

JUDICIARY COMMITTEE

MINUTES OF JOINT HEARING HELD

MARCH 1, 1967

A Hearing of the Senate and Assembly Judiciary Committees was held at 2:30 P.M., Wednesday, March 1, 1967, Chairmen Warren L. Monroe and Clinton Wooster presiding.

Chairman Monroe announced that five Senate Bills would be considered; namely, S.B. 140, 168, 188, 197 and 198.

Mr. Richard W. Horton, Reno attorney, made a general opening statement for the proponents of the legislation. He stated that although the Bills had been labeled "lawyers bills" they were in reality bills for the "uncommon man", the man without a lobby. He also mentioned that the bills had been assigned to particular attorneys and that the attorneys were appearing without recompense.

S.B. 140 "Limits definition of "guest" in automobile guest statute."

Mr. Morton Galane, Las Vegas attorney. Mr. Galane stated that for the past year he had served as President of the Nevada Trial Lawyers Association and was speaking in that capacity. He stated that the purpose of the legislation was to permit persons, excluding family and residents of the household, to recover damages incurred in accidents where the insured is "negligent" but not "grossly negligent". The high standards to be met under "gross negligence" was originally imposed during the depression to cover the hitchhiker situation in those days and their suits were likened to "biting the hand". Another point made by Mr. Galane was that the rates would not necessarily be adversely affected because the premiums were established on the basis of how densely populated, how heavy the traffic, and how high the accident rate is in a community. The fear of collusion, he said, is not real because competent lawyers know how to bring perjury out into the open, and many guests are killed and it is rather difficult for a dead person to commit perjury.

Mr. Alfred H. Osborne, Reno attorney, spoke on behalf of this legislation. Mr. Osborne stated that before the enactment of the "guest statute" the common law provided coverage for the guest if there was common negligence. He used as an example of inequity the fact that a guest trespasser, if injured, can bring action for recovery against the landowner. He also mentioned that the trend, nationally, is to abolish guest limitations and to expand liability.

Mr. Leslie B. Cray, Reno attorney, stated that he had only read the proposed Bill that morning, and the person who had brought it to his attention had authorized him to leave certain publications with the Committee for their information. He referred to the Florida Law Review, the October 1, 1966, issue of Time magazine, and a list of the statutes from the various states in summary which will tell exactly where the states stand. He commented that he understood that this amendment seeks only to confine the guest statute to certain categories.

Mr. Bill Crowell, representing the insurance industry, stated that he had heard the same arguments relative to liability under the guest statute for many years. It's true that the statute has a "hitchhiker" background, and the family not being able to bring action, but, you and I both know that the litigation is going to come from the "friendship" relationship. It is customary to pick up friends, and friendship is fine until something happens, then friendship ceases and your friends want to bring action against you. Under the present statute a guest is covered if the operator is drunk or grossly negligent, but, if this statute is changed the ordinary driver who operates his motor vehicle safely is liable for the suits which, believe me, will increase. With this increase in suits the insurance rates will increase accordingly.

Senator Dodge asked what the amount of increase might be. Mr. Crowell replied that he did not have any estimate but that he was having it documented and would present it to the Committees when completed.

Mr. Neil Galatz, Las Vegas attorney, said that the debate in his mind was -- what happened to the injured victim who is not covered when the bills pile up, and perhaps is unable to work. He stressed the word "negligent" and the fact that the Bill did not do away with the rules of responsibility. It doesn't change them there can't be two standards. Consider the situation where a driver runs a red light and hits a pedestrian and the passenger is also injured -- the pedestrian can recover and the passenger can't. He referred to Mr. Crowell's statement, where he indicated that insurance rates would go up. He then stated that the Florida Law Review study states that insurance rates do not vary with the statutes on the books. He asked, why are we interested -- we are interested because the public is entitled to protection -- the "public" has a certain meaning to all of us.

