

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 18, 1969

Meeting was called to order at 3:35 P.M. by Chairman Torvinen.

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

MR. TORVINEN: We amended this until it applied only to residents and we wanted it to apply to non-residents. We want to get it back so we can fix it.

MR. FRY: I so move.

MR. BRYAN: I second.

MOTION CARRIED UNANIMOUSLY.

MR. KEAN: There are two ways you can do this. We had a bill returned in Transportation for a technical error and we are correcting the situation by an entirely new bill.

AB 223: Provides punishment for unlawful supplying of, and raises second offense penalty for possession of dangerous drug.

MR. FRY: We are holding this one for the definition deal, I think.

MR. KEAN: The man from Washington, D.C. said he would get all this stuff right to us but we have not heard from him. He was going to put the whole Department of Narcotics to work on this for us. We could not get him on the telephone today and we will follow up in the morning.

MR. BRYAN: We voted to Indefinitely Postpone SB 227, but we still have AB 383 which is exactly the same thing.

AB 383: Doubles penalty for using gun or deadly weapon in commission of crime.

MR. BRYAN: I move we Indefinitely Postpone AB 383.

MR. KEAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 273: Marriage Commissioner.

MR. CLOSE: The problem of North Las Vegas was left open so I could check on it over the week-end. We contacted them and they want to be included.

I want the Judiciary to introduce a bill I have here and I am sorry I am late. It was brought to my attention this past week-end, by the President of the Landlords Association. They are very concerned about the affidavit eviction type of thing. It has brought them a lot of bad publicity. It has been abused, and they are concerned with present usage. This new legislation would wipe out the affidavit as a method of eviction.

This provides that if a fellow is five days behind with his rent the landlord can go to any court and file for eviction. Under the other

law it was three days. A summons has to be served as in any other case. If the tenant comes in within five days and answers, then within ten days from that date there is a hearing and the matter is decided.

MR. BRYAN: Then what we would be doing is killing Helen's bill?

MR. CLOSE: Yes and from what I hear she doesn't object.

This gives more protection to the tenant than the present law. The other has given a black eye to the Landlord's Association.

I believe this legislation is important. The affidavit system may be declared unconstitutional and then the landlords would be in the soup.

MR. BRYAN: I feel we should hold until we hear the others on the same subject.

MR. CLOSE: This would give the tenant 20 days if he uses the full amount he is allowed. The Landlords don't especially like this but they are willing to go along with it. There is no way to finagle with this.

MR. REID: I move a committee introduction of 3-1843. (A.B. 753)
I will amend that motion to hold until we get news back on the other bills

MR. KEAN: I second the motion.
MOTION CARRIED UNANIMOUSLY.

AB 449: Provides right of contribution for joint tortfeasors.

MR. TORVINEN: I have a long letter from Gene Wait on this. (Copy attached)

MR. REID: There was a case decided about 1964, Reid vs. Royal Globe Insurance. The Supreme Court said no right of contribution among joint tortfeasors. If there is an accident and there are two wrongdoers the person harmed has the right to sue either or both of the persons involved. If he sues just one, the defendant cannot bring in the other party unless there is a written contract of indemnification. The Supreme Court said this should be left to the Legislature to do by law.

There can be inequities. The defendant who is sued cannot do anything to bring in the other defendant. If this bill is passed it will make the law more complicated, but more just, I feel. There will be people who will say so and so caused the accident so I am going to bring him into the case and split the burden.

The letter from Gene Wait sets out at some length why he thinks this law is good.

MR. KEAN: In the case you mentioned they sued just one out could have sued more people?

MR. REID: At the beginning. Before the judge we tried to bring in some of the others but the Supreme Court said we could not do that. Only the plaintiff can do this. We were on the defense. If there is a written contract you can bring the sub into the case. It is sort of

a master-servant relationship.

MR. TORVINEN: What about the negligent cab driver? I get hurt. I choose to sue the company, not the cab driver. Can they bring him into the case?

MR. REID: Yes.

MR. KEAN: Is this like the Steen case?

MR. FRY: No. We sued everybody on that one.

MR. KEAN: If we passed this, could they still do it? Could Steen bring in others if they sued only him?

MR. REID: For that instance, this would not change the law. I can sue three people. If I get all my money from one, the rest are off the hook.

MR. TORVINEN: Section 3: "One feasor who enters into settlement, etc." What does that mean?

MR. REID: This is an attempt to make it so that you can still settle a case.

MR. TORVINEN: Would he have to reserve his right against the others in the settlement of the case?

VIRGIL ANDERSON: AAA: Your answer is in section 10.

WILLIAM S. BARKER: Attorney from Las Vegas: Let's assume you have two defendants in the case. One figures his liability is only 10 to 15 %, and he figures the other is 85% liable. Defendant A makes a settlement for \$10,000. Subsequently B goes to trial and there is a judgment against him for \$100,000. Can B get any contribution from A?

