

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 9, 1977

The meeting was called to order at 4:30 p.m. Senator Close was in the chair.

PRESENT: Senator Close  
Senator Bryan  
Senator Ashworth  
Senator Dodge  
Senator Foote  
Senator Gojack  
Senator Sheerin

ABSENT: None

Senator Close stated that he had talked to Dick Rottman, and he stated that he anticipates having the insurance company give him the securities. The insurance company makes the payment from it's independent funds and periodical they would review these with him and would refund whatever would be appropriate.

Senator Dodge stated that might work, because it keeps the insurance company in there for the administrative work, which we didn't want to place on the Commissioner.

Andy Gross stated that nobody in the other states with periodic payments concerned themselves about this detail. In Alabama, the insurance commissioner does the actual disbursement, but there is no mention of posting of any kind of security. California requires security only if the judgment debtor is not insured. Delaware was the only stated that provided in the law that interest on the balance should be paid each month to the plaintiff. Florida simply says adequate security and then leaves it to the judges discretion. Kansas doesn't mention security at all. Washington state is a little different in that they provide for an annuity plan for those that are totally disabled, but it is not the traditional periodic payment.

Senator Close asked that they go over the amendments again to make sure which ones they are to adopt. We are going to add in pharmacist and licensed nurse. As a condition precedent to getting a structured settlement there must be a special jury verdict. As a condition precedent for obtaining a structured settlement the insurance company must be made a party to the final judgment after the trial. The insurance company can put up as collateral; cash, TCD, Govt. Bonds or such other securities as may be approved by the insurance commissioner. The periodic payments to the injured person is to be made by the judgment debtor, independent of the collateral. Then as the necessity for collateral decreases the commissioner will review that and give back whatever is appropriate.

Senator Dodge stated he didn't know how the language should be worded but we had said that he needs to have it beyond the claim of general creditors.

MINUTES OF MEETING  
MARCH 9, 1977  
PAGE TWO

Senator Close stated then we should state that any sums placed with the insurance commissioner shall be beyond the reach of general creditors, or any creditors.

Senator Ashworth moved to amend and do pass SB 187 to reflect this.

Senator Close stated that the interest this fund earns would accumulate and should be utilized for the benefit of the injured person, if he outlives his life expectancy. If he predeceases prior to that date, then whatever remains in the fund plus the interest would go to the company. The insurance company anticipates this money as part of it's revenue, and so we are giving it to them. At the present time they give up all claim for this money because it goes immediately to the injured party.

Senator Ashworth felt the real thrust was to cut down on insurance rates and to take care of that person for the rest of his natural life. If he needs more money he can come in and get a review on that. He is intrigued with the idea because if he lives longer and needs more money he should have it, but to give him the interest on the money he does not feel is the intent of the bill.

Senator Sheerin stated he felt we are doing exactly what the intent of the bill is. We are giving the windfall back to the insurance company what the injured party or his estate, should he die, receives. The whole thrust of the bill is to prevent these windfalls to the deceased's estate.

Senator Dodge stated he was in favor. One of the justifications for that, is that under our present system if the award is made they don't get the interest anyway. This way they have a better shake because if the guy does not outlive his expectancy, the interest then is the insurance companies. By the same token, he thought we should recognize the poor guy who happens to have a strong enough body to outlive his expectancy and has nothing to help him.

Senator Close stated he thinks a specific motion should be made on the interest being accumulated and being utilized to the injured party if he outlives his life expectancy.

Senator Gojack so moved to adopt that particular amendment  
Senator Bryan seconded.  
Motion carried unanimously.

Andy Gross stated he had a couple of notes. One was to make clear that the court has no leeway in setting the total amount, only the amount of the periodic payment. Second to add language subject to any post-judgment motions, so then the final thing that he is going to work on is possibly the jurys verdict modified.

Senator Dodge moved amend and do pass.  
Seconded by Senator Ashworth.  
Motion carried unanimously.

301

Senate Committee on Judiciary

SB 189 - Requires reduction of damages awarded in medical malpractice actions by amounts from certain collateral sources.

