JUDICIARY COMMITTEE
57th NEVADA ASSEMBLY SESSION

MINUTES

APRIL 19, 1973

Mr. Keith Hayes, Chairman, Called the meeting to order at 8:30 AM.

MEMBERS PRESENT: MESSRS: HAYES, BARENGO, GLOVER, TORVINEN, HUFF, FRY LOWMAN, HICKEY AND MISS FOOTE.

MEMBERS ABSENT: NONE

GUESTS PRESENT: - SEE ATTACHED.

Mr. Howard Mc Kissick, representing the Nevada Trial Lawyers Association testified in behalf of S.B. 524. He said that he sees comparative negligence as a clean up bill at this stage. S.B. 611 has comparative negligence for auto cases, so that leaves a vast unsettled area of the law in the slip and fall cases and some products cases etc. He cited a specific case as an example of contributory negligence in which the plaintiff had proven $5,000 medical and $12,000 in lost wages and was awarded nothing. It is time for the legislature to act rather than leave it to the courts to decide. He urged serious consideration of 524.

Mr. George Vargas talked to the Committee in opposition to S.B. 524. He stated that he is a paid lobbiest for the American Insurance Associati and that this issue is an old re-play. He further stated that "if the feeling is that the insurance companies are selfish with regard to this bill that the "so called Nevada Trial Lawyers and American Trial Lawyers also have a fairly good moentary interest in this situation." It is true that in all of the "no fault" bills that I have seen there is a comparative negligence section which relates toand deals only with the coverages which are involved in the no fault situation. "Bodily injury, Uninsured motorist, and medical benefits." "I have mentioned this simply to point out that in this field there is a special problem to which many people have addressed themselves as giving consideration to a special problem." Unfortunately the provision for getting more money into the hands of those people involved in an accident does not appear in the "no fault" bill. It was in A.B. 227, it is not in S.B. 611. I don't think that we can say that the very fact that comparative negligence is involved in the "no fault" package is a justification for wiping out the defense of contributory negligence and the assumption of risk in the entire court field. Senate bill 611 is obviously a great compromise from those provisions contained in A.B. 227. However, I feel that it is still the intent of the legislature to attempt some savings to the insurance buyer. To the extent that comparative negligence is applied to the tort field generally, it is certainly going to cost the buyer money. The property field is not included in S.B. 611. We all know that when an auto gets hit damages run very substantial in the property field. In the event of a very expensive automobile, the plaintiff may be 49% at fault for that accident, the defendants, perhaps five of them, may be totally responsibl for 51% . This is a situation where a plaintiff would recover from defendants who are separately responsible for only 10% negligence. This would let the guy off who is 49% at fault in areas other than the limited areas covered by the no fault situation. This bill will increase the over all insurance buyer"s cost. To that extent it will wash out any advantage that we have attempted to offer the consuming public in the way of reduced auto premiums in the no fault area. I urge this

Committee to reject this bill and ask that a "no fault" situation be given the chance to see what it can do without having additional impositions upon it which are destined to put more money into claimants and hence into their attorney's pockets at a cost to the insurance buyer.

Mr. Oliver Bolton representing the Nevada Independant Insurance Agents testified that he was in agreement with Mr. Vargas's opinions and the members of his association are violently opposed to this bill because of the ramifications it would open in the field of litigation. "While there is a degree of comparative negligence in S.B. 611 the threshhold limit of $750 will take care of about 95% of the cases.

Mr. L.R. Hibbs, a Reno attorney, said that he was here purely on a self interest basis. He said that although he is primarily a defense attorney he felt compelled to speak in support of S.B. 524. He said that it would seem that the supreme court has gone as far as it can in telling us that it approves of comparative negligence, but it cannot judicially abolish contributory negligence and give us comparative negligence. They have said that the definition of contributory negligenc must be real and substantial. The legislature must give comparative negligence in a package. "I think comparative negligence is fair, I do not think it will increase the amount of litigation at all, in fact I think it will decrease because insurance companies will realize that settlements can be reached and not rely on the courts.

