

1987SB 511 By Judiciary ACTIONS

Revises provisions governing comparative negligence. (BDR 3-2191)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

05/11 78 Read first time. Referred to Committee on Judiciary. To printer.
05/12 79 From printer. To committee.
05/12 79 Dates discussed in Committee: 5/13 (A&DP)
05/14 81 From committee: Amend, and do pass as amended.
05/15 82 (Amendment number 798.)
05/15✓ 82 Read second time. Amended. To printer.
05/18 83 From printer. To engrossment.
05/18 83 Engrossed. First reprint!✓
05/18 83 Placed on General File.
05/18✓ 83 Read third time. Passed, as amended. Title approved. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
05 3 83 In Assembly!✓
0 83 Read first time. Referred to Committee on Judiciary. To committee.
05/18 83 Dates discussed in committee: 6/11 (DP)
06/11 103 From committee: Do pass.
06/11 103 Placed on Second Reading File.
06/11 103 Read second time.
06/12✓ 104 Read third time. Passed. Title approved. (41 Yeas, 0 Nays, 1 Absent, 0 Excused, 0 Not Voting.) To Senate.
06/13 105 In Senate.
06/13 105 To enrollment.
06/15 107 Enrolled and delivered to Governor.
06/22 0 Approved by the Governor.
06/23 0 Chapter 709.
Effective July 1, 1987.

(* = instrument from prior session)

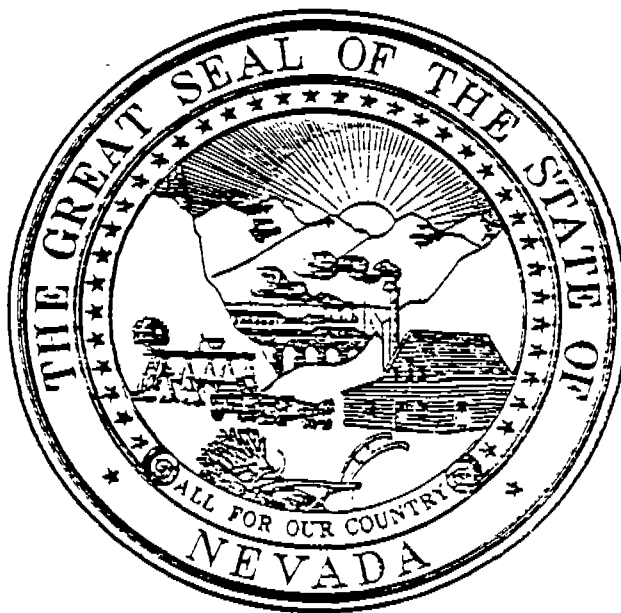
1/22/87 Joint Comte on Judiciary is included with this history as the issue of tort reform and comparative negligence is discussed.

NEVADA LEGISLATURE

SIXTY-FOURTH SESSION

1987

SUMMARY OF LEGISLATION



PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

NEVADA
LEGISLATIVE COUNSEL BUREAU
RESEARCH LIBRARY

examine the person. After the examination, the physicians' report is made in an open court hearing. If there is no clear and convincing evidence that the person is mentally ill, the court is required to order his discharge. If there is clear and convincing evidence that the person is mentally ill, he is committed to custody as currently provided for by state law. The court is required to issue its findings within 90 days after the defendant is acquitted.

S.B. 355 (chapter 222)

Senate Bill 355 authorizes the supreme court law librarian to charge a fee for persons who use any computerized service for legal research to which the library subscribes.

S.B. 379 (chapter 259)

Senate Bill 379 extends to marriage and family therapists on behalf of their clients the privilege to refuse to testify or otherwise disclose certain information.

The client also is given the privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications made while under diagnosis or treatment by a marriage and family therapist. Exceptions to these privileges include communications indicating the client intends to commit a crime, investigations or proceedings involving the welfare of the client or his minor children, proceedings to hospitalize the client for mental illness or proceedings in which the client's treatment is an element of a claim or defense.

