

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 21, 1967

Meeting was called to order by Chairman Wooster at 2:55 P.M.

Present: Wooster, Hilbrecht, Kean, White, Dungan, Schouweiler, Swackhamer (late)

Absent: Torvinen, Lowman

Mr. Wooster announced that there will be a Joint Hearing with the Committee of Public Health and Public Morals on Wednesday to consider AB 118. Thursday there will be a hearing on the Death Penalty Bill.

Mr. Kean asked if both committees would vote as one on AB 118. Miss Dungan said that their committee will vote and then our committee will vote.

AB 351: Exempts community property from liability for certain antenuptial debts of either spouse.

Mr. Hilbrecht said he had spoken with Dick Horton about the amendments to the bill and Mr. Horton said he has no objections to it now. The amendments exempt non-debtors wages and interest in community property of prior marriage. The bill is still not as liberal as the California statute.

Mr. Kean moved Do Pass as amended

Mr. Hilbrecht seconded

Motion passed unanimously

AB 438: Community Antenna Television Bill.

Miss Dungan said Mr. Lowman will be absent on Wednesday and she had promised him that she would move to reconsider this bill and then put it on the Chief Clerk's desk.

Mr. Kean said it would actually take four motions to get the bill on the Chief Clerk's desk. Mr. Hilbrecht asked if the committee really wanted to do all this for AB 438. Mr. Wooster said he had no objection to getting the bill put back on the Chief Clerk's desk.

AB 422: Authorizes county hospitals to sue and be sued; limits patient's right to physicians on hospital staff.

Mr. Kean noted that this is the fourth time he has seen this bill presented. Mr. Wooster said it bothers him that it limits patient's right to the hospital physicians.

Mr. Hilbrecht said he does not like the bill and that what they are trying to do is to limit the liability of the hospital. Miss Dungan added that she too does not like to see the patient limited in his choice of doctors.

Mr. Hilbrecht moved to postpone indefinitely AB 422

Mr. Schouweiler seconded

Motion passed unanimously

AB 94: Eminent domain for the University (the first bill).

Mr. White moved to indefinitely postpone AB 94

Mr. Kean seconded

Motion carried, with Hilbrecht and Dungan voting No.

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SB 198: Provides for allowance of punitive or exemplary damages in civil actions for willful or wanton misconduct.

Mr. Wooster asked Mr. Hilbrecht if he had something on this and Mr. Hilbrecht replied that he did not and suggested that it was probably Mr. Torvinen who had been asked to study this bill. He added that the idea of the bill seems to be to put things back the way they were before the bill was amended. He then offered to go look for Senator Young so he could join in the discussion and the offer was accepted.

SENATOR YOUNG: During the last session a bill was passed in the last days of the session that changed entirely the law relating to punitive damages and said they could only be collected in cases of oppression and fraud. Mr. Swobe says they thought they were adopting the California law. The material in italics in this bill is really the California law. This doesn't restore it to where it was before last session, which I would rather see, but as a compromise measure it seems to be pretty good. There are court rulings on it already which could be used.

MISS DUNGAN: Would somebody explain what the whole thing means?

SENATOR YOUNG: Suppose a big drug company puts out a certain drug and they know there is something wrong with it, but they still put forward a big campaign for it. Then you can sue for punitive damages. Punitive damages are for the purpose of teaching a lesson. They are rarely handed down. We often ask for them but rarely does the jury respond. An irresponsible attitude toward an individual or a group as a whole is a ground for punitive damages.

MR. HILBRECHT: This eliminates the area of defamation damages. Isn't that one of the main areas of punitive damages? I wonder what is going on with this.

MR. WOOSTER: Now the language is broader and would include defamation, oppression, fraud, or malice.

Mr. Kean asked Senator Young what the Senate did with AB 10 but Senator Young did not know.

SB 197: Provides that prevailing party in litigation be allowed as costs a reasonable amount of compensation for expert witness.

SENATOR YOUNG: I felt that this was necessary because of the increasing complexity of court cases. In personal injury cases it is always necessary to have a doctor in and they won't come for less than \$250. This bill doesn't favor one side or the other. It favors the prevailing side. This will make many plaintiffs more careful about bringing actions, because they will know if they lose they will have to pay the costs of expert witnesses. This covers costs of expert witnesses up to \$500 total.

SB 422: Adopts Uniform Testamentary Additions to Trusts Act.

SENATOR YOUNG: This is a trust provision. There is a growing use of the trust for implementation. I feel that many times there is an advantage in having a trust established. It also sometimes saves attorney's fees. The trust is a growing instrument in Estate Planning. It is practiced with some uncertainty now and this would clarify the whole situation.

MR. WOOSTER: This is the Uniform provision?

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SENATOR YOUNG: Yes, I think it is. As far as I know, there would be no objection to it by anybody.

SB 209: Increases renewal fees for licensing of certain private schools; makes changes in exemptions of other schools from supervision by State Department of Education.

MR. WOOSTER: Senator Young, do you have any background on this bill, or can you suggest someone to us who does?

SENATOR YOUNG: We had a young fellow in our committee who did a real good job. His name, E.G. Haglund.

AB 432: Provides penalties for misprision of felony.

Mr. Swackhamer retold the instance that took place in Battle Mountain that led to the drafting of this bill. It was a crime of assault with a deadly weapon two or three months ago, where two people held two other people who were going to aid the one being assaulted. Repealing the crimes of common law in the new Criminal Code made him wonder how these two would be charged and that led to the bill.

Mr. Wooster wondered if we should put a duty on the ordinary person to try to prevent a crime. Mr. Hilbrecht said he would disagree with having people try to prevent crimes.

