

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at
Chairperson

1:30 a.m./p.m. on March 24, 1986 in room 526S of the Capitol.

All members were present except:

Representative Peterson - E

Committee staff present:

Lynda Hutfles, Secretary
Russ Mills, Research
Raney Gilliland, Research
Mary Torrance, Revisor's Office

Conferees appearing before the committee:

James Clark, Kansas County & District Attorneys Association
Don Stumbaugh, Crime Reparations Board
Ruth Meserve, Kansans for Drunk Free Driving
Representative Clint Acheson
Representative Martha Jenkins
Representative Arthur Douville
Jim Chapman, International Union of Elevator Inspectors
Ernie Mosher, League of Municipalities
Tim Ryan, Overland Park
Scott Lambers, Overland Park

The meeting was called to order by Chairman Miller. He called attention to miscellaneous handouts that had been provided for committee members. Attachment A - Statement from Richard Harman on HB2918; Attachment B - Explanation of quotes from Ms. Danzon's Conclusions by Kathleen Sebelius; and Attachment C - Statement by the Real Estate Commission on SB594).

Representative Barr made a motion, seconded by Representative Goosen, to approve the minutes of the March 20 meeting. The motion carried.

Representative Neufeld explained a proposal dealing with hospitals. Representative Long made a motion, seconded by Representative Sallee to adopt the proposal as a committee bill. The motion carried.

Representative Cloud explained to the committee that the figures he used in his statement on HB2918 were inaccurate figures. Insurance premiums are skyrocketing. Regardless of where the jury settlements are coming from (Kansas or Missouri) they are affecting Kansas. He said the Supreme Court should be allowed to come up with some type of rules and regulations to take care of this particular problem. He distributed a letter from Chief Justice Shroeder to Justice Praeger in which Shroeder says the Supreme Court is requesting the Judicial Council to study the issue of Supreme Court regulation of attorney contingency fee contracts and submit its recommendation to the Supreme Court. See attachment D.

SB700 - Recovery of reparations for injuries caused by DUI

James Clark, Kansas County and District Attorneys Association, gave testimony in support of the bill saying that victims of DUI should come under the Crime Victims Reparation Act.

Don Stumbaugh, Crime Reparations Board, gave testimony in support of the bill which would extend eligibility to injured victims resulting from DUI crashes and would be eligible to receive reparations for uninsured losses under the same restrictions and limitations provided to victims of violent crimes. See attachment E.

Ruth Meserve, Kansans for Drunk Free Driving, gave testimony in support of the bill. She said she felt the financial responsibility should be placed on the drunk driver who has chosen to break the law and endanger the lives of citizens of the community. See attachment F.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Federal & State Affairs,
room 526S, Statehouse, at 1:30 a.m./p.m. on March 24, 1986

Representative Clint Acheson asked that HB2927 be amended into SB700. This bill prohibits convicted persons from making a profit off their crime through publication of their story. See attachment G.

Representative Jenkins also asked that HB2927 be amended into SB700. This is a good way to fund the crime victims reparations fund while at the same time pay restitution to victims or their family. See attachment H.

Hearings on SB700 were concluded.

HB3805 - State Elevator Inspection Law

Representative Arthur Douville explained the bill and why he introduced it. He said he felt the state does not have adequate codes for the inspection of elevators.

Jim Chapman, International Union of Elevator Inspectors, gave testimony in support of the bill. The State of Kansas is one of the few major populated states in the country that does not have a statewide comprehensive elevator safety act. See attachment I. There are eight cities who have elevator inspection codes: Junction City, Kansas City, Manhattan, Leawood, Overland Park, Salina, Topeka, & Wichita.

Ernie Mosher, League of Kansas Municipalities, gave testimony in opposition to the bill. There are a great many cities that have codes for elevator construction. He said he was not aware of a serious problem with elevator safety. Mr. Mosher raised a question about line 212 requiring half time elevator inspectors.

There was discussion about certified local inspectors and insurance company requirements for liability who would request inspections on a regular basis.

Scott Lambers, City of Overland Park, gave testimony in opposition to the bill saying this would preempt the city inspection. He expressed concern about qualifications in line 200 of sec. 6.

Tim Ryan, Inspector supervisor for Overland Park, gave testimony in opposition to the bill. He said that the Overland Park inspection code is more stringent than the bill. If this bill is passed the city of Overland Park will have to start charging for inspections. He said they do not currently charge because they feel service to the community is more important.

Hearings were concluded.

HB2918 - Regulating Contingency Fees

Representative Roe made a motion, seconded by Representative Aylward, to adopt Representative Cloud's balloon amendment (See attachment J). The motion carried.

There was discussion of the percentages in the bill.

Representative Roe made a motion, seconded by Representative Goosen, to report HB2918 favorably as amended.

Representative Roy made a substitute motion, seconded by Representative Hensely, to table the bill. The motion lost.

The original motion by Representative Roe to report HB2918 favorably as amended was voted on. A division was called. The motion carried. (10/9)

The meeting was adjourned.

Attachment K - Distributed for Judy Anderson in oppoistion to HB3085.

Kansas Association of

PROPERTY & CASUALTY
INSURANCE COMPANIES, INC.