S.B. 481 (chapter 330)

Senate Bill 481 clarifies that the ability to object under certain circumstances to the admissibility of an affidavit of an expert witness regarding the presence of alcohol or a controlled substance in the blood or urine of a defendant exists only in a criminal proceeding.

The bill also provides that, in counties with less than 25,000 population, if 3 judicial days of adjournment are insufficient to receive expert testimony in these types of cases, the judge or justice of the peace may extend the period of adjournment for a period not exceeding 10 days.

S.B. 511 (chapter 709)

Senate Bill 511 revises certain provisions in state law which govern comparative negligence in actions to recover damages for death or injury to persons, or for injury to property. If one of the defendants in such an action settles with the plaintiff before the entry of judgment, the comparative negligence of that defendant and the amount

of settlement must not be admitted into evidence or considered by the jury. The judge is required to deduct the amount of that settlement from the net sum recoverable by the plaintiff pursuant to the verdicts.

These provisions do not, however, affect the joint and several liability, if any, of the defendants in an action based upon strict liability, an intentional tort, a spillage of toxic or hazardous materials, concerted acts of the defendants, or injuries related to products manufactured, distributed or sold in Nevada.

S.B. 554 (chapter 536)

Senate Bill 554 revises the designation of household goods that are exempt from execution in the enforcement of judgments. The bill provides that "necessary household goods" are as defined in the Code of Federal Regulations (CFR) existing on January 1, 1987.

A.B. 110 (chapter 271)

Assembly Bill 110 authorizes the court to set concurrent sentences for a subsequent felony offense committed by a person on probation. The measure also removes a defendant's ability to waive a presentence investigation. It further provides that no presentence investigation and report on the defendant is necessary if the department of parole and probation has completed one within the previous 5 years.

A.B. 129 (chapter 760)

Assembly Bill 129 provides that the presence of a defendant is not required at the arraignment or any preceding stage of a trial if the court has provided for the use of a closed-circuit television to facilitate communication. In this situation, the bill authorizes members of the news media to observe and record the proceeding from both locations unless the court specifically provides otherwise.

In a related matter, the bill requires that the court determine that a defendant was fully aware of his applicable constitutional rights when he gave his consent to permit arraignment, plea, trial or imposition of sentence in his absence.

A.B. 171 (chapter 255)

Assembly Bill 171 clarifies the monetary amount paid for travel expenses to witnesses in state courts. The bill specifies a 19-cents-per-mile payment for any witness appearing before a court in the county in which he resides.

MINUTES OF THE JOINT MEETING
of the
SENATE COMMITTEE ON JUDICIARY
and the
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-fourth Session
January 22, 1987

The joint committee on judiciary was called to order by Senator Sue Wagner at 9:34 a.m. on Thursday, January 22, 1987, in room 131 of the legislative building, Carson City, Nevada. Exhibit A is the Meeting Agenda, Exhibit B is the Attendance Roster.

SENATE MEMBERS PRESENT:

Sue Wagner, Chairman
Erik Beyer, Vice Chairman
Thomas J. Hickey
Charles M. Joerg
Herbert M. Jones
Mike Malone
Joe Neal

ASSEMBLY MEMBERS PRESENT:

Robert M. Sader, Chairman
Myrna Williams, Vice Chairman
Matthew Q. Callister
John C. Carpenter
John DuBois
Robert E. Gaston
Ken Haller
Bill Kissam
David D. Nicholas
Gene T. Porter
Gaylyn J. Spriggs
Vincent L. Triggs
Bob Thomas

MEMBERS ABSENT: None

STAFF MEMBERS PRESENT:

Bob Erickson, Director Research Division
Don Williams, Principal Research Analyst
Brian Davie, Senior Research Analyst
Lorne Malkiewich, Principal Legislative Counsel

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Following roll call, Senator Wagner explained the purpose of the meeting was basically a briefing to inform both committees on the issue of tort reform, an issue to be handled by the committees in a joint fashion. She said the intention was to have the bills introduced in both houses and at that point discussion would take place in joint hearings. This was not expected to occur before the deadline informally set by both committees for introduction, February 20th. Senator Wagner encouraged each member of both houses to submit to her and Mr. Sader a list of bills pertaining to the issue of tort reform to give them a better idea of (1) what to expect and (2) so the bill drafters could proceed as quickly as possible. She further stated that only after the bills were all submitted would they have joint hearings on the issue.