MINUTES OF MEETING  
MARCH 9, 1977  
PAGE THREE

Andy Gross stated that the problem with this was the subrogation rights in these various programs and he had very little luck in talking to federal people on this subject. The best we can come up with is that indeed the right exists and indeed it is hardly ever utilized. But in any event, Senator Hilbrecht suggested we add language to the bill that whenever an award is reduced by nondiscretionary sources, and a later claim is filed by the source to recoup any part of such sums, that either party may petition to reopen.

Senator Bryan felt we should simply state "non-reimbursable".

Senator Sheerin stated that all of these things are reimbursable, they all have subrogation involved with them.

Senator Close stated then what we want to do is adopt the terminology non-reimbursable, take national insurance out and leave group insurance and employer health plan in.

The Committee felt the last was taken care of with the non-reimbursable language.

Senator Dodge moved amend and do pass.  
Seconded by Senator Ashworth.  
Motion carried unanimously.

SB 190 Provides for reporting and investigation of certain medical malpractice claims.

The Committee agreed that "unprofessional conduct" should be added to the amendment.

Senator Dodge stated he was a little concerned about the wording "shield". He felt it should be tied somewhere to persons who initiate or assist in proceedings under this act.

Andy Gross stated that this only covers a person who assists in a lawful investigation.

Senator Dodge thought what we want to do is trigger the immunity where it is in response to the procedures in this act.

Andy stated then what you want to do is specify the Board of Medical Examiners and the Board of Nevada Medical Liability Insurance Association.

Senator Ashworth stated he notations on section 2 line 10 after society "committee or other medical society" and down on line 20 you take the \$2,000 to \$5,000.

Senator Close stated also in section 3 <sup>Senate Committee on Judiciary</sup> sub-section 1, after "to the commission within 30 days" the language be added

MINUTES OF MEETING

MARCH 9, 1977

PAGE FOUR

with a simultaneous copy to the Board of Medical Examiners of the State of Nevada. Each claim closed under the policy giving the name and address of the claimant, physician, the date and circumstances of each alleged breach so far as known and the settlement agreed upon, award made or judgment by reason of the claim.

Senator Bryan moved amend and do pass and re-refer to finance.

Seconded by Senator Sheerin.

Motion carried unanimously.

SCR 11 Memorializes Joint Commission on Accreditation of Hospitals to require risk management as prerequisite to accreditation.

Andy Gross stated the joint committee felt there was a qualitative difference between what they are now doing and what is meant by risk management. He talked to Fred Hillery and he stated that there was a very big difference in the insurance industry in the kind of things they are talking about. Mr. Hillery talked about standards, more often that has to do with physical facilities, electrical codes and things like that. It does not require an affirmative program of instruction for different people that work in different areas as to what the accident risks are and all that.

Senator Foote moved a do pass.

Seconded by Senator Sheerin.

Motion carried unanimously.

SCR 12 Directs appointment of legislative committee to study present medical liability insurance problem and submit recommendations to the 59th legislative session and study by Legislative Commission of ongoing problems of medical malpractice insurance.

Andy Gross stated that the first section was really unnecessary, when it was first written was at the beginning of the session and it is now no longer applicable. If the Committee felt there was no need for a sub-committee it could be amended to be a staff update. Then if it became necessary there could be a sub-committee.

Senator Dodge stated he was for that. He felt that there could be some developments around the country that perhaps should be kept track of.

Senator Bryan stated that rather than have a mandatory resolution you could have an enabling resolution that would empower the Legislative Commission, upon finding of the commission, that more study be needed in certain areas.

Andy Gross stated that is the way it would be. It would simply be a matter of keeping up and he would probably be the one to do it. But it would have to be a resolution otherwise it would take a low priority.

MINUTES OF MEETING  
MARCH 9, 1977  
PAGE FIVE

Senator Bryan moved amend and do pass.  
Seconded by Senator Ashworth.  
Motion carried unanimously.

There being no further business on malpractice at this time the meeting was adjourned.

Respectfully submitted,

Virginia C. Letts, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN