

ASSEMBLY COMMITTEE ON JUDICIARY - 56TH SESSION, 1971

MEETING MARCH 25, 1971

The meeting was called to order at 4:05 p.m. Present: Miss Foote, Messrs. Fry, Lowman, Kean, Torvinen, Dreyer, May, Olsen and McKissick.

AB 658 - Provides for chief judge in certain judicial districts.

DISTRICT JUDGE JOHN BARRETT, Washoe County, stated the law would be unconstitutional because it is an attempt on the part of the legislature to infringe on the powers of the judiciary. In line 4, if the word "shall" was changed to "may" the constitutional question would be satisfied. The judges in Clark County if they desired could elect a chief judge and so could Washoe County, but they wouldn't be required to do so. But this revision also takes all the teeth out of the bill, and would involve no changes.

Mr. Fry asked if the judges in Washoe County were opposed to the inclusion of Washoe County in the bill, or if they would prefer to have the bill made discretionary to apply to Washoe County and Clark County.

Judge Barrett stated the Washoe County judges had met to discuss this and the opinion was they didn't want the bill. Judge Barrett stated the Washoe County district judges are now doing what the bill wants by having written rules.

Mr. Kean asked what part of the Constitution the bill would violate. Judge Barrett replied Article III provides that there be three branches of the Government, and it provides that no person charged with powers of one shall exercise any functions of the other.

Mr. Kean asked if SJR 23 were passed, would it conflict with AB 658? Judge Barrett said that would change the situation completely because it involves an amendment to the Constitution.

AB 587 - Provides procedure for pretrial compromise offers in settlement of civil actions.

Judge Barrett stated there is an element of unconstitutionality in this bill also. Everything in this bill is presently part of our law anyway, through the Rules of Civil Procedure.

LEE ROSE, ESQ., Las Vegas, speaking in regard to AB 587, stated that Judge Barrett's comments were correct. This would be in conflict with Rule 68, Nevada Rules of Civil Procedure, and would be unconstitutional.

AB 640 - Provides that a tort action shall be recognized for criminal conduct which injures a person or damages property.

GENE WAIT, ESQ., Reno, stated the bill is not needed. Unwanted causes of action will be created. He gave the example of a 17 year old girl willingly engaging in an act of promiscuity, having her 18 year old partner charged with statutory rape, and then being able to bring a cause of action in an action in which she consented. He feels it is a bad bill.

ASSEMBLYMAN NORMAN HILBRECHT stated the intent of the bill is to help persons who are victims of a crime, particularly when they have been helping a police officer to stop a crime. He cited the example of news media publishing the name of a young person as having committed a crime.

Mr. Lowman asked if the bill would provide for civil penalties against arresting officers also. Mr. Hilbrecht stated there are specific provisions in statutory law providing for civil actions for abuse of police and wrongful arrest.

GENE WAIT repeated his position that it is wrong to create a law involving damages for voluntary conduct.

Mr. Hilbrecht stated when someone is engaged in a voluntary act of his own there are other appropriate doctrines of law which would prohibit the recovery under the doctrine of law. He stated Mr. Wait's illustration was not a proper one.

Judge Barrett, regarding the publication of the juvenile's name, stated that the prohibition against printing the name of a juvenile in a capital case would hardly apply in Chapter 62 of NRS.

AB 623 - Applies rule of comparative negligence in tort cases and AB 624 - Eliminates contributory negligence as bar to recovery in tort actions and establishes comparative negligence as basis for recovery.

Mr. McKissick explained the provisions of the bills, and mentioned also SB 300 and SB 301 pending in the Senate. SB 301 is a no-fault concept. Mr. McKissick emphasized that if the plaintiff were to recover, his fault had to be less than that of the defendant. In AB 624, the amount of damages could be reduced by the amount of fault the jury attached to the plaintiff. He stated the bills will

not necessarily raise the insurance rates. Insurance rates have not been raised in other states which have adopted this type of legislation. He stated the rates may even be decreased because more cases would be settled instead of going to trial, and judgments would be brought down to a reasonable level.