Bob Erickson, Director of the Research Division for the Legislative Counsel Bureau, was then introduced by Senator Wagner. She gave a brief biographical sketch.

Senator Wagner then introduced Don Williams, Principal Research Analyst and gave a brief biographical sketch.

Also introduced was Brian Davie, Senior Research Analyst who outlined his professional background.

Senator Wagner then asked the research staff for their presentation.

Mr. Lorne Malkiewich, principal legislative counsel, was introduced by Mr. Williams who explained that Mr. Malkiewich was in attendance to answer any technical legal questions regarding Nevada's tort laws.

Mr. Williams defined two legislative reports completed late 1986 relating to the issue of tort laws. First was the report of the Legislative Commission's subcommittee studying medical malpractice insurance, released August, 1986. The second report was the Counsel Bureau Research Division report on liability insurance presented to the Legislative Commission in October, 1986. Both reports had been mailed to the members of both committees and additional copies were made available at the secretary's desk.

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He stated the meeting was to be a two-part presentation to cover the basics of tort reform, the civil litigation process, major tort reform proposals in Nevada, and actions taken by other states in those areas.

An overhead projection titled "History of a Civil Suit" (Exhibit F) was shown. Mr. Williams then read from the report "Legislative Counsel Bureau Staff Presentation on Tort Reform" (Exhibit C). Mr. Williams called attention to an area not covered within the report, the issue of immunity. He explained that immunities are defenses to tort liability which are given to entire groups or classes of individuals or entities in situations or under circumstances where public policy considerations mandate special attention for the individual activity or entity in question at the expense of those who are injured by its activities.

He explained that most common immunity was the concept of sovereign immunity. This is actually governmental immunity and means the government may not be sued in tort. He added that sovereign immunity has slowly eroded over the years because each level of government has enacted laws establishing its consent and ordinarily certain public officers and employees of other levels of government would not be held liable for torts committed within the scope of their official duties unless their behavior extended beyond the scope of their duties. The nature of an employee's or officer's authority would be the determining factor in deciding the extent of his or her immunity.

He went on to say the scope of tort liability of public officers and employees is largely governed by statute. The applicable statute in Nevada was in Chapter 41 of NRS, setting a \$50,000 limit on actions against government bodies.

Mr. Williams then continued reading from Exhibit C. Senator Neal interjected a question concerning the overhead chart, asking if allowances should not have been made for negotiated settlement. Mr. Williams explained there would be a time where this would occur after the court filing. Senator Neal expressed his understanding of the problem, as presented, was essentially that there were three players, an attorney, the insurance company and possibly those individuals not having

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insurance. He further stated his understanding was that when insurance companies were involved, chances of a negotiated settlement were more likely to occur than going through the court. Mr. Williams suggested the next two charts would shed some light on this question.

The next chart shown by Mr. Williams was titled "General Jurisdiction Courts Torts as a Percent of Civil Findings (Exhibit G). He continued reading from Exhibit C. Mr. Williams called attention to the penultimate paragraph on page 9 as an answer to Senator Neal's question. A statistical chart on tort actions was shown (Exhibit H).

Mr. Williams continued with narrative from the report dealing with the lack of data regarding tort action and its effects. In answering Mr. Triggs' request for clarification, Mr. Williams stated that when requested for information of this nature, although all courts responded, most said they had neither the staff nor resources to compile the past data.

Mr. Gaston questioned the problem of available staff. He asked if there had been response from the offices as to whether once the compilations of past data were completed, would it be possible to keep future data maintained.

Mr. Williams replied it was his understanding that with the effectiveness of the new law enacted last session, the various courts could now maintain the data if they were given the resources to compile the backlog.

Mr. Gaston asked if research had an estimate of what would be necessary to compile the backlog. Mr. Williams suggested the National Center for State Courts as an organization able to accomplish a project of this nature.