L. M. Cornish
Legislative Chairman
Merchants National Tower
P. O. Box 1280
Topeka, Kansas 66601

MEMBER COMPANIES

Armed Forces Ins. Exchange
Ft. Leavenworth

Bremen Farmers Mutual Ins. Co.
Bremen

Consolidated Farmers Mutual Ins. Co., Inc.
Colwich

Farm Bureau Mutual Ins. Co., Inc.
Manhattan

Farmers Alliance Mutual Ins. Co.
McPherson

Farmers Mutual Insurance Co.
Ellinwood

Great Plains Mutual Ins. Co., Inc.
Salina

Kansas Fire & Casualty Co.
Topeka

Kansas Mutual Insurance Co.
Topeka

Marysville Mutual Insurance Co., Inc.
Marysville

McPherson Hail Insurance Co.
Cimarron

Mutual Aid Assn. of the Church
of the Brethren
Ablene

Swedish American Mutual Insurance Co., Inc.
Lindsborg

Town and Country Fire and Casualty Ins. Co., Inc.
Hutchinson

Upland Mutual Insurance, Inc.
Chapman

Wheat Growers Mutual Hail Ins. Co.
Cimarron

POSITION PAPER OF THE KANSAS
ASSOCIATION OF PROPERTY AND
CASUALTY INSURANCE COMPANIES, INC.
in support of House Bill 2918

The Kansas Association of Property and Casualty Insurance Companies, Inc. is composed of 18 property/casualty insurance companies domiciled in the state of Kansas.

We support the concept embodied in this bill of imposing some limitations on attorneys' contingency fee arrangements. There are two particular reasons:

First, we believe some juries, in arriving at a damage figure (or a verdict), inflate or "pad" the award anticipating the plaintiff's attorney will receive anywhere from one-third to one-half of the verdict amount. This results in verdicts being greater than what the evidence otherwise proves.

Second, limiting an attorney's contingency fee allows injured person(s) to receive a greater share of the jury's award. It should not be forgotten that the sole purpose of an award in a civil suit is to compensate the injured party for the wrong committed. While we have no qualms with an attorney receiving a fair and reasonable fee for services rendered, we do not believe an attorney should receive an excessive fee simply because the client suffered high-dollar damages.

For these reasons, we strongly urge passage of House Bill 2918.

Respectfully submitted,

Richard Harmon

RICHARD HARMON
Assistant General Counsel

ATTACHMENT A

*H. FLSA
3/24/86*

B

CONTINGENT FEES FOR PERSONAL INJURY LITIGATION

PREPARED FOR THE HEALTH CARE FINANCING ADMINISTRATION,
U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PATRICIA MUNCH DANZON

R-2458-HCFA
JUNE 1980

*Data supplied by Kathleen Sebelius regarding testimony
on HB 2918 - March 20, 1986*



*H. FISA
3/24/86*

ATTACHMENT B

SUMMARY

Contingent fees are the typical mode of payment for plaintiff attorneys in personal injury litigation. Under a contingent contract, the attorney's fee is contingent on the outcome of the case: If the plaintiff wins, the attorney is paid some predetermined fraction of the award; if the plaintiff loses, the attorney receives no fee. Under an hourly wage contract, the plaintiff pays the attorney an hourly rate for his time, regardless of the outcome of the case. Thus, the contingent fee shifts the risk of zero return on the investment in litigation from the plaintiff to the attorney.

There is a long tradition of hostility toward contingent fees. A number of states have recently restricted their use in medical malpractice cases, in response to the rise in frequency and severity of malpractice claims. Opponents of contingent fees claim that giving lawyers the right to finance litigation makes them stir up cases, hoping for excessive financial reward. They also claim that the lawyer's financial stake creates a conflict of interest between lawyer and plaintiff. Proponents argue that by shifting the risk to the lawyer, contingent fees give legal recourse to plaintiffs who have legitimate claims but are unwilling to risk investing in an hourly wage contract. Further, they contend that by making the fee depend on the amount of recovery, contingent contracts align the interests of attorney and client. This alignment is particularly important when the client lacks the expertise to assess the lawyer's performance.

There is no conclusive theoretical analysis and little empirical evidence to support claims on either side of the debate. Yet, to the extent that fee arrangements affect the number of outcomes of suits filed, they affect the efficiency of the tort system in the performance of its dual functions of deterring negligent behavior and compensating people injured through negligence.

The purposes of this study are to clarify the debate over contingent fees and to determine the probable effects of restrictions on contingent fees on the frequency and severity of claims. The study analyzes the incentives created by the alternative assignment of risk

quotes
from Paul
Fleener

Ms.
Danzon's
conclusions

under the hourly and contingent contracts. The analysis assumes that attitudes toward risk affect the willingness of plaintiffs and attorneys to engage in litigation with uncertain payoff. Plaintiffs and attorneys may be averse to risk, or may prefer risk, or may be neutral to risk. A risk-averse person is one who would not participate in a lottery if the odds of winning were only even. A risk-preferring person would be willing to participate in a 50-50 lottery. A risk-neutral person is indifferent to the 50-50 lottery. In the medical malpractice context, a risk-averse plaintiff would not bring suit if the expected cost of litigation were as great as the expected award (i.e., the possibility of winning times the amount of the award).

The contractual assignment of risk and the parties' risk preference affect the number of cases that will be filed, the attorney's effort per case, and hence the probability of winning and size of award. If plaintiffs and attorneys are risk-neutral, the frequency of claims, the average gross recovery, and the plaintiff's probability of winning will be unaffected by the type of contract: The amount of litigation will be that necessary to maximize the net recovery of plaintiffs. The division of gross recovery into the net to the plaintiff and fee to the attorney is also unaffected, on average, over all plaintiffs. However, on cases won the actual fee is higher, hence net recovery is lower with a contingent fee than with an hourly wage contract. Obviously, on cases lost, the fee and therefore the plaintiff's out-of-pocket loss are zero.