MR. REID: If A settled in good faith, then NO he couldn't. Look at section 10.

MR. BRYAN: Is this the Uniform Act?

MR. REID: Dennis Wright says it is.

MR. ANDERSON: I have a draft of the Uniform Act and I believe this is identical.

MR. BRYAN: This would create more litigation.

MR. FRY: It might and it might not.

MR. TORVINEN: It might settle a lot of cases where there are two carriers involved.

MR. BARKER: I have a case now where my client is just barely liable, if he is at all. The other defendant is the main target. I would say the other one is 90% liable. If you pass this, the one with the greater liability is going to be encouraged to go on to trial, if you have multiple defendants where they can collect from anybody.

MR. BRYAN: Are you familiar with the experience on this?

MR. REID: No. My experience is limited to the one case. I would feel better if we had some time to look at this.

MR. KEAN: Would the 10% man have any action against the 90% man after the trial if we pass this law? Answer was the judgment is rendered equally.

MR. BARKER: Not under this bill. Section 6, sub 1, says relative degrees of fault shall not be considered.

MR. REID: I would be happy to find out how many other states have this law.

MR. KEAN: Would you also look into the possibility of an amendment giving the right of action from the lesser wrongdoer to the major wrongdoer?

MR. TORVINEN: That is impossible. We can't even determine who is right and who is wrong without trying to prove degrees or percentages of wrongdoing.

MR. REID: Let's wait and get further information.

AB 207: Permits district attorneys to commit certain drug addicts.

MR. TORVINEN: There was some question about when they have a drug addict who is in withdrawal symptoms and they don't want to keep him in jail but want him back after he has been committed.

MR. REID: It seems to me there could be a lot of abuse on this.

MR. TORVINEN: It is the same thing as an inebriate or kook. Same procedure.

MR. REID: A provision for committing people was passed last time. I don't see the purpose of this.

MR. BRYAN: The fact that bothers me is that there is not usually a criminal process pending at the same time. He might have to take the stand and this commitment could be used against him. He would be subject to criminal penalties. I think there is great danger in mixing the two together.

MR. TORVINEN: The district attorney has 15 days to complete the case and the guy is not in any shape to work with his attorney. This is just a way to keep him until the trial.

Has the prosecutor the right for continuation past 15 days on good cause?

MR. BRYAN: If the defendant is not making any objection and is in fact represented by counsel, what real concern does the prosecutor have?

MR. TORVINEN: He may not really be capable of assisting his counsel and counsel will try to have the hearing hurried so there will be something wrong with the trial.

MR. BRYAN: I like the California approach. The judge has discretion and he can either send the man to prison or to Corona, the narcotics rehabilitation center.

MR. FRY: We can't do this. We have no place to put them.

MR. BRYAN: We do still have a contract with California at Vacaville for people with some kind of mental problem. I think we have seven beds contracted but they are all full.

MR. KEAN: We did pass this out of committee some years ago but it failed in the Senate.

MR. FRY: I move we Indefinitely Postpone AB 207.

MR. KEAN: I second the move.

MOTION CARRIED UNANIMOUSLY.

AB 80: Removes limitation of parents', guardians' liability for tortious acts of minors.

Mr. KEAN: I move we kill AB 80.

MR. REID: I second.

MOTION CARRIED UNANIMOUSLY.

AB 57: Increases penalty for issuance of wage check without sufficient funds.

MR. REID: I move we kill AB 57.

MR. KEAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 248: Exempts movie projectionists and stagehands from criminal responsibility for exhibiting or possessing obscene material.

MR. BRYAN: I move to Do Pass AB 248.

MR. REID: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 348: Prohibits issuance of wage checks with insufficient funds.

MR. TORVINEN: This is the companion bill to AB 57 which has so many facets to it. 608 is the Labor Chapter. Some district attorneys say we need this. A man gets paid on Friday for the week just past or work just done so they say it is not a pre-existing debt.

If the employer just doesn't pay the man that is bad enough, but if he gives him a bad check then the employee becomes the first endorser and he is the one that gets stuck. Not only does he not get paid but he has to pay back the money he has spent.

In Chapter 202 they tried to do this by including "wage claims" but some district attorneys won't prosecute this.

MR. KEAN: The Labor Commissioner will.

MR. SWACKHAMER: But not very effectively.

MR. TORVINEN: Under \$50 it is a misdemeanor and over \$50 a felony.

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MR. SWACKHAMER: I move Do Pass AB 348.

MR. PRINCE: I second the motion.

MOTION CARRIED WITH MR. KEAN AND MR. REID VOTING NO.

MR. KEAN: 90% of these are construction cases. This "no money" comes on gradually and the employees should be able to foresee it and get out.

MR. REID: My father was a miner and worked for a guy that used to give him bad checks all the time, but the guy still stayed in business. My point is I am not sure it would have done any good to throw him in jail.

AB 495: Declares that checks given or accepted in licensed gaming are enforceable.