Senator Neal asked if the percentage figure for other dispositions as indicated on the chart for negotiated settlement held true for the state of Nevada. Mr. Williams indicated he did not know the answer to this question. Senator Neal then asked if research has seen any information explaining the high incidence of negotiated cases as opposed to trial cases.

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Mr. Williams said he would have to base his answer on an article in an insurance industry publication written by an attorney saying he felt one of the problems was that many insurance companies, corporations, etc., settle cases because their attorneys do not want to go to trial for various reasons. Mr. Williams offered to provide this article to the committee.

In response to Senator Neal's question, Mr. Sader offered paraphrase testimony made on this topic in the last couple sessions. Regarding the settlement issue, he felt there was no inconsistency in the state of Nevada from the previous testimony on settlements as compared to national figures in that a high percentage of cases are settled in this state as in other states. Whether the figure would be exactly 88 percent, no figures were available. As to the question of why cases are often settled, in addition to the answer given by Mr. Williams, was that lawsuits are often expensive, they are emotionally draining for all parties, there was an attendant worry about the verdict, and therefore, settlement was often opted for in place of trial.

Senator Malone expressed an understanding that in the past there had been only three cases settled by jury trial. He referred to information coming from the last session.

Mr. Sader corrected this saying that many cases had been determined by juries. He suggested Senator Malone's reference was to the number of medical malpractice verdicts or settlements over \$1 million dollars.

Mr. Gaston brought forward another statistic citing many cases settled prior to filing a complaint. Mr. Williams concurred with this comment but said their team had not researched that aspect of the issue.

Mr. Williams concluded with narrative from page 10 (Exhibit C). He then introduced Brian Davie who would review the report entitled "Variations on Tort Reforms Among the States" (Exhibit D).

Mr. Carpenter asked Mr. Williams for comment on whether there was a record of any cases being settled with no damages or if

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most were settled with monetary damage. Mr. Williams was not certain if this information was available but said he would check on it.

Mr. Carpenter then asked if most insurance companies were inclined to accept settlement because there was a threat to file a claim. Mr. Williams had nothing readily available to answer the question.

Mr. Porter asked in what way research had arrived at the particular four subjects they covered. Mr. Williams responded that they were submitted by the state-wide coalition in answer to the request by research for different proposals that could be presented to the legislature. Mr. Sader added that Senator Wagner and he had directed the research staff to address those particular four proposals specifically because they had come up so frequently.

Mr. Davie then presented an overview of the direction of his report (Exhibit D) and read from the report. He reported the main source of his information was derived primarily from the National Conference of State Legislatures, the analyses they have been doing and review of a variety of reports. He said there was a great deal of information available, and what research he had on hand was available to any committee member. He reported there were over 1400 bills introduced in state legislatures during 1986 on this issue and the outlook was for as many or more this year.

Narrative of the report continued.

In response to a question from Senator Neal regarding the new rule, Mr. Malkiewicz said that in Nevada there was comparative negligence and also a small limitation on joint and several liability. He reported that the plaintiff is not allowed to recover more than the proportional share against a defendant who is less negligent than the plaintiff, i.e., as long as the plaintiff is less negligent than all the defendants, the joint and several liability rule applies and he may go after any of them for the entire amount. It is then up to the defendants, among themselves, to negotiate fair share contributions.

Further, comparative negligence also provides that a plaintiff's recovery is reduced by his percentage of

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negligence, i.e., if the plaintiff is 20 percent negligent and has a million dollars in damages he only recovers \$800,000. Mr. Malkiewicz said the trier of fact would assess the percentages and this may not be developed in terms of the negotiated settlements.

Another aspect of Nevada's comparative negligence statute Mr. Sader felt was important was that if one was 51 percent or more negligent for his own injury, he could recover nothing.

