB 525. (ATTACHMENT V)

Lori M. Callahan, KaMMCO, Kansas Medical Mutual Insurance Company, testified in opposition of SB 525. (ATTACHMENT VI)

David Hanson, Kansas Association of Property and Casualty Insurance Companies, testified in opposition of SB 524. He stated their disagreement with situations when there would be delayed suits and awards based on future values. He added that they did not feel the bill would accomplish the desired goals.

Bob Corkins, KCCI Director of Small Business Development, testified in opposition of SB 525. (ATTACHMENT VII)

Chip Wheelen, Kansas Medical Society, stated their opposition to both SB 524 and SB 525.  
(ATTACHMENT VIII)

Lee Wright, Farmers Insurance Groups, added their opposition to SB 525 for the reasons put forth by previous conferees.

Paul Shelby, Assistant Judicial Administrator, Office of Judicial Administration, offered written testimony on SB 525 which included requests for technical changes to the bill. (ATTACHMENT IX)

This concluded the hearing for SB 525.

The meeting was adjourned.

COM. FEE: SENATE JUDICIARY COMMITTEE

DATE: Jan 29, 1990

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Ron Smith	Topeka	KBA
Tom Wright	Topeka	KBA
ALAN COBB	Wichita	Henderson Conlect
David Hanson	Topeka	Ks Assoc Proprt Gas Cos
Chip Wheelen	Topeka	Ks Medical Soc.
Leo WRIGHT	Orchard Park	Farmers Ins. Group
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Ryan Wiens	923 Humboldt	Page
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Bob Corkins	Topeka	KCCI
Brod Sweet	"	KCTR
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<del>J. Wilson</del>	<del>"</del>	<del>KZA</del>
Ani Callahan	Topeka	AIA / KAMMCO
Tim Alvarez	KCKS	KCLA
John W. Johnson	Wichita	KTCA
M. Hauver	Topeka	Capital-Journal
Mike Gorman	Wichita	Beer, Commercial Replac Wichita Division
Mark Sheeks	Lawrence	Intern - Parish

January 29, 1990



# KANSAS TRIAL LAWYERS ASSOCIATION

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## TESTIMONY of the KANSAS TRIAL LAWYERS ASSOCIATION before SENATE JUDICIARY COMMITTEE

January 29, 1990

SB 524 - WRONGFUL DEATH

Thank you for the opportunity to speak with you and your committee on behalf of the Kansas Trial Lawyers Association in support of SB 524.

SB 524 would raise the existing cap on nonpecuniary damages in wrongful death actions from \$100,000 to \$250,000. Our position is if the legislature and the courts have determined a \$250,000 cap on similar damages for those who are injured is proper and constitutional, then certainly the cap on damages in cases involving a death should be no less than \$250,000.

As you probably know, 60-1901 permits the heirs of a decedent to bring an action for damages against a person or entity whose wrong doing caused the decedent's death. Damages allowed are specified as 1) nonpecuniary, 2) expenses for the care of the deceased caused by the injury and, 3) pecuniary damages. Pecuniary damages and those damages for the care of the deceased are not limited.

The wrongful death statute was recodified in 1963 and a limit of \$25,000 for all damages was established. In 1967, it was raised to \$35,000, and then to \$50,000 in 1970.

In 1975, nonpecuniary damages were identified separately and capped at \$25,000, with no limit placed on pecuniary, or economic, losses. Finally, the nonpecuniary damage cap was last raised in 1984 to \$100,000.

Nonpecuniary damages are described in K.S.A. 60-1901 and include mental anguish, suffering or bereavement; loss of society, companionship, comfort or protection; loss of martial care, attention, advise or counsel; loss of filial care or attention; and loss of parental care, training, guidance, or education.

There are several reasons we believe this bill should be enacted. I have already described how it is a matter of fairness when contrasted with caps on personal injuries.

RICHARD H. MASON  
EXECUTIVE DIRECTOR

Testimony of Kansas Trial Lawyers Association  
Page 2

You know that members of the Kansas Trial Lawyers Association have never favored limitations on the power of the jury to decide damages. But the reality is the legislature has passed a \$250,000 cap and the Supreme Court has upheld it. In other words, lawmakers and the Court have determined \$250,000 is an acceptable limit on nonpecuniary damages.

