

ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING HELD FEBRUARY 24, 1971

The meeting was called to order at 3:05 p.m. All members of the committee present.

AB 164 - Regulates actions sounding in tort brought against employee or officer of state or political subdivision.

JAMES H. THOMPSON, CHIEF DEPUTY ATTORNEY GENERAL, stated the Nevada State Employees Association would prefer the substitute bill which was given to the committee last week. In answer to a question from Mr. Fry if he had any comments on the other sovereign immunity bills, Mr. Thompson replied he had reservations about AB 384 regarding the waiver provision on page 2, lines 10-13. Giving the state officer the right to select the limit of sovereign immunity is an unconstitutional delegation of legislative power, especially in view of a Supreme Court opinion that this is an unauthorized expenditure of state funds. One agency would have different coverage than other agencies, and the Legislature would have to consider appropriations for the funding of the program.

Mr. Fry asked if this is in conjunction with the suggestion of authorizing the state to settle cases up to a certain limit. Mr. Thompson replied that was to give the State Board of Examiners authority to settle for more than \$1,000 and he feels a limit of \$25,000 would be good.

Mr. McKissick observed if the three bills could be combined the limit of \$25,000 could be raised to \$100,000 without making much difference in the insurance premiums paid, and include the public entity and the individual employee. That eliminates the need of a waiver provision. He said there should be a requirement of notice against a political entity on the \$1,000 limit.

Mr. Thompson emphasized he would like the committee to consider the change in the substitution bill which would add employees of the State of Nevada.

BOB GAGNER, EXECUTIVE DIRECTOR, NEVADA STATE EMPLOYEES ASSOCIATION, concurred with Mr. Thompson's remarks, and stated the association would have no objections to the bill.

Speaking in opposition to the bill was RICHARD EDWARDS, ESQ., CHIEF COUNSEL, DEPARTMENT OF HIGHWAYS. He disliked the provision on minor's exemption, stating that if the statute tolled for 18 years there is no end to keeping cases open, and with disappearance of witnesses in 18 years, it is impossible to try such an old case.

Assembly Committee on Judiciary

Mr. McKissick stated he doesn't like a six month limit, especially for minors, and said he would go along with a 12 month limit for everyone. Another alternative would be to require that on a claim for less than \$1,000 the 12 month limit would apply and in claims over \$1,000 the regular statute of limitations would apply.

Mr. Edwards said he would oppose that for the reason that it would encourage additional litigation that could have been settled. He feels six months is a reasonable time limit and \$25,000 a reasonable amount to waive sovereign immunity. Mr. Torvinen stated that six months limit is for the purpose of putting the public entity on notice to repair the defect the claim is against.

AB 14 - Provides that advance insurance payments made under certain conditions in judicial proceedings are not admissions of liability.

Speaking in favor of the bill was DICK ROTTMAN, PH. D., PROFESSOR OF INSURANCE, UNIVERSITY OF NEVADA, who stated that with the exception of Section 3(b) it is an excellent piece of legislation. It has possibilities of providing more adequate compensation to victims of accidents. If insurance companies can make advance payments without liability they would do so more frequently in cases of questionable liability.

Mr. Fry asked how he would feel about the provision of advising a claimant he has the right to consult an attorney. Dr. Rottman replied he doesn't think that portion of the bill is good. It smacks of ambulance chasing, and he feels that most people are very aware that they have the option to contact an attorney.

Mr. McKissick felt there should be some type of advice that even though the victim received compensation for medical expenses, he had not been fully compensated for pain and suffering and wage loss.

Mr. May observed there are individuals who would not automatically know about their rights to counsel and would assume the advance payments were full payment. Dr. Rottman replied the victim would be notified that it isn't the extent of their rights, and he likes that rather than telling them to contact their attorneys. He stated the bill takes steps in our system to provide greater equity to accident victims.

JAMES GUINAN, ESQ., BOARD OF GOVERNORS, STATE BAR ASSOCIATION: He said the Board of Governors feels the victim should be told he should counsel with an attorney. Subsection (a) covers the situation because there is a statute of limitations and the victim should be

able to figure out if he needs an attorney to do that. If this notice is worded differently he wouldn't be opposed.

Mr. Kean stated the victim should be told that what he is getting is not full settlement. Mr. Torvinen wondered if AB 14 without 3(b) would encourage or inhibit companies to proceed with what they are already doing, and suggested it might inhibit them.

