

MINUTES OF HEARING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session  
February 25, 1969

HEARING was called to order at 2:45 P.M. by Chairman Torvinen.

PRESENT: Torvinen, Fry, Bryan, Kean, Prince, Swackhamer, Reid, Lowman, Schouweiler.

Absent: None

MR. TORVINEN: This is the time set for hearings on the following bills:  
AB 117, 161, 177, 179, 180, 181, 190, 195, 234, 243.

MR. REID: On AB 234, may I ask Mr. Capurro a question?

MR. FRY: Does the \$500 limit make it more possible or more limited to get a resident license?

MR. REID: All you have to do is pick up a telephone in Las Vegas and tell them you want to raise your bond and it is done. It is just that easy. Will this make it any harder?

MR. CAPURRO: These bonds don't cost much anyway, so this will not affect the cost hardly any.

MR. MCKISSICK: When I saw the figure of \$750 which you had used, I wondered about it, but I guess the bond premium will still be under \$10.

My trouble is that I have a couple of "slip and fall" cases where the plaintiff cannot show a financial statement good enough to buy the bond. The lawyer must sign it or she has to save it from her welfare money, in the one case. I have had to sign.

MR. REID: They do not request us to do that in Las Vegas.

AB 117: Specifies times when one spouse may testify against the other.

MR. BRYAN: I have an amendment on this which would delete lines 24 through 27.

MR. TORVINEN: Someone has contacted me to speak on this, so we will hold it for awhile.

AB 99: Guest Statute.

MR. MCKISSICK: If AB 99 is being made a "cause celebre" and it has got everybody upset, I will go along if you want to put in "to the 4th degree of consanguinity". Will that remove all the objections so we can get back on some of these other bills? I will go along with it.

AB 161: Increases amount of security required under Motor Vehicle Safety Responsibility Act.

MR. MCKISSICK: This bill just makes very good sense. It would be a big step backward to even consider Senator Slattery's bill to reduce to five and ten.

I had a call from ex-Senator Dial and he says that fifteen and twenty is not bad but why not put teeth in the responsibility law and require evidence of insurability before granting driver's license? It would be fine if we could find a magic formula to put teeth into this, but in the interim the increase required would be conforming to California's law. The evidence presented there is that twenty and forty would be too much because it would raise the rates too much. The raise to fifteen and twenty only raised the rates by \$5 - \$6 per year. The additional coverage is well worth that raise.

The people I have talked with have no objection to AB 161.

MR. TORVINEN: We will now hear from opponents of AB 161. (There were none).

MR. OLIVER BOLTON: Independent Insurance Agents for Nevada: I would like to ask for the passage of this bill.

MR. JAMES LORIGAN: Farmer's Insurance Group: I did a little home work on this and found that in our highest rated risk category, the increase from five - ten - fifteen to fifteen and thirty would increase the premium \$8.20 each six months.

MR. SWACKHAMER: What would be the average risk increase?

MR. LORIGAN: \$15 to \$16 per year. I wish to go on record as supporting this bill with the fifteen and thirty.

MR. KEAN: California's differential was \$5 and ours is \$16.40?

MCKISSICK: As I understand it, their average increase was \$5. Maybe now it is more like \$12 to \$15.

MR. CORIGAN: The average rated risk would be around \$7 - \$8 per year.

MR. CAPURRO: The average premium would raise about what we have been talking about.

MR. CORIKA: We are certainly not in favor of anything that reduces the limits. These are the minimum policies we provide and would not give sufficient protection.

MR. REID: Any other reason than to make more money?

MR. CORIKA: We are anxious to provide adequate limits for those who want it.

MR. CAPURRO: Very seldom are policies written on the normal risk limits. Most are commonly much higher, such as \$100,000 - \$300,000. This bill just provides guide lines, so to speak.

AB 177: Limits liability of officers and agencies of State and political subdivisions.

MR. SCHOUWEILER: Mr. Frank Young wants to comment on this and he can't come right now because he had to be in Ways and Means for a hearing there.

AB 179: Provides for award of costs and disbursements relating to trials.

MR. TORVINEN: This is the bill that reduces jury fees from \$15 a day to \$10 per day and makes other provisions concerning fees and costs.

MR. MCKISSICK: First of all, I would like to say that I did not realize when I introduced this bill that labor was so excited about this jury fee. I had thought when we went from \$5 to \$15 that we were raising it too much all at once. I think we should have gone to \$10 or \$12. Some of the small counties found this \$15 just prohibitive for grand or trial jurors, especially for the first day when you call up 45 - 50 prospective jurors. You have to pay \$180 for each day. Costs can get to be astronomical.

I thought we should reduce to \$10 but since then I have heard that labor was very upset about it.

Page 2, section 2 has to do with clerks' and other fees. In the Karen Andrus vs. Kingsbury District, the Supreme Court said costs were the same as in other procedures.

Under present law, a witness gets \$5. Under 179 the prevailing party would get the clerk's fee, which we hear he would get anyway.

