

Approved: 2-23-93
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 10:05 a.m. on February 10, 1993 in Room 514-S of the Capitol.

All members were present except: All present.

Committee staff present: Michael Heim, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Sue Krische, Committee Secretary

Conferees appearing before the committee:

T.C. Anderson, Kansas Society of CPA's
William Grant, Staff Attorney, Kansas Bank Commissioner
Charles Henson, General Counsel, Kansas Bankers Association
Lori Callahan, KaMMCO
Pat Hubbell, Kansas Railroad Association
Jim Clark, KCDAA
George Barbee, Kansas Association of Financial Services

Others attending: See attached list

SB 125 - Liability of officers and directors of certain financial institutions.

The Committee continued the public hearing on SB 125 begun on February 5. T.C. Anderson, Kansas Society of CPA's, testified in support of SB 125 and, further, expressed concern that federal agencies in lawsuits now are attempting to hold CPA's to a higher standard than the duty of professional responsibility (Attachment 1). He asked that the Committee consider an amendment to SB 125 that would prevent the holding of CPA's performing accounting, auditing and other services for financial institutions to a greater duty of professional responsibility than required by their professional standards. Louisiana passed such legislation in 1991.

William Grant, Staff Attorney, Kansas Bank Commissioner, appeared to respond to questions and stated the Bank Commissioner has no objections to SB 125. It was noted that the bill raises the standard of negligence for plaintiff's receiving damages in a suit by a depositor against the financial institution.

Charles Henson, General Counsel, Kansas Bankers Association, stated by raising the standard of liability of bank directors, banks and financial institutions will be able to attract qualified directors. He emphasized this is the importance of this legislation.

Chairman Moran closed the hearing and stated action on the bill would be taken up at another meeting.

Turning to final action on SB 124, Senator Bond moved to delete subsection 6 on page 2, lines 20-23 of SB 124. Senator Rock seconded. Motion carried. Senator Bond moved to delete the sentence in lines 2-4 on page 2 of SB 124 beginning "A defendant" and to recommend SB 124, as amended, favorably for passage. Senator Ranson seconded. Motion carried.

Chairman Moran announced the assignments of SB 175 and SB 221 to the Civil Law Subcommittee, SB 208 and SB 229 to the Criminal Law Subcommittee and SB 211 and SB 213 to the Family Law Subcommittee.

INTRODUCTION OF BILLS

Lori Callahan, Kansas Medical Mutual Insurance Company, requested introduction of a bill that would clarify that the itemization of damages was never intended to require juries to consider damages for which there was no evidence (Attachment 2). Senator Bond moved introduction of the bill. Senator Harris seconded. Motion carried.

Pat Hubbell, Kansas Railroad Association, requested introduction of a bill which provides that if the judgment in a fire damages case against the railroad is less than an originally tendered offer, the railroad will not be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:05 a.m. on February 10, 1993.

required to pay attorney fees following the litigation (Attachment 3). Senator Martin moved introduction of the bill. Senator Bond seconded. Motion carried.

Jim Clark, KCDA, requested introduction of a bill which raises the penalty on third offense DUI (Attachment 4). Senator Harris moved introduction of the bill. Senator Emert seconded. Motion carried.

George Barbee, Kansas Association of Financial Services, requested introduction of a bill that provides for the collection of attorney fees on delinquent accounts (Attachment 5). Senator Emert moved introduction of the bill. Senator Ranson seconded. Motion carried.

The meeting was adjourned at 11:00 a.m. The next meeting is scheduled for February 11, 1993.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-10-93

[illegible]



Kansas Society of Certified Public Accountants

400 CROIX / P.O. BOX 5654 / TOPEKA, KANSAS 66605-0654 / 913-267-6460 / FAX 913-267-9278

February 10, 1993

Chairman Moran, members of the Committee.

My name is T. C. Anderson, Executive Director of the Kansas Society of Certified Public Accountants.

On behalf of our members who serve on the Boards of Kansas financial institutions we offer our support to SB 125.

In addition this discussion allows us to express a concern Kansas CPAs have which extends beyond the scope of officer and director liability.

Lawsuits are surfacing across the country in which federal agencies are attempting to hold CPAs and other professionals to a higher standard than the duty of professional responsibility established for a particular profession.