GEORGE VARGAS, ESQ., representing AMERICAN INSURANCE ASSOCIATION stated this is a solution for which there is no problem. He stated insurance companies now make advance payments and he knows of no case in which the receiver of the payments believed the payments constituted a complete settlement, because the company has made no request for him to sign a release. A solution is to pay them under a stipulation that the payment would be made without prejudice to the rights of persons involved. He called attention to the fact that the matter of advancing payments is contained in Section 35 of the proposed evidence code which provides that evidence of furnishing or offering to pay medical expenses is not admissible to prove liability. If there is a possibility that a person is misled by the fact that advance payments have been made, anyone who came to exert a statute of limitations would be met with estoppel.

Mr. Kean suggested use of a form, uniform throughout the state, distributed by the State Insurance Commissioner, which would accompany advance payments, informing the recipient it is not a tender of final payment. Mr. Vargas stated this might be all right as a practice, but would not be good legislation.

Mr. Kean asked if the person making advance payments was found not to be ultimately liable, is there a provision for return of the money? Mr. Vargas replied advance payments are made without agreement that they would be returned, but there is no specific agreement that they should not be returned.

VIRGIL ANDERSON, representing AAA INSURANCE: We agree with the concept of advance payments. It is a helpful, humane technique for handling compensation for victims of accidents. The practice has been that advance payments are being made on a regular basis increasingly by the insurance industry. Section 3(b) may discourage advance payments.

Mr. Lowman asked if the fact that insurance companies make advance payments has anything to do with the fact that the insurance companies are running in the red. Mr. McKissick said they do it to discourage law suits. Mr. Lowman asked if Mr. Anderson agreed with Mr. Vargas that it wasn't needed, and Mr. Anderson replied that he did agree, particularly with the provision in the new evidence code.

AB 210 - Declares certain information in records of law enforcement agencies to be confidential.

JAMES LAMBERT, DIVISION OF LAW ENFORCEMENT, DEPARTMENT OF MOTOR VEHICLES, stated there are problems the bill would create. It is in conflict with NRS 484.243(2) which deals with the reporting of accidents and states that written reports should not be privileged or held confidential. Additionally, the bill would pose the problem of prohibiting the department from giving out accident information to news media and he doesn't think they could live with that language. It would create great public problems.

Mr. Lowman asked if this would exclude giving statistics on accidents to the National Safety Council. Mr. Lambert said safety councils are not mentioned, but he thinks it would be prohibited. It is definite in who it allows the information to go to.

JAMES GUINAN, ESQ. stated the Board of Governors is opposed because they don't see any reason for it, and in the absence of good reason, they see no reason for making the records confidential.

MR. JIM LORIGAN, FARMERS' INSURANCE GROUP stated this would deny their claims people access to the most important aspect of the investigation. They would have to sit back until court action is filed before we could get any information on an accident.

AB 133 - Abolishes joinder of parties in challenge for cause and limits peremptory challenges allowed to several parties.

Mr. Torvinen stated that to allow multiple parties each to have four challenges puts an extra burden on the judicial process in selecting juries. He stated he had asked for the bill draft at someone's request, and couldn't recall who requested it.

JAMES GUINAN stated the Bar has no objection to the first change but are opposed to change in the last sentence limiting challenges. In the case of multiple defendants their interests are not the same and are sometimes adverse. After the lawsuit is over there is a possibility they might be suing each other and they should be allowed their own challenges independently.

AB 166 - Removes limitation of parents' and guardians' liability for tortious acts of minors.

GEORGE VARGAS, ESQ. stated Mr. Lorigan had called to his attention that parents' liability under the statute would be insured under a homeowners' policy.

JIM LORIGAN stated he believes it would embrace the parents' comprehensive liability portion of his homeowners' policy

because the exclusion is for tortious acts on the part of the insured. The insurance company would have to defend the parent and if the judgment was against him it would be satisfied. This passes the liability on to the general public by recourse to the insurance company.

Mr. Fry questioned if a statute were enacted raising the limit to \$25,000 would it cost the public more? Mr. Lorigan said he couldn't state how much, but the rates would go up.

Mr. Torvinen asked if it is common practice to make the minor children named insureds. Mr. Lorigan replied the company could not defend the child but would have to defend the parent, because he is not negligent. The child is insured but is not a named insured.