Under the more plausible assumption that plaintiffs are typically risk-averse and lawyers risk-neutral, the frequency of claims, average gross recovery, and plaintiff's probability of winning will be lower with an hourly wage than with a contingent fee. This is because with an hourly rate, the plaintiff finances the litigation and bears the risk of zero return. With an hourly contract, the risk-averse plaintiff will spend less than is necessary to maximize the net value of his claim.

The analysis disputes the allegation that contingent fees result in excessive (above competitive) rewards for attorneys. Rational allocation of time by an attorney between contingent fee and hourly rate, cases and market competition both act to control fees. True, the actual fee on cases won will exceed the value of time spent on those cases. However, the excess is compensation for the ex ante risk of receiving no

fee. What little empirical evidence is available confirms that, averaging over cases won and lost, the effective hourly earnings of attorneys paid on a contingent basis are similar to the hourly earnings of defense attorneys paid by the hour. This is consistent with competition and elimination of risk aversion from the contingent fee sector. Competition will tend to drive attorneys who are risk-averse out of the contingent fee sector. The risk-averse attorney would require an expected fee that exceeds the value of his time, whereas a risk-preferring attorney would accept a fee that is less than the value of his time. Thus, risk aversion on the part of the attorney tends to reduce the net recovery of the client, and risk preference tends to increase it.

Evidence on the ratio of legal costs to average award suggests that returns to attorney effort diminish more rapidly for the defense than for the plaintiff in severe injury cases. One implication of this asymmetry in the "judicial production function" is that a reduction in attorney wage rates will tend to induce a greater increase in the efforts of plaintiffs' attorneys and, hence, lead to an increase in the size of awards and plaintiff win rates. This factor may have contributed to the increase in frequency and severity of claims and pro-plaintiff shift in the law in recent years.

Constraints on the minimum time necessary to process a case may bar cases with low expected recovery from suit. This effect is independent of the type of fee contract: If small cases are barred from the judicial process, it is because of the high fixed costs, not the contingent fee system. Ceilings on the contingent fee percentage may significantly reduce the number of hours an attorney will spend on a case and effectively bar certain cases from trial. The types of cases likely to be affected are (1) cases of severe injury but uncertain evidence of negligence, (2) cases with low expected payoff (minor injuries), and (3) cases where the plaintiff is highly risk-averse. All these factors contribute to a relatively large fee percentage, in the absence of constraints.

Restriction on contingent fees would also tend to be regressive, deterring low- and middle-income plaintiffs from filing even meritorious

suits. Risk aversion, low wealth, and high borrowing costs all create obstacles to filing that a contingent fee reduces but may not totally eliminate. For example, a person with average risk aversion but assets of less than \$20,000 would be unwilling to hire an attorney on an hourly basis to handle a malpractice suit yielding the average award of \$29,456 (1977 data), even with a high probability of winning. Thus, in the absence of the contingent fee, the number of cases filed would certainly be less. Conversely, the common allegation that the contingent fee induces attorneys to bring claims with little legal merit has no basis in logic. The fact that the fee depends on winning provides an incentive to screen out cases with little legal merit--an incentive that is lacking with an hourly fee.

If ceilings or outright prohibition of contingent fees are intended to reduce the amount paid out through the malpractice liability system, they will probably be successful. However, if the socially optimal level of litigation is that which would be undertaken by a fully informed, risk-neutral plaintiff, the unconstrained contingent fee is likely to yield the closest approximation to this ideal. Without contingent fees, plaintiff risk aversion will produce a suboptimal investment in litigation and hence suboptimal deterrence and compensation. Even if the explicit policy objective were to reduce frequency of suits, size of awards, and expenditure on litigation, it is doubtful that limiting contingent fees is an efficient means of achieving these results.



March 20, 1986

STATE OF KANSAS

**KANSAS
REAL ESTATE
COMMISSION**

PHONE: (913) 296-3411
217 East Fourth
TOPEKA, KANSAS 66603-3598

The Honorable Robert H. Miller, Chairman
Federal and State Affairs Committee
House of Representatives
Statehouse
Topeka, KS 66612

RE: Senate Bill 594

Dear Representative Miller:

In responding to your question yesterday, Mr. Perry did not have information available to him relative to the Stevens vs. Jayhawk Realty case. Mr. Stevens did in fact file a complaint with the Kansas Real Estate Commission prior to filing the civil action. The commission's investigation revealed no evidence of violation of the Kansas Real Estate Brokers' and Salespersons' License Act, and the complaint was closed on November 15, 1979. The civil action was filed in district court that same month, perhaps a few days earlier.

The plaintiff in the Geer case has not filed a complaint with the commission. With the case now on appeal, the commission has not at this point determined whether to investigate the matter on its own initiative.

If we may provide further information, please let me know.

Very truly yours,

E. W. Yockers, Director
Kansas Real Estate Commission

MEMBER:
NATIONAL
ASSOCIATION
OF
REAL ESTATE
LICENSE LAW
OFFICIALS

ATTACHMENT C

*H. FLSA
3/24/86*

Real Estate Recovery Revolving Fund

The fund was established at \$200,000 in 1974, and the first claim was paid in December 1976. Twelve claims totaling \$91,128 were paid through FY-84. Seven claims totaling \$60,452 were paid in FY-1985. While payouts from the fund are unpredictable, the FY-1986 and FY-1987 budgets project \$60,500 each year based on the FY-1985 payments.