I would hope the Committee, in its deliberations of SB 125 would give consideration to an amendment or a companion bill which would prevent the holding of CPAs performing accounting, auditing, consulting and other services to financial institutions doing business in Kansas to a greater duty of professional responsibility than required by their professional standards. Louisiana passed such legislation in 1991.

Briefly, let me explain the need for this legislation.

One major provider of CPA liability insurance has shared claim information with me. They report six possible actions against Kansas CPA firms are on file relative to financially troubled financial institutions. No claim has been made against the insured CPA firms at this time and we don't know if any will. We do know, however, in five of the six instances the CPAs had issued a going concern audit report or disclaimed an opinion.

SJ
2-10-93
Attachment 1

In one case the going concern report had been issued for seven years prior to the institution being placed under the control of the FDIC. In another case five years; three years in another; and in two instances one year. However, those were first time audits.

The sixth possible action resulted from a situation where the Kansas firm did the audit for four years and issued an unqualified opinion. The out-of-state firm which replaced our Kansas CPAs issued the same type of report for three more years before the OTS began to investigate.

In addition, those Kansas CPA firms doing financial institution audits are finding their liability insurance costing more or in some cases non-existent.

A liability plan administered by Rollins Burdick Hunter imposes a 15 to 25 percent surcharge on the premium to those firms doing financial institution audits and the plan administered by Jamison and Company excludes troubled financial institutions from coverage.

If our firms violate Generally Accepted Auditing Standards or Generally Accepted Accounting Principles, they clearly should be held accountable. If they don't, they should not. Banking regulators almost always bring their cases against professionals under state law. Our request would make it clear that if you're covered by a statute on day one, someone can't come back on day 200 and say you committed malpractice based on a duty of care you didn't know you had.

This provision hopefully will prevent regulators from holding CPAs responsible for activities that had nothing to do with providing accounting services to financial institution clients. Just maybe when the FDIC, RTC or OTS want to blame professionals for business deals that went bad, they'll think twice if its in Kansas.

1-2

Proposed Amendment To SB 125

Unless otherwise agreed in writing, certified public accountants licensed in accordance with Article 3 of Chapter 1 of the Kansas Statutes Annotated and their firms, officers, directors, agents, servants, and employees, while acting in the course and scope of providing accounting, auditing, consulting and other professional services to financial institutions authorized to do business or doing business in the State of Kansas, shall have no greater duty of professional responsibility to the institution, its shareholders, depositors, customers, creditors, or insurers than that required of certified public accountants by Generally Accepted Accounting Principles ("GAAP") and Generally Accepted Auditing Standards ("GAAS").

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY
AND
KANSAS MEDICAL INSURANCE SERVICES CORPORATION

TO: Senate Judiciary
FROM: Lori Callahan, General Counsel
RE: Itemized Jury Verdicts
DATE: February 10, 1993

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic, physician-owned, professional liability insurance company formed by the Kansas Medical Society pursuant to legislation enacted by the Kansas Legislature. KaMMCO currently insures over 1,000 Kansas physicians.

In 1987, in an attempt to collect greater data in order to track jury verdicts, the Kansas Legislature enacted the itemized jury verdict statute, K.S.A. 60-249a. Since that time, this statute has been interpreted by the courts as mandating the itemization of damages for which there has been no evidence presented. This proposed bill would clarify that the itemization was never intended to require juries to consider damages for which there was no evidence.

KaMMCO would, therefore, request the Senate Judiciary Committee introduce this bill.

60-249a. Itemized verdict, personal injury actions; jury instructions. ~~(a) In any action for damages for personal injury, the verdict shall be itemized by the trier of fact to reflect the amounts, if any, awarded for:~~

~~(1) Noneconomic injuries and losses, as follows:~~

~~(A) Pain and suffering,
(B) disability,
(C) disfigurement, and any accompanying mental anguish;~~

~~(2) reasonable expenses of necessary medical care, hospitalization and treatment received; and~~

~~(3) Economic injuries and losses other than those itemized under subsection (a)(2).~~

~~(b) Where applicable, the amounts required to be itemized pursuant to subsection~~

~~(a) shall be further itemized by the trier of fact to reflect those amounts awarded for injuries and losses sustained to date and those awarded for injuries and losses reasonably expected to be sustained in the future.~~

~~(c) In any action for damages for personal injury, the trial court shall instruct the jury only on those items of damage upon which there is some evidence to base an award.~~

History: L. 1987, ch. 224, § 1; July 1.

