

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

6th DAY OF APRIL, 1973

The meeting was called to order at 8:45 a.m. Senator Close in the Chair.

PRESENT: Senator Foley
Senator Dodge
Senator Hecht
Senator Wilson

Assemblyman Torvinen
Jim Brooke, Nevada Bar Association
Thomas Winter, Young Democrats of Carson City
Howard McKissick, Attorney at Law
George Vargas, Attorney at Law

EXCUSED: Senator Bryan
Senator Swobe

A.B. 210 - Expands criminal provisions
relating to explosive devices
and bomb threats.

Senator Dodge suggested amending the language as discussed previously to "with intent to destroy life or property" and eliminate the reference to the device being placed or thrown.

Senator Foley moved to amend and "DO PASS." Senator Dodge seconded the motion.

Yeas - 4
Nays - None
Absent - Bryan, Swobe, Wilson (3)

Motion carried.

A.B. 413 - Provides that certain expenses
relating to death of deceased
spouse are not community debts.

Mr. Torvinen testified that the Internal Revenue Service has taken the position that in community property states only one-half of burial costs or expenses of a last illness are tax deductible. This would not change any liability of the next of kin for any community obligations still owed.

Mr. Torvinen remarked further that this bill is sponsored by the trust departments of local banks, and is copied almost word-for-word

from the California statute.

Senator Dodge moved "DO PASS." Senator Bryan seconded the motion.
Motion carried.

A.B. 434 - Provides procedure for admitting certain persons to bail without necessity of first transferring such persons to distant counties.

Mr. Torvinen testified that hopefully within the next 2 years 90% of the public will be hooked into a single police records facility. This bill would look forward to that by allowing a peace officer to take a suspect to the local justice of the peace for traffic or misdemeanor warrants rather than being transported back to the county the warrant was issued from. He felt this would result in better law enforcement because the police are reluctant to transport a person clear across the state to answer a misdemeanor warrant.

The bill provided that this procedure would apply to arrests made 100 miles away from the county seat. Senator Dodge suggested an amendment applying this provision to different counties rather than the mileage factor.

Senator Dodge moved to amend and "DO PASS." Motion seconded by Senator Foley. Motion carried.

S.B. 524 - Provides system of comparative negligence in lieu of defenses of contributory negligence and assumption of risk.

Jim Brooke testified that for the first time the Board of Governor's has taken a position with respect to comparative negligence, they have taken a definite position of favoring this bill. It is an unfair doctrine to take away from the injured party the right to recover for injuries because he was 1% negligent. With comparative negligence, the parties are in a better position to settle out of court instead of suing.

This bill would apply comparative negligence to other types of cases besides automobile accidents.

Mr. Brooke stated that there could be some problems with risk as it applies in the theory of comparing fault with respect to allowing a judge or jury to determine assumption of the risk against what percentage of negligence, but none with comparative negligence per se. Senator Close remarked that the assumption of the risk could be deleted if it causes a problem. Assumption of the risk should not come into every case as part of the defense. Comparative

negligence would be applied against a person only to the degree that he is wrong and wouldn't punish him for a slight degree of negligence.

Senator Foley remarked that the biggest argument for no-fault is that many people loose out because insurance companies are interposing contributory negligence. This bill would make that area consistent with the torts area.

Mr. Brooke commented further that he feels comparative negligence would relieve the court calendars. If a few cases do get to the trial stage they may last longer, but not long enough to destroy the effect of the bill.

Mr. Thomas Winters testified in favor of this bill. He cited an article from "Adjudication" of October of 1971 based on a 4 year survey of questions coming out of jury rooms in New York. According to the article, 10% of the questions collected arose out of disbelief in the doctrine of contributory negligence banning recovery to persons even slightly negligent. The author of that article stated that widespread disbelief in this rule and desire for clarification are grounds to believe something like comparative negligence should be adopted.

Continuing existence in the law of the doctrine of contributory negligence may tend to bar experimentation of methods to clear clogged trial calendars. Another article in "Adjudication" described a pilot program of pre-trial mediation dealing with automobile accidents. This method has been successful in cutting down trials.

Mr. McKissick testified that there were three comparative negligence bills submitted in the no-fault package, realizing there is a great need for a doctrine of comparative negligence.

He related a recent case he had lost because of contributory negligence on the part of the plaintiff. If comparative negligence is alright for auto victims in no-fault, the legislature shouldn't make second class citizens out of other injured parties that slip and fall in other cases. If the plaintiff were over 50% negligent, he would have no right to recover. He sincerely urged the adoption of comparative negligence and represent that this would be part of the no-fault package. Mr. McKissick said he would mail the compilation he had prepared on the philosophy of the states on comparative negligence.

Senator Dodge remarked that contributory negligence was a common law doctrine and wondered why comparative negligence was not recognized by common law.

Senator Bryan stated that it was his understanding that assumption

of the risk and contributory negligence were judicially construed doctrines and ~~not construed by virtue of any statutory enactment.~~ The theory behind it was that in the formative stages of the industrial revolution, these industries needed protection from exposure. Insurance was not as commonplace as it is today.