An inconsistency now exists with the \$250,000 cap on personal injury actions and \$100,000 cap on wrongful death actions. Who can say the losses suffered as a result of a death are any less than the suffering of a bodily injury.

Careful reading of the elements contained in nonpecuniary loss for wrongful death go far beyond pain, suffering and bereavement. Children are entitled to compensation for the loss of parental care, i.e. guidance, love and education during their growing up years. Spouses are entitled to compensation for loss of attention, advice and counsel. Parents and siblings are entitled to compensation for loss of society, companionship and protection.

An important distinction must be made as to who shares in any compensation awarded by a court or jury in wrongful death cases. Distinctive from a personal injury loss, compensation for wrongful death extends to all heirs-at-law that have sustained a loss. That means one payment of \$100,000 may be awarded regardless of the number of heirs entitled to compensation. Please do not misinterpret the statute as allowing a maximum payment of \$100,000 to each heir sustaining a loss. Whereas in a personal injury action, the entire award for nonpecuniary loss goes to the single injured victim.

I've learned from past experience it is typically of interest to compare a legislative proposal with the laws in other states. Of the states bordering Kansas, only Colorado caps recovery for nonpecuniary damages and it is \$250,000 (which may be raised to \$500,000 by the judge under certain circumstances). As best as we can determine, only four states nationally have this type of cap on wrongful death actions. Kansas is obviously in the minority. Thus, the bill we are proposing this morning is quite modest.

SB 524 is imminently fair and will allow more appropriate awards to be made for the survivors of some Kansans who have lost a loved one due to another's negligent action. Furthermore, it creates inconsistency in the law for awards of nonpecuniary damages. We encourage you to act favorably on SB 524.

Thank you.

# KANSAS COALITION FOR TORT REFORM

STATEMENT OF BRAD SMOOT, COORDINATOR  
KANSAS COALITION FOR TORT REFORM  
BEFORE THE SENATE JUDICIARY COMMITTEE  
CONCERNING 1990 SENATE BILL NO. 524  
JANUARY 29, 1990

Mr. Chairman and Members:

Thank you for this opportunity to appear regarding 1990 Senate Bill No. 524. As you know, the Kansas Coalition for Tort Reform is composed of numerous businesses, professionals and their state associations. A partial listing of our membership is attached to the prepared statement for your reference.

On behalf of these members we appear today in opposition to S-524 which would amend K.S.A. 1990 Supp. 60-1903 to increase the liability exposure for non-economic damages in wrongful death cases from \$100,000 to \$250,000. (There are no statutory limits on actual economic losses in either personal injury or wrongful death cases.) Proponents of this amendment attempt to justify this 150% increase by comparing wrongful death actions to personal injury cases. While, at first glance, this comparison may have a certain appeal, I trust the committee will agree that it is a classic case of "comparing apples and oranges." Moreover, this drastic increase in exposure is wholly unwarranted and economically undesirable.

To begin with, the legal history of wrongful death actions is markedly different from that of personal injury actions. Under common law there was no right to recover for wrongful death. This cause of action has been created exclusively by statute while the exposure and costs associated with it have expanded radically in the last 100 years. Originally, recovery by beneficiaries was limited to actual economic losses. It was later expanded to include emotional (non-economic) damages within statutory caps. Later caps were lifted completely for economic losses (1975) and caps on non-economic losses were generously increased 400% to \$100,000 in 1984.

On the other hand, the recent history of personal injury actions shows a legislative recognition of the need to halt the previously unlimited recovery of damages, at least for non-economic losses. A further increase of liability exposure as proposed by S-524 is clearly inconsistent with the recent policy decisions and civil justice reforms the Legislature has overwhelmingly supported.

It has been less than one year since the Kansas courts upheld the \$100,000 non-economic cap on wrongful death and the \$250,000 non-

economic cap on personal injury. It is important that these reforms be given a chance to work.

In addition, it is important to remember that personal injury actions and wrongful death actions attempt to compensate different plaintiffs and different injuries. In personal injury claims we compensate the actual victim for any pain and suffering, disfigurement and disability. In wrongful death actions the heirs are compensated for their emotional losses. Of course, actual economic damages in both cases are unlimited and frequently result in multi-million dollar judgments for plaintiffs, their families and their counsel.