MR. KEAN: If the check is made out to CASH it is collectible.

MR. TORVINEN: If made to the gambling house it is not.

MR. KEAN: I was lobbied to kill the bill.

MR. TORVINEN: They have changed their minds. I have a letter from Munson saying they have changed their mind and now want it.

It was decided to hold and check further.

AB 607: Raises age of majority for females to 21; conforms marriage statutes. Cost: None.

MR. REID: I move we kill AB 607.

MR. BRYAN: I second the motion.

VICKI NASH: Professor Kathryn Duffy asked me to convey to you the information that she would like you to pass legislation that would make girls under 21 not responsible for contracts.

MR. REID: That would be against the trend which is to lower the ages.

MR. FRY: Let's hold up on this. There is another similar bill coming.

MR. TORVINEN: I think we ought to ignore all of these change of minority and majority bills.

MR. MCKISSICK: On AB 573: They have people from the American Express Company coming from New York to speak on this.

Meeting was adjourned at 5:00 P.M.

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March 18, 1969

Roy Lee Torvinen, Esq.
Chairman, Assembly Committee on Judiciary
Capitol Building
Carson City, Nevada

Re: Assembly Bill No. 449
UNIFORM CONTRIBUTION AMONG
TORT FEASORS ACT

Dear Roy:

As you know, this firm practices primarily in the field of insurance law. In our practice, we have had an opportunity to become aware of a serious defect in the structure of Nevada's law relating to contribution among joint tort feorsors. We strongly believe that Assembly Bill No. 449 introduced by Messrs. Reid and McKissick is vitally needed to correct this grave defect in the structure of our laws.

Assembly Bill No. 449 is designed to preserve to the plaintiff or claimant all of the rights and advantages available to a claimant or plaintiff under the common law. Specifically, this bill would preserve the absolute right of the injured party to make claim against only one, more than one or all of the persons, parties or corporations who might be legally responsible for the injury and damages resulting therefrom. As you know, under the existing law, the injured party may seek recovery of damages against only one of many potential defendants. Further, the injured person under existing law can file suit against only one of many potential defendants. He is entirely free to select the persons, parties or corporations against whom he may seek recovery without regard to any rights between or among the potential defendants. Under AB 449, these rights would be preserved to the injured party.

Further, under existing law, the injured party is entitled to seek judgment against one, more than one, or all of the parties potentially liable for the injury. And, if the injured party is successful in obtaining judgment against more than one of

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the named defendants, the plaintiff is entitled to seek satisfaction of the judgment against only one of the judgment debtors. Under Assembly Bill No. 449, this right is also preserved to the injured party-plaintiff. AB 449 would allow the plaintiff to obtain satisfaction of his judgment in the quickest and most direct way, even if this would require payment of the entire judgment by one of several judgment defendants, all of whom would be legally responsible for payment of the entire judgment.

The only effect of Assembly Bill No. 449 on existing law would be to change the rights and responsibilities of the persons legally liable for damages, among themselves. It would not hinder, limit or restrict any of the rights of the injured person against these parties potentially liable in damages. It would preserve the rights of the injured person and create new rights among the persons liable for damages among themselves. The rights of the parties legally responsible to the injured party would not arise until they have paid more than their pro rata share of the common liability. Thus, no rights accrue to the legally responsible parties until they have actually made payment to the injured party.

Some question might arise concerning the effect of AB 449 on early settlements. In our opinion, this bill will strongly favor early settlements of claims by the parties legally responsible. Specifically, AB 449 provides that where the person potentially liable makes a good faith settlement with the injured party, then the right of contribution no longer exists. Thus, each of a number of potential defendants would be strongly interested in reaching a good faith settlement with the injured party at the earliest possible time, in order to reduce their exposure to claims for contribution.

It is obvious that Assembly Bill No. 449 is intended to have a prospective effect only. We do not believe that such a bill should have retrospective application. In other words, we do not believe that a bill such as AB 449 should have application to existing cases. In particular, we do not expect AB 449 to have any effect whatever on any of the cases in which this office is presently engaged. However, we do know, from our handling of cases in this field, that the existing law can be used to work a grievous miscarriage of justice on one or more defendants.

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While we regret such miscarriages of justice which have occurred in the past, we consider them unavoidable under the state of the existing law. However, our experience leads us to strongly recommend to you and your committee that Assembly Bill No. 449 be enacted into law, to become effective upon passage and approval.

In summary, we favor AB 449 for the reason that it preserves all of the existing rights, remedies and safeguards available to the injured party, while it eliminates the possible injustice of requiring only one of several responsible parties to bear the entire loss.

Thank you very much for giving us this opportunity to present our views to you concerning this important bill.

Sincerely,

WAIT & SHAMBERGER

By Eugene J. Wait

cc: Howard F. McKissick, Jr.
Speaker

Harry M. Reid
Assembly Judiciary Committee