George Vargas testified that this bill would ~~ban~~, to a degree, contributory negligence and assumption of risk. It's been my experience as a trial lawyer that assumption of risk today is a doctrine that has no great effect in the courtroom. That's because traditionally, as a part of the common law, the assumption of risk came into play when the plaintiff knew of a risk, and with that knowledge, he could be charged with assumption of risk. The defendant has the burden of proving that the plaintiff actually and in fact had knowledge. That is a tremendously difficult burden. Assumption of risk, for all intents and purposes, doesn't play a great part in any tort cases in Nevada.

Contributory negligence, on the other hand, does. It is very interesting that Nevada Trial Lawyers would argue against no-fault by saying that it puts a premium on a person who may cause an accident and then turn around and argue in this bill that even though he may be 49% at fault, this man should be rewarded. He called attention to Line 7: "contributory negligence shall not bar recovery if the negligence of the defendants contributed more to the injury than the contributory negligence of the plaintiff," and further reference to combined negligence of multiple defendants in Line 14. Yet on page 2 Line 5 there is a statement which says that the defendants are jointly and separately liable to the plaintiff. If there is one defendant with 1% negligence and four others sharing 50% of the negligence, as against the plaintiff with 49%, this will provide that the one defendant is separately liable for the entire general verdict.

Senator Dodge raised the question of whether or not there would be any practical difficulty in a jury trying to come to some kind of fair verdict under this bill. Mr. Vargas replied that if the jury determines the plaintiff is entitled to recovery, it shall reduce the verdict returned by a monetary amount in proportion to the damages. The jury shall also return by general verdict the amount to which the damages are diminished, if any, with the knowledge that the lesser verdict is the final verdict in the case.

This would be a very inadvisable time to enact a bill which would result in a rate increase in auto coverage. If a no-fault bill goes through, which is a mandated reduction of perhaps 15% in coverage and this bill goes through which would increase the rates of general coverage, it is not going to satisfy the demand by consumers for a reduction in insurance rate. Comparative negligence

as compared against contributory negligence is going to open the door to more awards for the plaintiffs.

A.B. 66 - Reduces age of majority for males from 21 to 18 years of age.

Senator Close mentioned to the committee the suggestion of Assembly-woman Jean Ford of amending the bill to provide the possibility of certifying a 21 year old as a juvenile in the Juvenile Court. This bill presently does not contemplate that provision. Senator Dodge moved the adoption of that amendment. Motion seconded by Senator Wilson. Motion carried.

Senator Close asked for discussion on the amendment deleting drinking and gambling from the bill.

Senator Wilson remarked that he wants to salvage the bill and was concerned that the bill would not pass the Senate floor unless it is amended to exclude the drinking and gambling provisions. He preferred allowing the more fundamental rights and compromising on the drinking and gambling than seeing the bill lost. He didn't agree that the 18 year old could not hold office and felt the public should decide that issue. The basic commercial and practical rights should be granted.

Senator Dodge remarked that he also wanted to salvage the bill except for drinking and gambling. He is in favor of lowering the age in all circumstances and giving full rights of citizenship to these young people. But the timing is bad to lower the age on drinking and gambling before the states around Nevada do the same. He didn't feel Nevada could afford to be one of the first because it would cause outright antagonism among the people in the neighboring states. Younger people coming to Nevada to drink and gamble would cause all sorts of complications.

Senator Foley remarked that he could recognize what Senator Wilson and Senator Dodge spoke of as good and sound arguments in support of eliminating the drinking and gambling. However, he has the problem of facing the young people and looking at them eye-to-eye and telling them that they are not capable of going in and having a drink in a bar, even though people have been doing it illegally and still are doing it illegally. He supports the bill in its present form with the one minor exception of being able to certify down as a juvenile. He didn't think the legislature was squarely looking the young people straight in the eye when giving them some rights and holding back others.

Senator Wilson remarked again that he is in agreement with the principle of the bill but wanted to make clear that when he said he wanted to salvage the bill, he meant just that. He thinks the principle of the bill is sound and he subscribes to that principle, as does Senator Dodge. If the bill was put out of committee without amendment, he didn't think it would pass on the floor. He stated that he wants to be able to look the young people in the eye and say, "we did a responsible job for you." If the committee hangs tough and fights the amendment because it is right on principle, it will be lost on the floor. It is because he wants the bill that he is supporting the amendment.

Senator Dodge moved to amend and "DO PASS." Motion seconded by Senator Wilson.

Yeas - 6
Nays - Foley (1)

Motion carried.

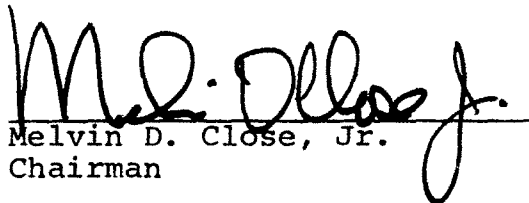
The meeting was adjourned at 10:00 a.m.

Respectfully submitted,



Eileen Wynkoop
Secretary

APPROVED:



Melvin D. Close, Jr.
Chairman