Mr. David Hoy representing Nevada Trial Lawyers said he is not sure if he is paid or not, they may have run out of money. "It seems that in discussions of this problem it always gets around to what greedy people attorney's are." I would like to talk about comparative negligence and the distribution of risk. Historically the tort system has been defined as distribution of risk. Mr. Hoy read from S.B. 611 and stated that comparative negligence does apply to property contrary to Mr. Vargas"s statement. Mr. How recommended that S.B. 524 be amended by striking Lines 6 thru 22 and inserting language which is identical to that contained in S.B. 611. Then there would be no question that we are talking about the same standard of comparative negligence. He said he would also request that with respect to the instructions given in the case that the judge should not always be required to instruct regarding comparative negligence because in some instances it may not be necessary. Change Sub section 2 to read "the judge may" and "when requested by any party shall instruct the jury" then insert that the jury will find what the percentage of negligence is attributable to each party and insert an instruction that the jury will be told that the negligence attributable to the person seeking recovery shall reduce his reward in that proportionate amount. This in effect would conform S.B. 524 to S.B. 611.

Mr. Guild, representing the Union Pacific Railroad, re-told the Committee that the standard of S.B. 611 is certainly different than the standard of s.b. 524. He stated that the railroad does not like comparative negligence, but if the feeling is that as a policy it is necessary then he would go along with the language in the Utah or Idaho bills.

Mr. Virgil Anderson representing AAA said that in addition to being involved in the auto end of this situation he also writes a policy

on comprehensive personal liability. It has to be recognized that if a comparative negligence bill is passed there cannot help but be cost involved to the insured in these types of cases. He said that he would concur with Mr. Vargas et al. that this bill should be defeated.

ACTION:

Mr. TORVINEN moved to amend S.B. 524 as per Mr. Hoy's suggestions and recommend DO PASS, Mr. Barengo seconded.
Mr. Hayes said that he would like to make some comments on comparative negligence: "there are a lot of people in this country and probably a lot of people who have a family tradition of cursing and damning lawyers and the courts and I think that as much as anything else, the cause of this is the rank course injustice which has arisen out of contributory negligence. A well intentioned, well meaning person that just simply at a particular time in their lives is not perfect is injured or hurt by someone who is grossly negligent and cleaver insurance company defense lawyers find some little thing that that person may have done wrong and juries not having expertise in these matters have come in with nothing for the plaintiff when it may be well deserved. In this bill we have a chance to equalize and do justice and the stilted one way street of contributory negligence has not done justice in the past and it is long over due. I certainly support this bill and I urge the Committee to give it favorable consideration.'

Mr. Hickey said that the largest settlements in this state have come from accidents occuring on railroad property. Mr. Hickey further stated that this bill creates more legislation.

Voting against the motion: Glover, Hickey, Huff, Lowman and Foote.
MOTION FAILED

Mr. Hayes presented some Senate amendments for concurrance.

A.B. 595 delete Lines 12 thru 39, Section 3, Page 2 .

Mr. Torvinen moved to concur, Mr. Fry seconded.
MOTION CARRIED DO CONCUR A.B. 595

A.B. No. 111 Senate amendment to remove the brackets on Section 1, Page 1, Line 18 this does not effect the bill. Mr. Barengo said "they are grammarians over there".
Mr. Lowman moved to concur, Miss Foote seconded.
MOTION CARRIED CONCUR WITH SENATE AMENDMENT TO A.B. 111

A.B. No. 453 Senate amendment to extend the effective date to 1975.
Miss Foote moved to concur, Mr. Barengo seconded.
MOTION CARRIED DO CONCUR WITH SENATE AMENDMENT TO A.B. 453.

A.B. No. 196 Senate amendment to include that one of the witnesses be from the Welfare Division.
Mr. Torvinen moved DO NOT CONCUR, Mr. Fry seconded.
Mr. Lowman said the Welfare Department needs this bill.
Mr. Hayes remarked that in his legal practice he only charged $50. for paper work, because he considered it a public service.

Mr. Lowman voted against the motion.
MOTION CARRIED DO NOT CONCUR WITH SENATE AMENDMENTS TO A.B. 196

S.J.R. No. 30 SUMMARY-Proposes to amend Nevada constitution by authorizin legislature to expand membership of supreme court and to authorize division of supreme court into panels for hearing certain cases.