The recovery fund balance presently includes \$125,104 invested in treasury bills to mature at \$135,000 on September 4, 1986 and an uninvested amount of \$3,648. It is therefore anticipated that payouts will occur this fiscal year to drop the balance below \$100,000 and trigger an assessment.

3-20-86

Rep. Cloud



Supreme Court of Kansas

Kansas Judicial Center

Topeka, Kansas 66612-1507

January 13, 1985

ALFRED G. SCHROEDER,
Chief Justice

(913) 296-3807

Hon. David Prager, Chairman
Kansas Judicial Council
301 West Tenth Street
Topeka, Kansas 66612

Dear Justice Prager:

The Supreme Court is requesting the Judicial Council to study the issue of Supreme Court regulation of attorney contingent fee contracts and submit its recommendations on the matter to the Supreme Court.

I am enclosing a copy of pages 20-21 of the Kansas Bar Association's 1985 Legislative Policy booklet which more fully describes the issue recently considered by the court.

Respectfully,

A handwritten signature in cursive script, reading "Alfred G. Schroeder".

ALFRED G. SCHROEDER
Chief Justice

AGS:ph

Enc.

cc: ✓ Mr. Gerald L. Goodell
Marcia Poell

ATTACHMENT D

H. FLSA
3/24/84



STATE OF KANSAS
CRIME VICTIMS REPARATIONS BOARD

112 W. 6TH
SUITE 400
TOPEKA, KANSAS 66603-3810
913/296-2359

TO: Gary Stotts, Acting Director of the Budget
FROM: Don Stumbaugh, Director
DATE: March 24, 1986
RE: SB 700 Fiscal Impact Statement

I. Bill Summary:

Existing law excludes injured victims of motor vehicle incidents, to be eligible for reparations, except when conduct arising out of the ownership, maintenance or use of a motor vehicle was intended to cause personal injury or death. SB 700 would extend eligibility to injured victims resulting from DUI/DWI crashes. Under SB 700 a victim of a DUI/DWI crash would be eligible to receive reparations for uninsured losses under the same restrictions and limitations provided to victims of violent crimes.

II. Impact on agency, agency responsibilities, and agency staffing:

Through survey of other states' compensation programs providing reparations to victims of DWI/D&I incidents it is believed the proposal would have minimal impact on the agency and agency responsibilities by an increase in number of claims received but could be implemented at current level of staffing.

III. Fiscal Impact:

Although there would be a fiscal impact on the agency funds from which reparations are paid statistical data is unavailable to analyze and measure in terms of dollars the anticipated fiscal impact. Theoretically since each incident should by law be covered by some form of insurance, i.e. the uninsured motorist's provision of the victims insurance as well as the insurance of the intoxicated driver can be used to compensate the victim and would reduce a victim's claim to an amount representing the uninsured losses not to exceed \$10,000.

Also because Crime Victims Reparations Board statutes provide for subrogation in case there is a law suit against the drunk driver recovery of some expenditures are anticipated.

H. FISA
3/24/86

ATTACHMENT E

Gary Stotts
March 24, 1986
Page 2

A sample survey of 9 states providing reparations to victims of DUI/DWI incidents indicates a small fiscal impact on agency funds.

IV. Long-range fiscal effect of the measure:

Same as above.

STATE VICTIM COMPENSATION/REPARATION PROGRAMS

STATE	YEAR EFFECTIVE	DWI/DUI PROVISION	TIME LIMIT TO REPORT TO PD	TIME LIMIT	MAXIMUM AWARD	MINIMUM AWARD	SON OF SAM PROVISION
				TO FILE CLAIM			
(1) ALABAMA		1984					
(2) ALASKA	1972	1983	5 DAYS	2 YEARS	\$25000		YES
CALIFORNIA	1965		YES	1 YEAR	\$23000	\$100	
(3) COLORADO	1982	1983	72 HOURS	6 MONTHS	\$1500	\$ 25	
CONNECTICUT	1979		5 DAYS	2 YEARS	\$10000	\$100	
(4) DELAWARE	1975		YES	1 YEAR	\$10000	\$ 25	
(5) FLORIDA	1978	1985	72 HOURS	1 YEAR	\$10000		
HAWAII	1967		YES	18 MONTHS	\$10000		
(6) ILLINOIS	1973	1983	72 HOURS	1 YEAR	\$15000	\$200	YES
INDIANA	1978		48 HOURS	90 DAYS	\$10000	\$100	
(7) IOWA	1983	1984					
KANSAS	1978		72 HOURS	1 YEAR	\$10000	\$100	
(8) KENTUCKY	1976	1984	48 HOURS	1 YEAR	\$15000	\$100	YES
(9) LOUISIANA							
MARYLAND	1968		48 HOURS	180 DAYS	\$45000	\$100	
MASSACHUSETTS	1969		48 HOURS	1 YEAR	\$10000	\$100	YES
MICHIGAN	1977		48 HOURS	30 DAYS	\$15000	\$100	
MINNESOTA	1974		5 DAYS	1 YEAR	\$25000	\$100	YES
(10) MISSOURI	1982	1984	48 HOURS	1 YEAR	\$10000	\$200	
MONTANA	1978		72 HOURS	1 YEAR	\$25000		YES
NEBRASKA	1979		3 DAYS	2 YEARS	\$10000		YES
NEVADA	1981		5 DAYS	1 YEAR	\$5000	\$100	YES
NEW JERSEY	1971		3 MONTHS	1 YEAR	\$10000	\$100	
(11) NEW MEXICO	1981	1983	30 DAYS	1 YEAR	\$12500		
(12) NEW YORK	1966	1985	1 WEEK	1 YEAR	* \$20000		YES
NORTH DAKOTA	1975		72 HOURS	1 YEAR	\$25000	\$100	
OHIO	1976		72 HOURS	1 YEAR	\$50000		
OKLAHOMA	1981		72 HOURS	1 YEAR	\$10000		YES
(13) OREGON	1978		72 HOURS	6 MONTHS	\$23000	\$250	
PENNSYLVANIA	1977		72 HOURS	1 YEAR	\$25000	\$100	
(14) SOUTH CAROLINA	1983	1984					
TENNESSEE	1976		48 HOURS	1 YEAR	\$10000	\$100	
(15) TEXAS	1980	1983	72 HOURS	180 DAYS	\$50000		YES
(16) UTAH		1983					
VIRGINIA	1976		48 HOURS	6 MONTHS	\$10000	\$100	
(17) WASHINGTON	1974	1983					
(18) WEST VIRGINIA	1981		72 HOURS	2 YEARS	\$20000		
(19) WISCONSIN	1977	1984	5 DAYS	2 YEARS	\$12000		