Mr. Thomas questioned if this applied to personal injury only or if it also applied to product liability. Mr. Malkiewicz replied that comparative negligence does not apply to strict product liability and that various states had applied it, but his understanding of Nevada law, at this time, was that it did not. However, he was not certain how a court would deal with a case where the negligence of one defendant and case of strict product liability against another defendant would be apportioned. He also stated the negligence of the plaintiff will not reduce his recovery in the case of product liability. He felt that joint and several did apply in an instance where the manufacturer versus the distributor. Mr. Sader said the theory was very complicated when considering product liability because of the concepts of strict liability and concepts of negligence as well. In a product liability case, he said if someone is injured and the jury finds for the plaintiff on the issue of negligence, comparative negligence then is operative, as in all negligence cases.

Mr. Davie continued reading from the report on matters of joint and several liability, variations and actions taken by the various states.

Mr. Gaston asked Mr. Davie if a statistical analysis had been made regarding those states involved in joint and several liability statutes regarding the effect on compensation. Mr. Davie replied that this was brought up later in the report. He said most states enacting tort reforms have been so recent there is not a good body of evidence to provide conclusive results.

Senator Hickey questioned limitation on the data and asked about (1) dollar awards and how the percentage of "probate" compares on a national basis; and (2) the amount of insurance

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(percent) this state represents nationally. His understanding of the real issue was that this was a national and international problem and how did Nevada fit into that picture. He asked if research had those figures.

Mr. Davie replied that in previous research and conversation with the insurance commissioner it was indicated that the extent of insurance written in Nevada accounted for approximately .4 of one percent of the national total so that the market in Nevada was not significant compared with the nation as a whole.

Mr. Gaston said he felt the crux of the intent was to bring the victim to a whole and productive life. He requested this committee to see if these statistics were available because in his view they were critical.

Mr. Davie replied he did not think there were studies that would completely answer Mr. Gaston's question. He then continued in narrative of the report.

Senator Neal interjected that as he now understood it, the committee's function would be to work and discuss the issues with the lawyers and the insurance companies. He felt that in order for him to make a proper judgment as to where to place certain restrictions, he would need to obtain information relating to Nevada insurance companies as to where they obtain their money. He said it appeared to him their funds are obtained from premiums and investments and there is a reserve fund from which monetary damages are paid. He asked for information on what the reserve funds are and what has been paid out in the past three or four years.

Mr. Sader replied that the Insurance Commissioner was in attendance and would be able to answer Senator Neal's questions on statistics in the State of Nevada.

Senator Neal restated his understanding that the only thing at issue in his mind was joint and several liability. The balance, he felt, fell within negotiation with the insurance companies and the lawyers. He again asked for the statistical information either from the insurance commission or alternatively, he would research it himself.

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Mr. Sader noted there was not enough time to hear from Mr. Gates and he would be asked to return for the joint meeting on Friday, January 23rd. Senator Wagner asked that Mr. Davie complete his presentation and suggested the meeting be continued on Friday beginning at 9:00 a.m. in room 131.

Mr. Davie corrected an omission in that South Dakota was not shown in the report under states that have noneconomic damages. He reported South Dakota has a \$1 million dollar cap on medical malpractice awards including all recoverable damages. He pointed out the innovative formula used by the state of Washington. He then continued with narrative on page 11. It was pointed out regarding collateral source that since Nevada did not have a collateral source rule the system could be called discretionary since a judge or jury could apply it in this manner.

Chairman Sader interjected comments and corrections regarding the first paragraph of the summary: for the collateral source rule, the state of Nevada does include workmen's compensation and there is a state statute requiring pay back of any workmen's compensation and the jury has to be so informed. He said while Mr. Davie's report was generally correct, for Nevada specifically, it was not correct. Secondly, in the collateral source area, another aspect important to understand is the subrogation rights of health insurance or other providers of collateral sources which may arise. This means that if the liability carrier is required to pay for a source from which the victim has already been compensated, that collateral source sometimes has subrogation rights to collect that money. Therefore, the real issue is if there was double recovery or not.

Mr. Malkiewich clarified the issue stating that usually when attorneys referred to the collateral source rule, they mean the rule which prohibits admission of evidence of insurance. In that sense Nevada did have a collateral source rule allowing admission of that evidence of insurance. As such, technically, Nevada has that rule, if it is stated as being the rule which excludes evidence of collateral sources.