Mr. Wooster said he thinks sections 1 and 2 are good but he has doubts about section 3. Mr. Swackhamer said he had no objection to taking section 3 right out of the bill. Miss Dungan said perhaps the committee should make it so that people should notify authorities if they know a crime is going to be or is being committed. Mr. Swackhamer said the only thing he had really wanted was section 1. Mr. Wooster said he feels section 2 has value also.

Mr. Swackhamer says he definitely objects to making the whole thing so sticky it won't pass.

Mr. Swackhamer moved Do Pass as amended, removing section 3
Mr. Kean seconded
Motion passed unanimously

AB 464: Repeals law relating to partition fences.

Mr. Swackhamer says there are problems in this area but he doesn't think this law is going to really affect them.

Mr. Schouweiler moved Do Pass
Miss Dungan seconded
Motion passed unanimously

SB 197: Provides that prevailing party in litigation be allowed as costs a reasonable amount of compensation for expert witness.

Mr. Kean asked if the committee didn't feel that allowing this would encourage calling more witnesses than are really necessary. Mr. Wooster said he did not think so because it would be very risky. Mr. Schouweiler thought it would have a sobering effect.

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Mr. Hilbrecht said that right now the fee is \$10 a day, even for an expert witness. Mr. Kean said he was somewhat scared of the thing. It might encourage unnecessary or unusual witnesses. If a man feels quite sure he is going to win he might call in all kinds of witnesses.

Mr. Hilbrecht said this bill would just about double the average costs of a jury trial, which is now around \$500. Mr. Kean said it would also cause each witness to try to collect the maximum expert witness fee of \$500.

Mr. Swackhamer moved to postpone indefinitely SB 197
Mr. Kean seconded
Motion passed unanimously

SB 198: Provides for allowance of punitive or exemplary damages in civil actions for willful or wanton misconduct.

MR. HILBRECHT: I don't think it changes the substantive law that much. The present law is sort of an orphan child. We have no body of law on this, but the amendment is a little better.

MR. SWACKHAMER: If we did have a case of fraud or malice, would it be possible for a plaintiff to sue under the law now?

MR. HILBRECHT: Unless it was a grievous case it would probably be denied. Right now no one knows what all these terms mean. If this bill is the California law, then we have a body of law for interpretation.

MR. WOOSTER: There was an exception for defamation in the original bill. Maybe this is a little clearer.

Mr. Hilbrecht moved Do Pass
Mr. Schouweiler seconded
Motion passed unanimously

SB 422: Adopts Uniform Testamentary Additions to Trusts Act.

MR. HILBRECHT: Can we defer this and ask someone to check it out? I would like to know if it is a Uniform law. If it is, I would recommend we pass it.

MR. WOOSTER: Mr. Daykin says there is a change in this from the Uniform Act. (He then called Mr. Daykin and asked him to come in.)

MR. DAYKIN: This bill corresponds to the Uniform Testamentary Additions to Trusts Act with the exception of the 4th section of the bill. Our section says "applies to all wills probated after the act" and the Uniform Act says "this act shall have no effect upon any device or act done before the effective date of this act". This bill provides additions to existing trusts.

MR. SWACKHAMER: It looks like people who have made wills now, based on the old law, will still have this law applied to their wills. (the new law). Maybe we should take out "probated" and put in "made", because we do not want to change someone's will that was already made.

MR. DAYKIN: The situation is improbable, because someone who makes a bequest to a

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trust must have a trust in existence and it must be in existence for the old law to apply. Actually in common law, the same law would apply that this statute establishes, with the exception that I don't think in common law you could enter a bequest to a dry trust. So, anyone who drew a will and made a bequest to a trust must have been satisfied with the terms of the existing trust, so we would not be crossing him by passing this and we would be confirming the impression of anyone who thought he could so do in the absence of statute and had done so. My only doubt is to the validity of the dry trust.

MR. HILBRECHT: Would anyone who has already made a will be opposed to this bill?

MR. DAYKIN: I would not think so.

MR. WOOSTER: The substantive part of this act is the Uniform Act?

MR. DAYKIN: Yes.

Mr. Schouweiler moved Do Pass
Mr. Hilbrecht seconded
Motion passed unanimously

Mr. Wooster announced that we would have Senators Dodge and Swobe in tomorrow to discuss some Senate bills.

The bills to be discussed are:

SB 344

SB 357

SB 386

SB 387

SB 368

AB 118

SJR 14

SB 192 Torvinen has some thoughts on this bill.

MR. KEAN: What about AB 10 that was to be amended?

MR. DAYKIN: The purpose of this amendment was simply to spell out that life insurance policies and annuities --the contracts include certificate issued by Fraternal Benefit Societies. The act itself uses the term "policy or contract". Around here benefit companies use certificates. This change was made in the Senate.

Mr. Kean moved the committee concur in the amendment
Mr. Hilbrecht seconded
Motion passed unanimously

Mr. Wooster said he has a bill given him by Mel Close with a request for a committee

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introduction. It has to do with the duties of the Highway Patrol. It would delete some things they no longer do. It adds "vehicles" to their duties. Don Brown asked for it.

Mr. Hilbrecht suggested that the bill really belonged in Roads and Transportation.

MR. SWACKHAMER: These duties were all over the place and I introduced a bill about 20 years ago when we had State Police, trying to get all these things together. We had a provision that they could engage in off-duty obligations. One after another of these things have been dropped by the people who were doing them, but this is the first time this bill has been amended to catch up with the action.

MR. KEAN: After looking at this, maybe we should keep it in judiciary.

MR. WOOSTER: I will talk with Keith Ashworth and see where it should go.

MR. KEAN: Jim Bailey will know more about this than anyone. I would like to take it to him.

MR. WOOSTER: I will assign it to you.

Meeting was adjourned at 4:15 P.M.