Mr. Olsen asked if it would be difficult for the jury to understand this theory with all the instructions offered.

Mr. McKissick stated they would only get one instruction instead of 15 they now get. The instruction would state the jury could consider the relative negligence of each party. If the plaintiff is entitled to recover damages could be assessed; thereafter, the jury would be entitled to reduce the damages by the amount or percentage the plaintiff was found to have contributed to his or her own injury.

Mr. May noted the jury could decide on an amount three times what they ordinarily would have given, so that when it is reduced by a percentage of negligence, the plaintiff would still receive a large amount, and he wondered what the bill would accomplish.

Mr. McKissick stated that now the jury must bring in full damages but under this legislation they could reduce it for negligence.

GEORGE VARGAS, ESQ., representative of American Insurance Association, stated if the bills are offered together they would create a huge amount of confusion. Mr. McKissick said they were "either-or" bills and not intended to be passed together.

Regarding AB 623, Mr. Vargas stated that the last section provides that each defendant shall be jointly and severally liable for the full amount of the judgment. This is in spite of the fact that a defendant may be lumped with other defendants, and may have only 1% of negligence, against the plaintiff's 2%. In Section 1, subsection 3, line 14 it provides that if the plaintiff is more at fault than defendant, or in the case of multiple defendants, more at fault than the combined defendants, the plaintiff cannot recover. Had the defendant been a lone defendant he could become responsible for the entire judgment. In some of these areas, attorneys are in disrepute because of ethical violations accorded in this field.

Regarding AB 624, this could create more confusion, and in many cases a sympathetic jury would give plaintiff money from sympathy. If the circumstances are properly presented to the jury this could be prevented. The matter of sympathy should not be necessarily a criteria. AB 623 would leave the jury open to speculation as to awards. He stated that SB 301 is a better bill, being a no-fault bill, and would provide for payment of economic loss for the duration of that loss, even though it may be for life. SB 300 is another industry approach to the problem of automobile

insurance. It would not take cases out of court. It provides for court action, and would not apply to cases exceeding \$5,000. AB 623 and AB 624 would add to the cost of the consumers' insurance policies.

LEE ROSE, ESQ., speaking on behalf of State Farm Insurance stated that the plans presented in AB 623 and AB 624 are in conflict. AB 623 is the Arkansas plan and AB 624 is the Wisconsin plan. The difference is that in 624 a plaintiff has to be 51% right before he can recover anything. In 623 if the plaintiff is 10% right he can only recover for 10% of the damages and even though he is 90% wrong, he can still recover from the defendant.

The statement that it doesn't cost anything is not correct from State Farm figures. In Wisconsin there is a substantial increase in insurance costs. You don't get something for nothing. With increased recovery, the attorneys would recover the most. If the comparative negligence provisions in AB 624 were enacted, the insurance policies would cost more, the premiums would be higher.

Mr. Olsen asked if he had suggestions for restructuring the damage situation to prevent the astronomical amount of damages awarded. Mr. Vargas said he didn't. Under our system, he didn't see how any given case could be limited, unless it would be under the system proposed in SB 301 which has specified benefits, such as workman's compensation.

GENE WAIT stated the answer to the astronomical verdict would be not to allow an economist to testify on speculative grounds. The comparative negligence is designed to increase the income of plaintiffs' lawyers. The Arkansas plan is ludicrous. If the plaintiff is 99% at fault, he can still be awarded 1% of his claimed damages, and the defendant would have to pay costs of suit.

DICK ROTTMAN, State Insurance Commissioner, stated encouragement of a bill on comparative negligence because it will provide greater equity to the victims of automobile accidents. It is not a new concept, but has been tested in other states. He would recommend that AB 624 is realistic. You would not have a significant upward effect on automobile insurance rates, but it would provide greater equity to the victims. There are not statistics that it would encourage litigation, and he feels it might discourage litigation.