Mr. Triggs asked if in this state workmen's compensation must be included and yet that information would not be revealed to the jury. Chairman Sader replied that this was an exception

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to the rule that Mr. Malkiewich recited in that there was the requirement that the jury be informed of workmen's compensation claims and also the requirement to repay the workmen's compensation carrier.

Mr. Malkiewich added the agreement between the insurer and the insured may provide that the insurer is subrogated to his rights and can recover part of that payment.

Mr. Davie continued his narrative on page 15. He amplified paragraph 3 regarding tort awards compensating plaintiffs for costs incurred. He said in the state of Nevada there was no law that specifically prohibited or required periodic payments.

Senator Wagner asked that the report be finished in the interest of time and Mr. Davie briefly concluded his review. Senator Hickey requested the study of Kansas and Wisconsin regarding the reduction in insurance rates be provided to the committee. Mr. Davie said he would make that report available.

Senator Wagner adjourned the meeting at 10:57 and stated it would be continued on Friday, January 23rd at 9:00 a.m.

RESPECTFULLY SUBMITTED:

Iris Bellinger, Committee Secretary

The following Exhibits have not been reproduced and made a part of committee members' minutes, however, they are available as attachments with the original minutes in the library:

EXHIBIT K - Memorandum to Commissioner David Gates from John Simmons, dated January 12, 1987, regarding Medical Legal Monthly Report.

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EXHIBIT L - Study of Insurance Against Medical Malpractice,
Legislative Counsel Bureau Bulletin No. 87-18.

EXHIBIT M - Report to Nevada's Legislative Commission on The
Liability Insurance Issue from the Research Division of the
Legislative Counsel Bureau.

MINUTES OF THE
JOINT SENATE AND ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-Fourth Session
Friday, January 23, 1987

The Joint Senate and Assembly Committee on Judiciary was called to order by Chairman Robert M. Sader at 9:00 a.m. on Friday, January 23, 1987, in Room 131 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator Erik Beyer, Vice Chairman
Senator Joe Neal
Senator Thomas J. Hickey
Senator Mike Malone
Senator Charles W. Joerg
Assemblyman Robert M. Sader, Chairman
Assemblyman Myrna T. Williams, Vice Chairman
Assemblyman Matthew Q. Callister
Assemblyman Bob E. Gaston
Assemblyman Kenneth L. Haller
Assemblyman William Kissam
Assemblyman Gene T. Porter
Assemblyman Vincent L. Triggs
Assemblyman John C. Carpenter
Assemblyman John B. DuBois
Assemblyman David D. Nicholas
Assemblyman Gaylyn J. Spriggs
Assemblyman Bob Thomas

COMMITTEE MEMBERS ABSENT:

Senator Herbert M. Jones

STAFF MEMBERS PRESENT:

Carol MacLeod, Committee Secretary

Mr. Sader stated the hearing would consist of a briefing by David Gates, Insurance Commissioner, regarding the *medical malpractice screening panel followed by an overview by research staff of major issues coming before the Judiciary Committees during this legislative session.

**the remainder of these minutes are not included with this history
as they pertain to medical malpractice screening panels*

SENATE BILL NO. 511--COMMITTEE ON JUDICIARY

MAY 11, 1987

Referred to Committee on Judiciary

SUMMARY--Revises provisions governing comparative negligence. (BDR 3-2191)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION--Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to civil liability; revising the provisions governing comparative negligence; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 41.141 is hereby amended to read as follows:
2 41.141 1. In any action to recover damages for death or injury to
3 persons or for injury to property in which [contributory negligence may be]
4 *comparative negligence* is asserted as a defense, the [contributory]
5 *comparative* negligence of the plaintiff or his decedent does not bar a
6 recovery if that negligence was not greater than the negligence or gross
7 negligence of the [person or persons] *parties to the action* against whom
8 recovery is sought . [, but any damages allowed must be diminished in
9 proportion to the amount of negligence attributable to the person seeking
10 recovery or his decedent.]
11 2. In those cases, the judge [may and when requested by any party] shall
12 instruct the jury that:
13 (a) The plaintiff may not recover if his [contributory] *comparative*
14 negligence or that of his decedent [has contributed more to the injury] *is*
15 *greater* than the negligence of the defendant or the combined negligence of
16 multiple defendants.
17 (b) If the jury determines the plaintiff is entitled to recover, it shall
18 return:

1 (1) By general verdict the total amount of damages the plaintiff would
2 be entitled to recover without regard to his [contributory negligence.]
3 *comparative negligence; and*

4 (2) A special verdict indicating the percentage of negligence
5 attributable to each party [.