Moreover, the wrongful death statute permits heirs to also recover for any pain and suffering prior to death even when that period of time is a matter of minutes. See Ingram v. Howard-Needles-Tanner & Bergendoff, 234 Kan. 289, 627 P.2d 1083 (1983). In the recently-decided Lieker v. Gafford case, which upheld the \$100,000 wrongful death cap, the deceased's heirs recovered full economic damages and non-economic damages for both the personal injuries of the deceased and the statutory \$100,000 maximum for wrongful death. In all, plaintiffs recovered more than \$2.3 million dollars.

Although no amount of money can replace a loved one, between full compensation for economic losses and the frequent opportunity for heirs to collect on both wrongful death and survival claims, it would appear that plaintiffs can be fairly compensated under current Kansas law.

In summary, we believe an increase in the wrongful death damage cap is unnecessary and runs contrary to the tort reform measures recently enacted by the Kansas Legislature. Moreover, we believe there is no reason for the non-economic damage caps in personal injury and wrongful death claims to be identical since each attempts to compensate a different victim for different injuries. And since personal injury claims are frequently tried and compensated together with wrongful death claims, we have no reason to believe the current legal framework is unfair to heirs and beneficiaries. Finally, such a drastic increase in the wrongful death caps will have an adverse affect on businesses and consumers who must ultimately pay the costs of the tort liability system.

Thank you for your time and attention.

# KANSAS COALITION FOR TORT REFORM

Kansas Chamber of Commerce and Industry  
Kansas Farm Bureau  
Kansas Contractors Association  
Independent Insurance Agents of Kansas  
Kansas Railroad Association  
Kansas Motor Carriers Association  
Kansas Society of Architects  
Kansas Hospital Association  
Wichita Area Chamber of Commerce  
Kansas Medical Society  
Associated General Contractors of Kansas  
Kansas Association of Broadcasters  
Kansas Grain and Feed Dealers Association  
Kansas Consulting Engineers  
Kansas Lodging Association  
Kansas Life Insurance Companies  
Kansas Petroleum Council  
Kansas Association of Property and Casualty Insurance Companies  
Kansas Independent Oil and Gas Association  
Kansas Engineering Society  
Kansas Oil Marketers Association  
Kansas Motor Car Dealers Association  
Kansas League of Savings Institutions  
Wichita Independent Business Association  
Western Retail Implement and Hardware Association  
Kansas Telecommunications Association  
National Federation of Independent Business/Kansas  
Merrell Dow Pharmaceuticals, Inc., Overland Park  
Hutchinson Division, Lear Siegler, Inc., Clay Center  
Becker Corporation, El Dorado  
The Coleman Company, Wichita  
FMC Corporation, Lawrence  
Puritan-Bennett Corporation, Overland Park  
Seaton Media Group, Manhattan  
Boeing Military Airplane Company, Wichita  
American Insurance Association  
Alliance of American Insurers  
National Association of Independent Insurers  
National Association of Mutual Insurance Companies  
Kansas Fertilizer and Chemical Association  
Wes Sowers Management Counsel  
Beech Aircraft Corporation  
Cooper Industries, Funk Manufacturing Div.  
Southwestern Bell Telephone Co.  
Allied-Signal, Inc., King Radio

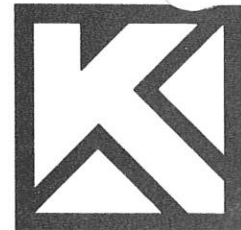
January 1988



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 524

January 29, 1990

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Judiciary Committee

by

Bob Corkins  
Director of Small Business Development

Mr. Chairman and members of the Committee:

My name is Bob Corkins, director of small business development for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to testify regarding SB 524 so that we might reaffirm our strong opposition to excessively liberal tort policies of this kind.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

The argument is likely to be very familiar to you after these many years of debate on the topic. Uncontrolled judicial awards drive up litigation costs and insurance rates, thereby attacking the pocketbooks of everyone -- Kansas businesses included. Everyone is negatively affected because everyone must eventually pay for health care, everyone is potentially liable to litigious injured parties, and everyone pays the taxes which support an over-burdened court system. Your efforts to curb these runaway costs through tort reform have been effective and are greatly appreciated.