Mr. George Vargas, Counsel for the American Insurance Association, remarked facetiously that he was being compensated for his appearance today. He then stated that the fundamental philosophy behind this Bill, or Bills, since they are essentially a "package" and sponsored by the Nevada Trial Lawyers Association which is an offspring of the Compensation Lawyers group, the old NAPA group. He stated that yere, in this Legislature for many years he had opposed groups of Bills like this. He submitted that this group of Bills were the same thing, and that the lawyers sponsoring them had a definite special interest in a broadened field of contingent fees. He said that he thought this Bill was all a package of this special interest group and wondered shy if they wanted to repeal the guest law they didn't do that instead of just defining "family". The question is, philosophically whether we should, or should not, have a guest law. He made reference to friendly collusion. If the reasons for having a guest law are no longer sound and you want to repeal it, repeal it, but this is a smoke screen -- but they say, "no it isn't". He mentioned that in the Assembly there is a Bill that would permit a husband or wife to sue each other on torts. Mr. Vargas then amused the gallery with a story relative to a suit for loss of consortium. He stated that the general background of these Bills should have been put before this Legislature. He also suggested, why not regulate contingent fees, in some places they do.

Mr. Morton Galane requested permission to offer a rebuttal to Mr. Vargas' remarks, which was granted by the Chairman. He stated, that to refer to

a group of Bills as a "package" does not take away from individual consideration which has merit, one by one. To refer to an organization by initial does not take away from the fact that the organization has the people's interest in mind. Motivation of the speaker should not concern the Legislature -- it is the merit and substance about which he speaks that should be of concern. To hold a piece of prior legislation up to ridicule -- does that detract from the ability of the Legislature. The Bill is designed to protect a particular group of citizens who are not able to recover. We submit that what we should be concerned with is whether the Bill should receive favorable consideration.

Mr. Rex A. Jemison stated that he was a defense lawyer and practised in Las Vegas. He stated that he was interested in winning his cases. He said that he was not compensated for appearing here today, but, he did defend these cases. What the guest law does basically, is put guests in the automobile in the same position as guests in the home. There is a standard of liability when you go into a business establishment and are injured. There is an entirely different standard when you go into a person's home as a social guest. The reason for the difference is the businessman that invites you in as part of his business, compensates you for injuries caused through negligence. If you repeal this legislation then you impose the same liability for social guests as business guests. The Common Law did not deal with automobiles but there were homes, this is a law that has grown up.

S.B. 168 "Repeals certain conditions and limitations on right to bring action against the State."

Mr. William O. Bradley, Reno attorney, urged passage of S.B. 168 introduced by Senator Swobe. The Bill broadens the Act passed in 1965 and removes a number of impediments that are currently in the sovereign immunity area in suits against political subdivisions. The Act has various exceptions which restrict the actions and the exceptions are broader than the Act. The present Bill also has a provision that the State "may" insure itself against liability. S.B. 168 removes the restrictive sections. It also gives an employee the right to recover up to \$100,000. Also, it requires the State to carry liability insurance, insuring to this extent. Political subdivisions carried insurance for many years prior to 1965, but in every instance when sued, an insurance company lawyer would raise the question of sovereign immunity, even though the insurance company had written the insurance. Ray Knisley, who was in the Legislature when the Bill was passed said that it was his understanding that the Bill, as now one the Books, required insurance coverage, and that the company writing this liability coverage specifically stated that sovereign immunity would not be raised. Mr. Knisley was amazed, he recalled that before this body that the Bank Examiners had stated that it would be illegal to pay insurance premiums to companies that write, no-risk. It is archaic, outmoded and has been thrown out in a number of jurisdictions. He quoted Oliver Wendell Holmes saying in effect, that sovereign immunity was revolting. Mandatory coverage of \$100,000. -- the State knows that it is paying that premium, and the people should know the insurance is there.