(a) In any action for damages for personal injury, the jury's instructions and the itemized verdict form shall refer only to those items of damage upon which there is some evidence to base an award.

if the jury finds for the plaintiff

the following items of damage but only if there is some evidence upon which to base an award for that item of damage

and reasonable expenses of necessary medical care, hospitalization and treatment reasonably certain to be needed in the future

past and future

The jury shall be instructed that if it finds for the plaintiff that it shall consider the following in awarding damages, but only if there is some evidence upon which to base an award for that item of damage

(1) For noneconomic losses:

(A) Pain and suffering;

(B) Disability; and

(C) Disfigurement and accompanying mental anguish.

(2) For past economic losses:

(A) Past lost wages or income; and

(B) Any other valid past economic injuries and losses.

(3) For future economic losses:

(A) Future lost wages or income; and

(B) Any other valid future economic injuries and losses that may reasonably occur.

2-2

KANSAS RAILROAD ASSOCIATION

800 JACKSON

SUITE 1120

PATRICK R. HUBBELL

TOPEKA, KANSAS 66612

913-357-3392

AN ACT concerning fire damages by the railroad; relating to the payment of attorney fees; ~~repealing~~ amending K.S.A. 66-233 and repealing the existing section.

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

Section 1. K.S.A. 66-233 is hereby amended to read as follows: 66-233. In all actions commenced under this act, ~~if-the-plaintiff-shall-recover,--there-shall-be-allowed-him-by-the-court-a-reasonable-attorney's-fee,--which-shall-become-a-part-of-the-judgment~~ in which judgment is rendered against any railroad company for damages by fire caused by the operating of such railroad if it appears from the evidence that such company has refused without just cause or excuse to pay the full amount of such damages, the court in rendering such judgment shall allow the plaintiff a reasonable sum as an attorney fee for services in such action, including proceeding upon appeal, to be recovered and collected as a part of the costs. When a tender is made by such railroad company before the commencement of the action in which judgment is rendered and the amount recovered is not in excess of such tender no such costs shall be allowed.

Section ~~1~~ 2. K.S.A. 66-233 is hereby repealed.
Sec. ~~2~~ 3. This act shall take effect and be in force from and after its publication in the statute book.

SJ
2-10-93
Attachment 3

Jimi Clark

Section 11 K.S.A. 8-1567 is hereby amended to read as follows:
8-1567 (a) No person shall operate or attempt to operate any vehicle within this state while

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .10 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .10 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge

(d) Violation of this section is a misdemeanor. Upon a first con-

except upon a third or subsequent conviction.

Every person convicted of violating subsection (a) on or after July 1, 1993, upon a first conviction, shall be guilty of a class B nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a second conviction of such subsection, shall be guilty of a class A nonperson misdemeanor. Every person convicted of violating subsection (a) on or after July 1, 1993, upon a third or subsequent conviction of such subsection, shall be guilty of a severity level 9, person felony.

Attachment 4
2-10-93
SJ

Barbee

Session of 1991

HOUSE BILL No. 2380

By Committee on Economic Development

2-18

8 AN ACT concerning attorney fees; relating to allowance thereof in
9 civil actions to recover amounts on certain accounts, instruments
10 and contracts; also repealing K.S.A. 58-2312.

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

12 Section 1. In any civil action to recover on an open account, a
13 statement of account, account stated, revolving account, note, bill,
14 negotiable instrument, contract for a line of credit or contract relating
15 to the purchase or sale of goods, wares or merchandise or for labor
16 or services, unless otherwise provided by law ~~or~~ the contract which
17 is the subject of the action, the prevailing party shall be allowed
18 reasonable attorney fees to be set by the court and to be taxed and
19 collected as costs.

20 Sec. 2. K.S.A. 58-3212 ~~is~~ hereby repealed.

21 Sec. 3. This act shall take effect and be in force from and alter
22 its publication in the statute book.
23

16a-2-507 and

if

provides for attorney fees
to be awarded in addition
to the amount of the judgment

together with any court costs assessed.

16a-2-507 and

are

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Attachment 5