Our comments today are meant to echo those presented by the Kansas Tort Reform Coalition, of which KCCI is a member. Rather than repeat those arguments, I would like to note our support for those points raised by the Coalition and emphasize the interest of the Kansas business community. SB 524 represents a step backward from the progressive reforms enacted to control spiraling litigation costs. To increase the maximum recoverable non-pecuniary damages in wrongful death cases would simply substitute another arbitrary limit for the current \$100,000 limit on an unquantifiable category of damages. Since these damages are unquantifiable, it is better public policy to de-emphasize their award by keeping the present limit. Only an emotional plea -- and no reliable substantiation -- could support an increase in this potential source of recovery.

Because KCCI believes that the great weight of public benefit clearly counterbalances this vague justification for higher awards, we oppose SB 524.



# KANSAS TRIAL LAWYERS ASSOCIATION

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## TESTIMONY of the KANSAS TRIAL LAWYERS ASSOCIATION before SENATE JUDICIARY COMMITTEE

January 29, 1990

### SB 525 - PREJUDGMENT INTEREST

My name is Tim Alvarez and I am an attorney in private practice in Kansas City. I am representing the Kansas Trial Lawyers Association in my capacity as Vice President for Legislation.

We appreciate the opportunity to speak in support of SB 525. This bill will require a judge to add to the damages interest on the judgment from the date of the cause of action. Such interest is added only if the judgment exceeds the last written demand made by the plaintiff prior to the start of the trial.

SB 525 is really a compromise form of a bill we introduced in 1987. It granted prejudgment interest to all cases where the plaintiff received a money judgment. SB 525 provides a trigger mechanism, so that interest is contingent upon a specific, successful action by the plaintiff.

All states bordering Kansas have some form of prejudgment interest, as do the vast majority nationwide. And we believe there are good reasons for its overwhelming acceptance in other legislatures.

First, an injured party currently receives less than the value of their claim. This is due to inflation and the fact that a claim is not concluded for several months or even years after the injury. This bill does not impose penalties or sanctions, but simply recognizes the effects of inflation and the time value of money and adjusts the injured person's verdict accordingly.

Second, prejudgment would clearly have the effect of encouraging faster settlements, where otherwise there may have been only litigation. Faster settlements and the avoidance of litigation are desirable goals and benefit all parties involved in this process. The injured person receives an inflation adjusted award and receives it more quickly, while the insurance carriers decrease or avoid litigation costs. Just as the postjudgment statute has had an effect on appeals, so can a prejudgment interest law have a beneficial effect on the litigation process.

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TIM RYAN, Clay Center  
MARK J. SACHSE, Kansas City  
RICHARD SAUBORN, Wichita  
GENE E. SCHROER, Topeka  
S. A. SCIMECA, Wichita  
GERALD W. SCOTT, Wichita  
K. GARY SEBELIUS, Topeka  
DANIEL SEVART, Wichita  
MICHAEL L. SEXTON, Kansas City  
RONALD SHALZ, Colby  
JOHN ELLIOTT SHAMBERG, Overland Park  
KAREN L. SHELOR, Kansas City  
JAMES R. SHETLAR, Overland Park  
TIMOTHY SHORT, Pittsburg  
CRAIG SHULTZ, Wichita  
DONALD E. SHULTZ, Dodge City  
MICHAEL SIMPSON, Leavenworth  
DAN L. SMITH, Overland Park  
BROCK R. SNYDER, Topeka  
MARTY SWIDER, Topeka  
FRED SPIGARELLI, Pittsburg  
DIANNA K. STAPLETON, Kansas City  
DANIEL J. STRAUSBAUGH, Overland Park  
M. WILLIAM SYRICK, Wichita  
LEE H. TETWILER, Paola  
JAY THOMAS, Overland Park  
ROBERT TILTON, Topeka  
DAVID P. TROUP, Junction City  
PHILIP W. UNRUH, Harper  
DONALD W. VASOS, Kansas City  
ARTIE E. VAUGHN, Topeka  
MICHAEL WALLACE, Overland Park  
WES WEATHERS, Topeka  
ROBERT W. WELLS, Kansas City  
SAMUEL WELLS, Kansas City  
T. MICHAEL WILSON, Wichita  
W. FREDRICK ZIMMERMAN, Kansas City  
JAMES B. ZONCHER, Wichita

Third, this bill does not give the injured person anything, rather it restores what inflation erodes during the pendency of a claim. Under the present law, the injured person does not have a level playing field upon which to negotiate his or her claim. Instead, time is on the side of the defendant and delay often becomes a strategy. This bill would level the playing field upon which injured persons may adjudicate their claims.