* INCLUDES UNLIMITED COMPENSATION FOR MEDICAL EXPENSES

ADDITIONAL DWI/DUI COMPENSATION REQUIREMENTS:

- (1) ALABAMA - CLASSIFIED AS CRIMINALLY INJURIOUS CONDUCT. PROSECUTION OR CONVICTION OF DEFENDANT IS NOT REQUIRED.
- (2) ALASKA
- (3) CALIFORNIA - COMPENSATION IF OFFENDER IS CHARGED WITH HIT AND RUN, DUI, USING VEHICLE AS A WEAPON, OR FLEEING THE SCENE OF A CRIME.
- (3) COLORADO
- (4) DELAWARE - CLASSIFIED AS VEHICULAR ASSAULT/VEHICULAR HOMICIDE.
- (5) FLORIDA - INCLUDES INTENTIONAL INJURIES INFLICTED THROUGH USE OF VEHICLE/BOAT/AIRCRAFT.
- (6) ILLINOIS - OFFENDER MUST BE CRIMINALLY CONVICTED OF RECKLESS HOMICIDE OR DUI. NON-STATE RESIDENTS QUALIFY IF THE CRASH OCCURRED IN THE STATE OF ILLINOIS.
- (7) IOWA - GUILTY PLEA OR CONVICTION OF DUI, OR BLOOD ALCOHOL CONTENT .13 OR ABOVE.
- (8) KENTUCKY - OFFENDER GUILTY IF VEHICLE OPERATED IN VIOLATION OF DWI STATUTES.
- (9) LOUISIANA - THE ATTORNEY GENERAL HAS WRITTEN AN OPINION THAT IT MAY BE POSSIBLE TO INCLUDE CRASH VICTIMS UNDER THE CURRENT PROGRAM BUT, IT WOULD BE A CASE BY CASE BOARD DECISION.
- (10) MISSOURI - INCLUDES ALL ALCOHOL RELATED TRAFFIC OFFENSES.
- (11) NEW MEXICO
- (12) NEW YORK
- (13) OREGON - RESTITUTION STATUTE ALLOWS THE VICTIM COMPENSATION PROGRAM TO RECOUP COSTS FROM THIRD PARTIES, SUCH AS, DRINKING ESTABLISHMENTS WHO MAY BE HELD RESPONSIBLE FOR THE CRIMINAL ACTS OF THEIR PATRONS.
- (14) SOUTH CAROLINA - CLASSIFIED AS RECKLESS INJURY OR DEATH BY MOTOR VEHICLE.
- (15) TEXAS
- (16) UTAH - VICTIM MUST PURSUE A CIVIL SUIT AGAINST THE DRUNK DRIVER WITH AN AFFIRMATIVE JUDGEMENT PRIOR TO QUALIFYING FOR ANY COMPENSATION.

ADDITIONAL DWI/DUI COMPENSATION REQUIREMENTS:

- (17) WASHINGTON - CLASSIFIED AS VEHICULAR ASSAULT/VEHICULAR HOMICIDE
BENEFITS ARE DENIED IF THE VICTIM IS GUILTY OF CONTRIBUTORY
MISCONDUCT. VICTIMS ARE ALLOWED UNLIMITED COMPENSATION
FOR MEDICAL EXPENSES.
- (18) WEST VIRGINIA - COMPENSATION ALLOWED IF DRIVER FOUND GUILTY OF DUI,
RECKLESS DRIVING, OR NEGLIGENT HOMICIDE.
ALL CRASH VICTIM AWARDS MUST BE APPROVED BY THE LEGISLATURE
AT THEIR ANNUAL MEETING.
- (19) WISCONSIN - ALL CLAIMS WILL BE DENIED IF THE VICTIM IS GUILTY OF
CONTRIBUTORY MISCONDUCT.
A VICTIM QUALIFIES IF THEY WERE A PEDESTRIAN OR IN THE
CAR HIT, WAS A CHILD VICTIM IN THE OFFENDER'S CAR, OR WAS AN
ADULT PASSENGER IN THE OFFENDER'S CAR UNLESS THEIR BLOOD ALCOHOL
CONTENT WAS .10 OR MORE OR THEY KNEW THE DRIVER WAS DWI/DUI.