AB 622 - Provides for contribution between joint tortfeasors.

GENE WAIT stated this is a good bill, for plaintiffs and defendants. It preserves the rights of the plaintiff. If the verdict is against five defendants the plaintiff can pick who pays. The others don't have to contribute. Under the contributions bill the other people have to share the verdict. It will also promote settlements because if a defendant pays his money early he gets out and the plaintiff will have multiple defendants paying off quickly to get out of the contributions.

JIM LORIGAN, Farmers' Insurance, asked about the covenant not to execute. Mr. Wait stated the covenant not to execute would be the same. This is a vehicle to hide behind. Under this you can make the same agreement but it would not have so much benefit.

SB 217 - Exempts Nevada nonprofit professional dental service corporations from Nonprofit Hospital and Medical Service Corporation Law.

DUANE CHRISTIAN, DDS, Chairman of Group Care Committee, Nevada State Dental Association, stated that an Attorney General's Opinion had informed his group that Chapter 696 of NRS was not correctly amended by SB 507 of the last session, to include the dental service plan. They have not been authorized to operate by nonprofit service corporations. This bill would comply with the provisions of Chapter 696. They can then proceed with the establishment of dental service plans as were authorized by the last session of the Legislature.

Mr. Kean asked who would use the plan. Dr. Christian stated it can be used by union groups, employer groups, state and Federal agencies, and mainly by the Title 19 program. It would be a vehicle to provide dental service for organized groups, whoever they may be.

AB 208 - Creates additional crimes involving explosives; and AB 306 - Regulates importing, storage, manufacture and distribution of explosives.

CAPTAIN WILLIAM WHITTEY, Clark County Sheriff's Office, is in favor of the bills. He stated law enforcement people need the protection of AB 208, since they now cannot arrest a person who is in possession of explosives. Bombings have become a large problem.

Re AB 306, Capt. Whittey stated they are concerned about explosives getting into the hands of militants. Under Title 11, the Federal government gave control of explosives to three agencies, the FBI, IRS and Alcohol Division, and they are still fighting about who will take care of the enforcement. Local officers are now trying to enforce the regulations.

Mr. Fry asked if the Legislature can come up with a bill responsive with law enforcement problems without conflicting with the Federal law. Captain Whittey stated that AB 208 doesn't specifically define explosives, and also Section 5 should state "any building" without restrictions.

MR. SHRIVER of Las Vegas supported the bills, stating ~~there~~ are no laws that can be used by law enforcement officials to arrest persons in possession of explosives, and militants are getting explosives and distributing them.

AB 739 - Requires dealers, garagemen, repairmen and trailer park keepers to give 48 hour notice before their lien seizure.

MR. RICK ELMORE cited a case wherein a repairman had seized an automobile without notice, and it was a mistake due to clerical error. He felt notice should be given, with restrictions if the owner of the vehicle tries to hide the vehicle after notice.

Mr. Torvinen noted that in most cases of nonpayment, there is a misunderstanding about the quality of the work, or the amount due.

Mr. Kean stated he felt that a civil action was being made a crime.

There being no further business, the meeting adjourned at 6:05 p.m.

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ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date March 25 Time adjournment Room 240

Bills or Resolutions to be considered

Subject

Counsel requested*

AB 587 ✓

Provides procedure for pretrial compromise offers in settlement of civil actions.

AB 622

Provides for contribution between joint tortfeasors.

AB 623

Applies rule of comparative negligence in tort cases.

AB 624

Eliminates contributory negligence as bar to recovery in tort actions and establishes comparative negligence as basis for recovery.

AB 640 ✓

Provides that a tort action shall be recognized for criminal conduct which injures a person or damages property.

AB 654

Enacts Nonprofit Chiropractic Services Corporation Law. Exempts Nevada nonprofit professional dental service corporations from Nonprofit Hospital and Medical Service Corporation Law.

SB 217

AB 658 ✓

Provides for chief judges in certain judicial districts

*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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