Finally, as written, this proposal is extremely fair to all involved. For example, the bill does not provide for interest in all cases or in all situations, even though inflation does effect all cases. Instead, the injured person only receives interest if the verdict exceeds the last written demand or offer. It will encourage the injured party to make reasonable settlement demands, while discouraging the defendant from seeking protracted litigation. Finally, the bill neither gives the injured person a windfall nor punishes the defendant. It merely adjusts the value of the claim for inflation.

In summary, we believe SB 525 will accomplish several worthwhile goals, with the added inducement to settle, not litigate cases perhaps being the most important. We ask you to act favorably on this bill. Thank you.



Jack Focht, President  
Robert W. Wise, President-elect  
Thomas A. Hamill, Vice President  
Clarence L. King, Jr., Secretary-treasurer  
Dale L. Pohl, Past President

Marcia Poell, CAE, Executive Director  
Ginger Brinker, Director of Administration  
Elsie Lesser, Continuing Legal Education Director  
Patti Slider, Public Information Director  
Ronald Smith, Legislative Counsel  
Art Thompson, Legal Services — IOLTA Director

SB 525  
January 29, 1990

### Prejudgment Interest

Mr. Chairman, members of the Senate Judiciary Committee. I am Tom Wright. I am a partner in the Topeka firm of Davis, Wright, Unrein, Hummer and McCallister. I represent the Kansas Bar Association.

*KBA opposes SB 525. We have long opposed prejudgment interest bills of this nature. However, KBA would support such legislation only if the effect of the bill, taken as a whole, encourages pretrial settlement by imposing penalties on any party unwilling to make progress towards a meaningful settlement.*

Settlement of legal disputes is favored in the law. To statutorily encourage that process is fine with us. However, it takes all parties with cooperative counsel to effect a meaningful settlement.

The purpose of this bill is to impose a penalty on the defendant if plaintiff makes an offer to settle the case and defendant unreasonably rejects the offer. It stands to reason that such legislation should be enacted only if the legislature believes there is a problem of unwillingness to settle claims, and that this bill is the best remedy for that problem.

Prejudgment interest is only one form of penalty that can be imposed by the judge when the parties are unwilling to settle. Unfortunately, under SB 525 it is imposed only against the defendant. If, for example, a defendant truly does not believe the evidence shows any culpability or liability in a case, then to reject the plaintiff's offer would act to trigger prejudgment interest. This sets up the inconsistent theory that a defendant that is negligent and who accepts plaintiff's offer can avoid prejudgment interest, while the defendant who truly believes it is without negligence in the case and rejects the offer may see a penalty imposed for simply saying to plaintiff, "prove it."

We do not support legislation which gives one side an upper negotiating hand in the process of finding a satisfactory settlement. Such legislation would not be in the interests of justice.

If the legislature believes that such penalties are needed, we suggest that we review the current Offer of Judgment statute,<sup>1</sup> for methods by which such rejections can be made two sided, and the penalty for inappropriate delay of settlement proceedings be strengthened.

Thank you.

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<sup>1</sup>K.S.A. 60-2002(b).

(over, please)

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# KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY

January 29, 1990

TO: Senate Judiciary Committee

FROM: Lori M. Callahan  
Legislative Counsel

SUBJECT: Senate Bill 525 - Prejudgment Interest

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas, physician-owned, non-profit professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures 400 Kansas doctors and has capitalized and anticipates insuring in the next few months 400 more. KaMMCO feels it is in a unique position to provide insight to the Kansas legislature with regard to professional liability insurance for doctors and, therefore, appreciates the opportunity to testify today.

KaMMCO opposes S.B. 525 and other similar efforts to impose prejudgment interest in Kansas.

Prejudgment interest penalizes defendants for pursuing their right to have matters determined by a jury. Under S.B. 525, a defendant who refused to settle a case in a situation where a verdict was rendered in an amount greater than the last offer of settlement, would be required to pay interest from the date the cause of action arose. Thus, defendants who truly believe they are not responsible for damages caused to a plaintiff are encouraged to settle with plaintiff, despite their sincere belief with regard to their lack of responsibility.