STATE OF FLORIDA
DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY
DIVISION OF WORKERS' COMPENSATION
BUREAU OF CRIMES COMPENSATION & VICTIM/WITNESS SERVICES

2551 Executive Center Circle West
Lafayette Building, Suite 202
Tallahassee, Florida 32301
(904) 488-0848
SUNCOM 278-0848

January 28, 1986

Mr. Don Stumbaugh, Director
Crime Victim Reparation Board
112 W. 6th Street, Suite 400
Topeka, KA 66603

Dear Mr. Stumbaugh:

Recently, I received a message that you had inquired about the Florida law regarding compensation to victims of persons driving while intoxicated (DWI) or driving while under the influence (DUI) of alcohol or drugs.

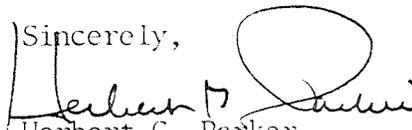
The bill which passed is very simple. A copy of which is attached (S.960.033). It states that a "Crime" also includes any violation of S.316.193 or S.316.1931 which violation results in physical injury or death; etc. This permits us to make awards to victims of DUI and DWI; however, we still cannot make awards to those persons injured involving a motor vehicle, except where the injury is intentional.

The people who can help get this bill passed are the Mothers Against Drunk Driving (MADD). They have a strong lobby and can be very helpful.

After having passed this legislation the numbers of persons requesting assistance has been negligible. We do not know the reason for such. We had expected a very large number of claims.

I am attaching the Senate bill as it passed S.B.106. Also I am attaching a copy of our Statute - 960.F.S.

Should you desire further information, do not hesitate to write or call.

Sincerely,

Herbert G. Parker
Bureau Chief

HGP/pc

Attachments

RECEIVED BY

FEB 3 1986

C. V. R. B.

IOWA DEPARTMENT OF



TERRY E. BRANSTAD
GOVERNOR
GENE W. SHEPARD
COMMISSIONER

CARROLL L. BIDLER, DIRECTOR
DIVISION OF ADMINISTRATIVE SERVICES
WALLACE STATE OFFICE BUILDING • DES MOINES, IOWA 50319
515/281-3211

February 7, 1986

RECEIVED BY

Mr. Don Stumbaugh, Director
Crime Victims Reparations Board
State of Kansas
112 W. 6th, Suite 400
Topeka, Kansas 66603-3810

FEB 10 1986

Dear Mr. Stumbaugh:

I am enclosing some information concerning the State of Iowa's Crime Victim Reparation Program and specifically about the ability to compensate victims of DWI/DUI.

Chapter 912 of the Iowa Code covers the Iowa Crime Victim Reparation Program. Section 912.1(4) defines a crime as including violations of Section 321.281 which is our statute covering operating while under the influence of alcohol or a drug or while having an alcohol concentration of 13/100 or more. This section further provides that a plea or verdict of guilty of a charge under Section 321.281 or a license revocation under 321.B.13 or 321.B.16 shall be considered by the Department as evidence of a violation of Section 321.281 for the purposes of the Chapter. For your information I have enclosed Sections 321.281, 321.B.13 and 321.B.16 for your review. Also enclosed is a copy of Chapter 17 of the Iowa Administrative Code which is the Administrative Rules covering the Crime Victim Reparation Program. Under Section 680-17.3(3) we have expanded on the definition of a crime to include several items that would evidence violation of Iowa Code Section 321.281.

Please note that in 5 we have provided for a very broad standard that can be used by the Department.

We have found that the inclusion of the provision for compensating victims of drunk drivers is a very useful addition to the Crime Victim Reparation Program. Since our program does not compensate victims who are

otherwise covered by insurance the uninsured motorists provisions of the victims' insurance as well as the insurance of the intoxicated driver can be used to compensate the victim. Our statute also provides for subrogation in case there is a law suit against the operator to cover the medical expenses of the victim.

We have not found a great number of cases involving this particular statute, however, in the cases that we have had we have found the provisions of this Section to be a very beneficial addition to the program.

If, after reviewing the enclosed material, you have any further questions, please feel free to contact me again.

Sincerely,



Carroll L. Bidler, Director
Administrative Services

CLB/jrc

2F

Ruth N. Meserve
KANSAS COALITION FOR
DRUG FREE DRIVING

Kansas

P.O. BOX 195
Donna Bole

REGISTERED
LOBBYIST

913-649-1177

ree Driving

'89

March 6, 1986

Mr. Chairman and Committee Members;
I am Ruth Meserve, Lobbyist for Kansas Coalition for
Drug-Free Driving.

We feel the financial responsibility should be placed on
the drunk driver who has chosen to break the law and endanger
the lives of citizens of the community. We suggest an
assesment of \$5 to \$10 for each convicted drunk driver
through court costs.

The drunk driving crash is sudden, the cause is senseless,
and the pain is deep. Whether the pain is physical or in
the heart, it remains with the victim for the rest of their
life. Surviving victims, including family members, of drunk
driving crashes suffer serious physical, psychological, and
financial damage as a result of their victimization.

Kansas has always been a leader in the protection of its
residents. Twenty states now have compensation laws that
do provide services for victims of drunk driving crashes
including our neighboring states of Colorado, Iowa and
Missouri.

Thank you for your support

Sincerely,

Ruth Meserve
Ruth Meserve, Lobbyist
Kansas Coalition for Drug-
Free Driving

ATTACHMENT F
H. FJSA
3/24/86

FEDERAL AND STATE AFFAIRS COMMITTEE

CHAIRMAN R. H. MILLER

March 24, 1986

TESTIMONY FOR AMENDING SB 700 BY CLINT ACHESON

My motivation for introducing this bill, HB 2927, in the first place goes back to the horrible murder of the Clutter family near Holcomb over 30 years ago. Herb Clutter was a friend of mine and because of that fact it was personally offensive to me that Truman Capote gained fame and fortune through his book "In Cold Blood" by dwelling on the misfortune of this family.