Mr. May observed that not all people who have children also have homeowners' policies, and asked if the parents who don't have the coverage should be protected by a statutory limitation on the amount for which they could be sued because of the acts of their children. Mr. Kean asked if it isn't true that an insurance company could escape liability by naming the children as insureds. Could you be defending one insured against the other?

Mr. Lorigan replied that is true. One has committed the tortious act and the other hasn't.

JAMES GUINAN stated the Board of Governors is opposed to the bill and opposed to raising the limit. It is contrary to the course of jurisprudence because you have liability without fault. There should be a showing of negligence on the part of the parents before you have liability.

AB 183 - Specifies certain allowable costs in court actions and appeals.

GEORGE VARGAS stated he opposes the bill. It would impose interest from the time of the accident, when no right of interest is provided. Imposition of interest from the time of the accident would increase the costs and problems of insurance. Many times suit is not filed until just before the statute of limitations has run, and the defendant has no control over that. The claim would be subject to interest for two years before suit was filed, and the defending party could not avoid that. The company is ultimately liable for an extra two years' interest on a large sum of money for damages.

Mr. Fry asked Mr. Vargas if he had comments on costs and interest provisions on frivolous appeals. Mr. Vargas stated there are provisions in the Supreme Court that attorneys are all subject to penalties of the Court if they trifle with the Court, and could

be found in contempt. He would have no objection to the provision, since he doesn't think it would be a problem very often.

AB 188 - Provides for more representative selection of jurors.

Mr. GUINAN stated the Board of Governors is opposed because it can't be done without purchasing four computers and putting all the information on the population into the computers. It isn't practical.

MR. VARGAS said the proposition is unworkable.

NOEL MANOUKIAN, ESQ. stated that Carter v. Green Co. requires this language be contained in the selection of grand juries and he sees no distinction between that and a regular jury.

Mr. Fry stated Mr. McKissick had prepared an amendment to AB 182 permitting the court to furnish food and lodging. Mr. Lowman stated he would like the bill to say "members of the jury are kept together", as a grammatical correction. Mr. Torvinen asked why the bill is needed, and Mr. Guinan replied that it allows the separation of jurors and they are opposed to that. It is being amended to say that in civil actions you can put them up as you can in criminal actions.

Mr. Fry said he thinks the statute is broad enough to permit this now, and Mr. Torvinen agreed. Mr. Guinan noted it doesn't specify how costs are assessed. Mr. Fry will look further into the amendments for the bill.

Mr. Lowman moved that AB 210 be indefinitely postponed. Seconded by Mr. Torvinen. Carried.

Mr. Lowman moved that AB 188 be indefinitely postponed. Seconded by Mr. Fry. Carried.

Mr. Torvinen moved Mr. McKissick be appointed a special subcommittee of one to study ABs 164, 189, 296 and 384 and combine the requirements into a suitable bill. Seconded by Mr. Lowman. Carried.

AB 14: Mr. Kean feels it should have language letting the recipient know he is not obligated to accept advance payments. Mr. Fry agreed, and said the committee has no way of knowing what will happen to the evidence code. The bill will be set aside for now.

Mr. Torvinen would like AB 133 set aside until he looks to see who requested it.

Mr. May moved AB 166 be indefinitely postponed. Seconded by Mr. Fry. Carried, with Mr. Lowman voting "No."

Mr. Kean moved AB 183 be indefinitely postponed. Seconded by Mr. Dreyer. Carried.

There being no further business, the meeting was adjourned at 4:47 p.m.

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ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date February 24 Time p.m. adjournment Room 240

21

<u>Bills or Resolutions to be considered</u>	<u>IN ADDITION TO PREVIOUS AGENDA</u> <u>Subject</u>	<u>Counsel requested*</u>
<u>AB 115</u>	<u>Absolves domestic animal owners from liability for third party's negligence in allowing such animals on highways.</u>	
<u>AB 164</u>	<u>Regulates actions sounding in tort brought against employee or officer of state or political subdivision.</u>	
<u>AB 159 IN</u>	<u>Extends time limits for filing claims against cities, counties, state and political subdivisions and increases amount of liability.</u>	
<u>AB 296</u>	<u>Increases maximum award for damages in tort actions against state, political subdivisions.</u>	
<u>AB 394</u>	<u>Increases monetary limit on sovereign liability and provides for waiver of such limit.</u>	

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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