In professional liability cases involving doctors, where verdicts tend to be higher than in other types of cases, the penalty for a defendant utilizing the jury as a factfinder is even greater.

Finally, measures have just recently been taken by the Kansas Legislature to curb the high cost associated with malpractice cases. These measures are still being litigated with regard to their constitutionality and, therefore, have not yet been given an opportunity to have an affect on the system. KaMMCO would

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Page Two

urge that before enacting measures that will increase the cost of liability insurance, such as S.B. 525, that the Legislature give its prior enactments sufficient time to take effect.

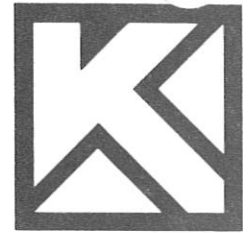
We appreciate the opportunity to testify and would be happy to answer any questions.



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 525

January 29, 1990

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Judiciary Committee

by

Bob Corkins  
Director of Small Business Development

Mr. Chairman and members of the Committee:

My name is Bob Corkins, director of small business development for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express our concerns about SB 525 and its proposal for increasing the amount of interest recoverable on judgments. KCCI opposes this proposal on the grounds of fairness embodied in the legal principles which currently deny the recovery of such interest.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

Quite simply, common law doctrine has established that civil defendants are liable for interest accruing only from the date the judgment is handed down. This policy is sound because -- absent a stipulation as to liability -- liability is not established until a verdict is rendered. The trier of fact analyzes all the evidence presented to determine if the defendant is the proximate cause of the plaintiff's injuries. This is a fact which is in dispute throughout the proceedings. It is the fact upon which liability for interest turns, and to impose that liability prior resolution of the issue would be to presuppose the defendant's knowledge of his own wrongdoing.

The question of liability for damages prior to the verdict, we believe, is adequately addressed through other legal procedures. A verdict can include pecuniary and non-pecuniary damages which date from the time the cause of action accrued. Punitive damages, also, can address those circumstances in which evidence shows the defendant pursued a defense which was not based on a good faith interpretation of the facts. However, to make the defendant liable for pre-judgment interest when no culpable intent is evidenced is completely unwarranted.

To retreat from these established legal principles would represent an injustice upon all civil defendants. KCCI therefore strongly recommends your rejection of SB 525.



## KANSAS MEDICAL SOCIETY

1300 Topeka Avenue • Topeka, Kansas 66612 • (913) 235-2383  
Kansas WATS 800-332-0156 FAX 913-235-5114

January 29, 1990

TO: Senate Judiciary Committee

FROM: Kansas Medical Society

SUBJECT: Senate Bills 524 and 525

The Kansas Medical Society wishes to state for the record that we are opposed to the provisions of both SB 524 and SB 525.

### Senate Bill 524

Regardless of whether or not an increase in the limit on non-economic damages in wrongful death actions would actually result in higher awards by juries, actuaries would necessarily project higher losses by liability insurers. This, in turn, would result in applications for higher premium rates. The reason for our opposition is obvious.

### Senate Bill 525

We oppose the change which would mandate the addition of pre-judgment interest to awards in personal injury actions. This change will clearly increase costs, both to insurance companies and the Health Care Stabilization Fund, which will result in higher premiums for health care providers. Such change is unnecessary and unfair. When juries make awards, they presumably compensate the plaintiff fully for past damages (up to the point of trial), making the addition of pre-judgment interest unnecessary. Additionally, why should a defendant be forced to pay interest on an award before it has been adjudicated and determined to be due and owing by the trier of fact? This concept is plainly unfair, and will only serve to increase both transaction and indemnity costs paid by professional liability insurers.

### Conclusion

Thank you for the opportunity to express our objections to both SB 524 and SB 525. We urge you to report both bills not recommended for passage.

CW:nb

Senate Bill No. 525  
Senate Judiciary Committee  
January 29, 1990

Testimony of Paul Shelby  
Assistant Judicial Administrator  
Office of Judicial Administration

Mr. Chairman:

Technical change on lines 36 and 37 on page 1: We respectfully request that you delete the language "by the clerk of the district court."

The present language has the clerk adding interest to damages and including it in the judgment. We continue to discourage the clerks from figuring interest due to legal liability.

The Tort Claims Act makes the state the indemnifier for negligent acts of its employees, which can be avoided if the litigants do the calculations and adding and not the clerks.

For these reasons, we request this amendment.

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