Several other states have already enacted laws similar to HB 2927. After the sensational "Son of Sam" murders several years ago in New York, that state passed a law like this proposal. Minnesota has such a law, as does Arizona, and Missouri passed a law last year. It is my understanding that 22 states now have such laws. It is also my understanding that the laws have been constitutionally challenged on the grounds that they infringe on the First Amendment and that no such challenge has succeeded.

The Congress has enacted such a law following the attempt on the president's life by John Hinckley who indicated he wanted to write a book about it.

The leader of the gang committing the senseless murders in northwest Kansas, about this time last year, allegedly was approached to publish a story about the crime. There have been many others including the so-called rape case in Illinois last year.

It is my hope that the committee will accept this bill as an amendment to SB 700.

ATTACHMENT G

H. F. SA
3/24/86

Testimony by Phil Magathan
on House Bill 2927

I am here today speaking not on behalf of the Kansas Association of Court Services Officers, or as a representative of the Third Judicial Court. I am here today speaking to you as a professional who has been extensively involved with establishing victim services and advocating the need for fair treatment of crime victims by the Criminal Justice System.

I recently attended a national conference on crime victims, in Orlando, Florida, that was underwritten by the U.S. Department of Justice. I was extremely pleased to learn the State of Kansas was one of the early states to pass legislation providing for victim compensation, restitution, and pre-sentence victim impact statements.

) At this conference, The United States President's Task Force on Victims of Crime presented proposed state level legislative recommendations. These recommendations included enactment of legislation to "Prohibit a criminal from making any profit from the sale of the story of their crime. Any proceeds should be used to provide full restitution to the victim(s), pay the expenses of prosecution, and finally, assist the crime victim compensation fund."

As a professional probation officer working with offenders, I can tell you that it does not benefit the rehabilitation of the offender when they gain unjust enrichment from their offense.

In closing, I would encourage favorable passage of H.B. 2927, so that the State of Kansas remains a leader in enacting legislation for the fair treatment of crime victims.

TO: House Judiciary Committee
FROM: Rep. Martha Jenkins
RE: House Bill 2927

House Bill 2927 prohibits convicted persons from making a profit off their crime through publication of their "story". The bill provides that moneys owing to convicted persons for publication of their crimes be paid to the Crime Victims Reparations Board. The Board is then responsible for paying restitution to the victim of the crime; reimbursing the State Board of Indigents' Defense Services for amounts expended on behalf of the defendant and for payment of court costs assessed against the convicted person. Any money left over would be credited to the crime victims reparations fund.

Danny Remetta, one of four responsible for the Colby slayings last February, was approached to publish the story of his crime spree. Reverend Bird of Emporia has already been the subject of a published story concerning the murder of his wife and a fellow parishoner. And just this weekend, Paul Hess, convicted of embezzlement, is attempting to sell his story for a possible movie production to get back on sound financial footing!

Several states have enacted similar laws, the most recent being the State of Missouri. House Bill 2927 is a good way to fund the crime victims reparations fund while at the same time pay restitution to victims or their dependents.

Mr. Chairman, members of the committee, I ask that you consider HB 2927 favorably. Thank you.

ATTACHMENT H
H. FLSA
3/24/86



LOCAL UNION No. 12

International Union of Elevator Constructors

AFFILIATED WITH THE A. F. L. - C

KANSAS CITY, MISSOURI

James H. Chapman Jr.
Business Representative

6301 F. Hill Rd.
Suite
Kansas, Mo. 64131

International Union of Elevator Constructors
Local 12

Office
816-444-0012

An Act relating to elevator safety with penalty provisions for the State of Kansas is long past due. The citizens of the State of Kansas have the right to be protected from injury or even death resulting from an elevator accident because of negligence. High rise office buildings, hospitals, housing for the elderly, schools and plants are some major users of elevators and, as of now, there are no prevailing state wide inspection of these facilities. The State of Kansas is one of the few major populated states in the country that does not have a statewide Comprehensive Elevator Safety Act.

The elevator industry strives for safety but many times shortly after an installation, gates are removed, safety equipment is made inoperative, and electrical safety circuits are jumped out. There are elevator car safeties installed on passengers and freight elevators to prevent runaways or free falls, but, once installed and turn over to the owner they are never again inspected and tested to insure proper operation. It is hard to estimate the number of elevators in the State of Kansas that are in an unsafe condition.

I have heard many people say that we have elevator safety laws, but this is not true. Some municipalities have codes, true, but they are different from city to city or municipality to municipality with no state regulation.

I am sure the question will be raised; what will this law cost the building owner and tenant? Who will profit from this bill? I think the answer is very simple. First, what price do we put on life, limb and mental anguish. Second, the economic answer is, very little. The conscientious and concerned building owner who has made an effort to keep his elevator in safe operating condition, would pay a small fee to have the state or authorized representative of the state inspect his elevators. This inspection would also serve as a check for the owner to ensure that whoever is servicing his elevators is doing so in a judicious manner. The cost of this law to the elevator owner will be further minimized by the stabilizing effect it will have on elevator liability insurance. Finally, all the citizens of the State of Kansas will benefit by this elevator safety law in the knowledge that safe vertical transportation will be provided for all.

We cannot justify elevator safety by chance.