Mr. Virgil Wedge, Reno attorney, commented that the Bill had two important provisions: 1. It raises the limit of liability from \$25,000. to \$100,000.00, and, 2. Strikes down certain exemptions in the present Bill and makes it mandatory. With reference to the \$25,000. limitation -- this is adequate public compensation for the ordinary injury that a person might sustain through the actions of a negligent employee, but inadequate for major injuries. The real serious injury, with tremendous damages, where the doctor and hospital bills alone could amount to the \$25,000. If there is going to be a striking down of sovereign immunity, I think it is better for all of us to bear a share of the cost -- I see no reason to limit the liability. With reference to the present law and limitation in Section 41.032, conditions and limitation on accidents, it prohibits action against the State or the county where injured -- I am not sure I can tell you what that means but if we are going to allow recovery against the State or county why should we deny an injured person recovery merely because it falls within this exemption. I think that all subdivisions should be covered by insurance so that if there is a major loss by personal injury it will not cripple that subdivision financially. I would like to see the proposed Bill contain a provision that if a subdivision has an injury action that the defense of government immunity shall not be raised. I am a proponent of this legislation.

Mr. Vargas stated, with reference to Section 2, the present law provides "No such award may include any amount as exemplary or punitive damages or as interest prior to judgment." This Bill proposes to take that out. I am not too sure that a State could get insurance policy with punitive damages.

Mr. Bradley replied, that his point was well taken, that recovery of \$100,000. would be the total, and punitive damages would serve no good purpose, and, if that is the only objection Mr. Vargas raises deleting that provision would meet with no objection.

Assemblyman Kean asked what the amount of increase in premiums would be.

Mr. James Corecco, Insurance Agency, answered that increasing the policy from \$25,000. to \$100,000. would probably result in only a 15 or 16% increase in premiums.

S.B. 188 "Provides for interest on damage judgments from date of tort."

Mr. Richard Horton, Reno attorney, stated that the Bill is to allow interest on damages to be awarded in the case from the date of injury instead of the date of judgment. This is more fair since the loss of funds is on the date of injury and should be allowed from that date -- the moment of debt is the moment of injury.

Richard Blakey, Reno attorney, stated that he was opposed to this Bill. It doesn't take into account some of the conditions in a tort case. First, the legal rate of interest is 7%, and he is not obliged to start suit for 90 days, there is no control by the defendant -- it is left in the hands of one party. The Bill neglects to take into account that there are many elements of damage in a tort case, it is uncommon to sue for damages until after recovery of the insured. Payment could extend over a period of 7

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years -- I don't know how a computation could be made for the total amount of injury. It is uncommon for a plaintiff not to sue for humiliation, pain and so forth, and for humiliation, pain and so forth he will suffer in the future -- would you pay 7% on the amount of the judgment now, and on what he may suffer in the future. I don't think this Bill has been given much thought. Every lawyer wants the biggest possible verdict, that is a very obvious observation. I think it is a very bad Bill because it imposes an artificial part of a verdict. I think it would be a mistake to point out in a tort an unliquidated sum -- only the jury can tell the amount of the judgment at the end of the trial. This Bill will add to the expenses to insurance payers by increasing the recovery -- somebody is going to pay for it.

Senator Dodge asked if the statutory period is two years, what lag there might be in trying to get the case docketed. What period of time in Washoe County?

Mr. Blakey replied two years.

Senator Dodge said, instead of 14% you are talking about 28%.

Mr. Blakey said sometimes it could be five or six years, in which case it would be 42%.

Mr. Howard W. Babcock, Las Vegas attorney, stated that the majority of personal injury cases never go to judgment. 95% of all cases are settled prior to judgment and no consideration of interest goes into that settlement. Should this Bill pass, the insurance carriers would attempt to bring about fair settlements more quickly.

Assemblyman Kean asked, regarding the mechanics of bookkeeping by insurance companies, if a case is docketed I assume they remove from their capital a sum that they guess will be a proper amount. But, do they really withdraw the amounts from investment?

Mr. Vargas stated that insurance companies, under the law, have to set up a reserve for that claim. Many of the cases are won, maybe the claimant should pay interest to the insurance companies.