MR. REID: This is case law, as I understand it.

MR. MCKISSICK: Once the judge goes through that magic formula of breaking the seal, then you can collect the clerk's fee.

I think this should be \$10 for the juror but it is up to you.

The court may award up to \$250 for expert witness. Normally a case would have two doctors and an engineer among which to divide the \$250. Orthopods now demand \$500 for coming in one hour one day. I challenged Dr. Mack's bill for \$1,000 and he showed me that he has to have that much in order to come because he has several expensive operations scheduled for each day. Also, you can't cancel them once you have arranged for them to come because they will have canceled their scheduled surgeries. It is \$350 not to come to court and \$500 to come.

When the plaintiff recovers, he will usually get this back from insurance. The defendant is doubtful.

MR. REID: What about section 2, subsection 3? We have had a big hearing on this and it has passed the Assembly. Won't this change that?

MR. MCKISSICK: I suggest you amend. You will have to amend some of this out to conform with what we have already done.

Last section, page 3: This is like the Andrus vs. Kingsbury General Improvement District. You have to hire appraisers. In this case, the Supreme Court said that probably it would be fair for a person who is condemned and isn't satisfied with what they are giving him and who takes it to court and wins, that this expense should be paid. Why should we take the cost of these expert reports out of his settlement

for his property? If the statute isn't changed, they are not going to allow any more than \$5 for this testimony.

MR. TORVINEN: This amendment on section 4: Would this allow any attorney's fees? In condemnation cases?

MR. REID: No, unless it is under \$10,000.

MR. MCKISSICK: Trial judges are ruling to allow attorneys' fees in condemnation cases. The question is can you ever prevail when you are the condemnee?

Under section 6, beginning at line 17, you get mileage from place of residence. The way it is now you get mileage from near the state line.

MR. GEORGE VARGAS: When Senator Herr got this \$15 a day for the jurors, it struck me that we might run into problems with that \$180 per day. This is a philosophical thing, whether or not this is going to prevent people from going to court. I have no disagreement with the fees allowed in this bill.

MR. KEAN: I think the \$15 was sponsored by labor at the time it went through.

AB 180: Enlarges circumstances where plaintiff to recover costs.

MR. MCKISSICK: This is a frivolous bill.

MR. REID: I move to kill it.

MR. LOWMAN: I second

MR. TORVINEN: We will not take formal action until after the hearing is concluded.

AB 181: Provides methods for interest computation.

MR. TORVINEN: This bill provides for computation of interest in certain cases.

MR. MCKISSICK: I have discussed this before in this committee. You have heard a lot of testimony on this. Many states have a law on the books to take care of frivolous suits which are made just for the purpose of delay. When the court finds there is no real merit to the case, you can raise the interest charged.

The main thrust of this bill is on appeal when you have a verdict. Insurance companies might delay settlement while they make 10 to 12% on the money in the meantime. I thought it would be more realistic to make it 9%.

The other part of the bill has to do with the Supreme Court Decision on Holmes vs. Federal Surety and Investment Corporation. Even though interest is allowed on some of these, you can't always collect on them. That is why page 2 states a method of computing it from the day of the last charge.

The point is that the Supreme Court is now allowing pre-judgment interest.

The only other possible controversial point would be allowing the interest on special damages in personal injury cases, which I would suggest be deleted. Too difficult to ascertain. /- 220

In cases where person borrows from a finance company to pay you, he should be able to get the actual bill, plus interest. If you consider the bill, I would suggest that section 2 be deleted.

MR. TORVINEN: Under the present law where interest was paid, you could recover.

MR. REID: It would be an item of special damages.

MCKISSICK: If not being sued, could they get interest, or couldn't they?

MR. KEAN: Most firms that do business on open account, have on their invoices a specific amount of interest they can charge. In my mind, you have a contract. Aren't we asking the state to take away the right of contract of a businessman and his customer when we pass a statute that says you can't do so and so. It should be 7%.

MR. TORVINEN: You still have the right under the law to agree with some one else on the rate of usury under certain retail credit accounts.

MR. KEAN: If you sue here, the judge is supposed to allow 7%.

MR. MCKISSICK: That is for the uncareful businessman who does not have this already set up.

AB 190: Repeals certain provisions relating to dismissal of actions.

MR. BRYAN: You may have a situation where the act was totally unacceptable.

MR. MCKISSICK: I disagree. If the Legislature wants to tell the Supreme Court it can be 7 years because it takes that long to get it to court, it should be 7 years.

AB 195: Prohibiting certain practices of insurers.

MR. TORVINEN: This is intended to deal with those cases where medical carriers obtain receipts or something entitling them to be recompensed. Any comments concerning the original AB 195?

MR. MCKISSICK: I would like to go get Mr. Hilbrecht on this.

MR. TORVINEN: We should cover medical payments coverage. Apparently this is separate from liability. It pertains to an accident policy. Apparently, under our law as I understand it, because you are covering an accident risk, you should not be entitled to subrogation. Some of these carriers were insisting on receipts before they made payment to enable them to collect from a wrong-doer. It would apply mostly to automobile coverage, where the risk was not based on damage.