Miss FOOTE MOved to recommend DO PASS, Mr. Torvinen seconded.
Mr. Glover voted against the motion.
MOTION CARRIED DO PASS S.J.R. No. 30

S.B. 262 SUMMARY-Provides for electronic interception of communications;

Mr. Hayes commented that the telephone company wished to have a "good faith reliance"clause amended into the bill.

Mr. Lowman moved to AMEND AND RECOMMEND DO PASS, Mr. Barengo seconded.
MOTION CARRIED AMEND AND DO PASS S.B. 262

S.B. No. 544 Provides for equal rights of management and control of community property between husband and wife.

This is a bill which was discussed with Senator Close,and we agreed that this bill is more complete than A.B. 699

Mr. Torvinen moved to recommend DO PASS, Mr. Barengo seconded.
MOTION CARRIED DO PASS S.B. 544.

The meeting adjourned at 9:15 AM.

The COMMITTEE RECONVENED AT 10:30 AM to further discuss S.B. 524 the bill on comparative negligence.

Miss Foote moved to amend and DO PASS S.B. 524. Mr. Torvinen seconded.
Miss Foote pointed out that since the earlier meeting she had been given additional information that had caused her to change her mind. (SEE ATTACHED)
Mr. Huff said the reason he had voted against passage of this bill was because of the 49% statistic quoted.
Mr. Fry and Mr. Hayes pointed out that this is unrealistic
Voting against the motion: Glover, Huff, Lowman, and Hickey.
MOTION CARRIED AMEND AND DO PASS S.B. 524
Mr. Fry said the record should be clarified Commissioner Rotman is not against the forementioned legislation.

Mr. Barengo moved to DO PASS S.B. 282, Mr. Glover seconded.
Mr. Fry remarked that this bill has to be amended. Mr. Lowman felt this to be unfair since the ASSEMBLY BILL which accomplishes the same thing is being held in the Senate.
Mr. Hayes commented that the business of this Committee is to process the bills referred and there is great need for a debt adjusting law.
Voting against the motion: Lowman, Fry and Hickey
Not Voting: Huff and Torvinen. MOTION FAILED

The following illustrates the inequity of the contributory negligence doctrine and the need for comparative negligence doctrine. On December 31, 1971, Mr. Jay Cozad, while working as a deputy sheriff in Washoe County, sustained a rather serious injury in the course of his employment. While proceeding down a street with his red light on at 32 miles an hour in a 30 mile zone, Mr. Cozad's vehicle was struck in the side by the defendant's vehicle while pulling out from a private driveway.

As a result of the three day jury trial completed on April 11, 1973, by Peter Chase Newmann, Esq., Mr. Cozad's counsel, a defense verdict was returned by the jury based on contributory negligence in that Mr. Cozad was proceeding 2 miles over the speed limit at the time the defendant's car struck the side of Mr. Cozad's car.

In this particular instance the injury sustained by Mr. Cozad was serious and presently he has been unable to return to work. The obvious inequity of the contributory negligence doctrine is clearly illustrated in Mr. Cozad's case. The fact that he was exceeding the speed limit by 2 miles an hour is such slight negligence as compared to the defendant's negligence in pulling from a private driveway without proper precaution so as to strike the side of Mr. Cozad's vehicle.

S.B. 524 SUGGESTED AMENDMENT:

SECTION 1, PAGE 1, Strike Lines 6 thru 22 and insert.

"ligence of the person seeking recovery was not greater than the negligence or gross megligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person seeking recovery.

2. In such cases the judge may and when requested by any party shall ins ruct the jury that:

(a) same
(b) same
(c) If the jury determines that a perty is entitled to recover, it shall return a special verdict indicating the per_ CENTAGE of negligence attributable to each party.
(d) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recowery by the proportionate amount of such negligence.

DATE 4/19/73 Judiciary

NAME	BILL #	TESTIFY YES	TESTIFY NO	REPRESENTING
George V. Vargas	SB524	✓		American Ins. Ass'n
Oliver D. Bolton	SB524	✓		Nev. Ind. Ins. Agents
Clark Guild	SB524			U.P.R.R. Co.
J. R. Hubbs	SB524	✓		private attorney
Howard McKissick	SB524	✓		Nevada Trial Lawyers Assn.
David R. Hoy	SB524	✓		