ATTACHMENT I

H. FJSA
3/24/84

HOUSE BILL No. 2918

by Representatives Cloud, DeBaun, Dyck, Fox, Friedeman, Goossen, Guldner, King, R.H. Miller, Neufeld, Rolfs, Sand, Smith and Spaniol

2-12

H. FLSA ✓
3/24/86

ATTACHMENT J

018 AN ACT concerning civil procedure; relating to certain liability
019 claims; placing limitations on attorney fees charged in con-
020 nection therewith; prescribing the form of judgment to be
021 entered for certain damages awarded therefor.

022 *Be it enacted by the Legislature of the State of Kansas:*

023 Section 1. As used in this act:

024 (a) "Contingent fee arrangement" means an agreement for
025 legal services of one or more attorneys, including any associated
026 or forwarding counsel, under which compensation, contingent in
027 whole or in part upon the successful accomplishment or dispo-
028 sition of the subject matter of the agreement, is to be in an
029 amount which either is fixed or is to be determined under a
030 formula.

031 (b) "Future damages" means damages to be incurred after a
032 settlement agreement or judgment is entered.

033 (c) "Liability claim" means any claim for damages arising out
034 of the tortious conduct of another, including any product liability
035 claim as defined by K.S.A. 60-3302 and amendments thereto.

036 (d) "Net amount recovered" means the gross amount re-
037 covered under a settlement agreement or judgment, including
038 amounts recovered for interest or court costs, less any amounts
039 recovered for expenses or disbursements connected with en-
040 forcement of the claim or prosecution of the action on the claim.

041 (e) "Person" means any individual or entity.

042 (f) "Structured settlement" means a plan for the payment of a
043 settlement or judgment which provides for the payment of
044 amounts to be received by the claimant on an installment basis,
045 whether by direct periodic payments or by payments under an

0046 annuity contract.

0047 Sec. 2. (a) Except as otherwise authorized by K.S.A. 44-536
0048 and amendments thereto, in any matter in which a person asserts
0049 a liability claim, a contingent fee arrangement shall not provide
0050 for a fee which exceeds—

0051 ~~(1) Fifty percent of the first \$200,000 of the net amount~~
0052 ~~recovered; and~~

0053 ~~(2) fifteen percent of that portion of the net amount recovered~~
0054 ~~which exceeds \$200,000.~~

0055 ~~(b) In any matter in which a person asserts a liability claim,~~
0056 ~~any portion of such person's attorney fees which is based on a~~
0057 ~~structured settlement shall be payable in installments at the time~~
0058 ~~of, and in proportion to, payments received under the structured~~
0059 ~~settlement.~~

0060 ~~(c)~~ No contingent fee arrangement shall be enforceable un- (b)
0061 less reduced to writing and signed by the parties to it.

0062 Sec. 3. (a) In any action in which a person asserts a liability
0063 claim, the judge shall require the jury to return special verdicts
0064 in the form of special written findings upon the issues of the
0065 amount of damages incurred for future losses and the period of
0066 time during which it is anticipated that such losses will be
0067 incurred.

0068 ~~(b) In any matter in which a person asserts a liability claim,~~
0069 ~~any amount recovered for future damages under a settlement~~
0070 ~~agreement or judgment shall be paid in the form of a structured~~
0071 ~~settlement over the period of time during which it is anticipated~~
0072 ~~that the future damages will be incurred.~~

0073 Sec. 4. The provisions of this act shall apply only to claims
0074 arising on or after July 1, 1986.

0075 Sec. 5. This act shall take effect and be in force from and
0076 after its publication in the statute book.

the following percentages of the net amount recovered unless, after hearing, the court finds unusual circumstances or expenses which warrant greater fees:

(1) 33 1/3% of the first \$250,000;

(2) 25% of the next \$250,000;

(3) 20% of the next \$500,000; and

(4) an amount set by the court for any portion exceeding \$1 million.

(b) In any action in which a person recovers future damages for a liability claim, the verdict shall not reduce such damages to their present value and the jury shall be instructed to that effect. The court shall reduce such damages to their present value and shall enter judgment, with respect to such damages, for an annuity contract which has a present value equal to the present value of such damages and which, to the greatest extent possible, will provide for the payment of benefits over the period of time specified in the verdict in the amount awarded by the verdict for future damages.

THE CITY OF WICHITA

OFFICE OF PUBLIC AFFAIRS

DATE March 21, 1986

TO Members of House, Federal & State Affairs Committee

FROM Judith E. Anderson, Intergovernmental Affairs Officer

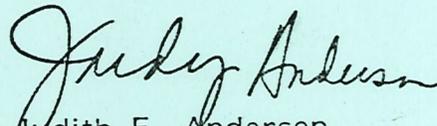
REGARDING: House Bill 3085
(Elevator Inspection)

The City of Wichita does not agree that municipalities or political subdivisions which qualify in the Bill should be regulated or participate in the fee system. We do agree that areas which do not have an active inspection program, current standards or qualified personnel should participate in the program.

We specifically object to the following section as stated herein:

Section 7 & 13 - Jurisdictions which qualify to do their own inspection should establish their own fees to cover inspections. None of the fee should go to the Board. Most jurisdictions have adequate inspection and the majority of elevators are in those locations. To require them to pay fees to the Board creates a burdensome bureaucracy which is not necessary. Fees from areas which do not have adequate inspection and fees for certification should cover all costs of the Board.

Respectfully,



Judith E. Anderson
Intergovernmental Affairs Officer
City of Wichita

JEA:kl

ATTACHMENT K

H. FISA
3/24/86