The intent of this bill is to close off any requests for assignments, in effect give medical rights a subrogation.

MR. LORIGAN: Does this cover the uninsured motorist situation? That

is a serious right we should want to maintain.

MR. TORVINEN: No one has an argument with the intent of this bill. The question is whether or not this would affect uninsured motorist problem with the carrier.

MR. MCKISSICK: The claim is paid and then they get a judgment against the uninsured motorist.

I have asked Mr. Hilbrecht to come in. He sponsored this last session.

MR. HILBRECHT: The case of Davenport vs. State Farm: The Supreme Court came out with the opinion that this is not necessarily predictable. Many states have held that when you buy a policy from a carrier and pay the premiums on it, for them to come back against you when you have already recovered is not acceptable. Our Supreme Court held that contract provisions were enforceable in Nevada because of our survival provision.

California's law says that nothing can be construed to allow this. We meant to assume this same language. I have not personally had an occasion to know about these things. Mr. Reid has more problems and I am advised that the problem has been solved in the past. But I am told that some carriers in Northern Nevada are still trying to push this subrogation against their clients.

This is the first time I have considered the uninsured motorist situation. If the claim is unassignable, it is unassignable in any event. It should apply to uninsured motorists as well. You buy a policy and pay a premium for it and then out of your recovery the insurance company comes back against you for money which you have paid in your premium contract with them. Nothing was meant to pertain to a third party.

MR. MCKISSICK: Gene Waite thinks this is an unnecessary bill because the Supreme Court will rule that way, but I don't know. We thought we had sealed this in 1967. State Farm has been pursuing this practice and it's up before the court now. Pending their decision, the Legislature is in proper form to say we intended to prohibit this. We should knock out this unscrupulous practice of some attorneys of filing against a phantom uninsured motorist and taking default judgment against the defendant.

AB 243: Expands liability coverage against uninsured motorists.

MR. TORVINEN: This is now in the Commerce Committee.

MR. MCKISSICK: I wish we had got it back in here.

MR. VARGAS: Serious question: All these separate bills are floating around outside the new Insurance Code which we just paid \$25,000 to get. I would think this subject should be settled in the Insurance Code.

MR. TORVINEN: Any questions or comments any of the committee would like to make to these people while they are here?

MR. LORIGAN: I have a question on line 20, section 5. Just what does that mean?

MR. MCKISSICK: Have direct action now under existing law. The whole law is a mess. The default judgment problem is the one you should address yourselves to.

MR. TORVINEN: We have another bill here, AB 290, someone may want to comment on.

AB 290: Authorizes wrongful death action by surviving spouse of minor.

MR. TORVINEN: This enlarges the wrongful death action.

MR. MCKISSICK: Amazingly enough, this was brought to my attention by Gene Waite. He says he has three cases right now where they had to file judgment against a minor witness. The Court, under existing law says there is no cause of action except for parents to sue for the wrongful death of a minor. It is very unfair.

Parents cannot show a lot of damage from the death of their emancipated son, whereas the young widow could.

MR. SWACKHAMER: If this widow was not pregnant, would it make her case better?

MR. MCKISSICK: No.

MR. LOWMAN: Is there nothing in our law about an emancipation statute?

MR. REID: Nothing.

MR. MCKISSICK: This is just a quirk in our law.

MR. VARGAS: American Insurance Association: I assume that this would place the minor dependant in the place of the father and mother? If it doesn't, there could be problems.

MR. MCKISSICK: I have a case like this now, and when it is settled, someone is going to have to decide who gets what of the amount granted. Both the parents and the widow are in the case. They happen to be from California. In Nevada the widow could not be in the case.

MR. VARGAS: I think it should be one or the other, not both. I think here you are giving the wife of a minor the right of action.

MR. MCKISSICK: I see nothing wrong with the way it is in California. The jury system takes care of these things. You can come in with an amount for the parents. That is fine, as long as the widow is not excluded. I think the good sense of the jury will take care of this recovery.

MR. REID: Isn't Mr. Vargas' point well taken? If married widow were over 21 then she would have this right of action. We are trying to give it to her if she is still a minor.

MR. TORVINEN: I tend to go along with the thought of having only one action. We could have the parents file in Elko County, the widow in Washoe County and the Estate in Clark County.

MR. VARGAS: This is a highly technical area. I would not want any of my opinions taken as gospel. This could get very involved. If you could hold up on this, I could maybe come up with something.

AB 99: Guest Statute.

MR. BRYAN: These consanguinity charts have been floating around. As the committee members will recall, this was reported out of committee with second degree of consanguinity. Has there been any decision as to a magical degree or number?

MR. VARGAS: Not as far as I am concerned. I am opposed to this bill.

MR. MCKISSICK: I don't believe that any of the insurance people are against this any more, with the exception of Mr. Vargas.

The Hearing ended at 4:00 P.M.