6 (3) By general verdict the net sum determined to be recoverable by the
7 plaintiff.] *remaining in the action.*

8 3. *If a defendant in such an action settles with the plaintiff before the*
9 *entry of judgment, the comparative negligence of that defendant and the*
10 *amount of the settlement must not thereafter be admitted into evidence nor*
11 *considered by the jury. The judge shall deduct the amount of the settlement*
12 *from the net sum otherwise recoverable by the plaintiff pursuant to the*
13 *general and special verdicts.*

14 4. Where recovery is allowed against more than one defendant in such an
15 action, [the defendants are jointly and severally liable to the plaintiff, except
16 that a defendant whose negligence is less than that of the plaintiff or his
17 decedent is not jointly liable and] *except as otherwise provided in subsection*
18 *5, each defendant is severally liable to the plaintiff only for that portion of*
19 *the judgment which represents the percentage of negligence attributable to*
20 *him.*

21 5. *This section does not affect the joint and several liability, if any, of*
22 *the defendants in an action based upon:*

23 (a) *Strict liability;*

24 (b) *An intentional tort;*

25 (c) *The emission, disposal or spillage of a toxic or hazardous substance;*

26 *or*

27 (d) *The concerted acts of the defendants.*

28 **Sec. 2.** The provisions of this act do not apply to a claim that accrues
29 before July 1, 1987.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-Fourth Session
May 13, 1987

The Senate Committee on Judiciary was called to order by Chairman Sue Wagner, at 8:00 a.m., on Wednesday, May 13, 1987, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Sue Wagner, Chairman
Senator Erik Beyer, Vice Chairman
Senator Joe Neal
Senator Thomas J. Hickey
Senator Mike Malone
Senator Charles W. Joerg
Senator Herbert M. Jones

STAFF MEMBERS PRESENT:

Carol MacLeod, Committee Secretary

SENATE BILL 248 - Makes various changes to provisions governing duties of landlord upon closure or conversion of mobile home park.

Senator Beyer gave a brief report to the committee regarding the progress of the sub-committee work on S.B. 248.

ASSEMBLY BILL 556 - Revises provisions governing qualification and training of justices of peace.

The committee had a brief discussion regarding an amendment to A.B. 556 which had already been acted upon.

SENATE BILL 198 - Prohibits impersonation of officer or employee of public utility.

SENATOR HICKEY MOVED TO CONCUR WITH AN AMENDMENT TO S.B. 198.

SENATOR MALONE SECONDED THE MOTION

THE MOTION CARRIED BY MAJORITY. (SENATOR NEAL WAS

ABSENT FOR THE VOTE)

SENATE BILL 511 - Revises provisions governing comparative negligence.

Testimony of Pat Cashill, President, Nevada Trial Lawyers Association, and Jim Cashman, Chairman, Coalition for Affordable and Available Liability Insurance (CAALI)

Mr. Cashman testified, "S.B. 511 is a product of our negotiations which were concurred by Chairman Wagner and Chairman Sader...the bill, we suggest to you, is a reasonable compromise on tort reform and modifies the doctrine of joint liability, with some major exceptions."

Mr. Cashman continued, "There was an omission in the bill drafting which was carried through to the bill. The omission is on page 2, between lines 27 and 28...there should be included a section (e) 'Products Liability'...this clearly was the result of our negotiations and we agreed that products liability would be an exception...."

Senator Wagner asked, "You are representing to this committee that all of the people who discussed this issue are in concert with what you are saying, even though they may not be present in the room today?" Both Mr. Cashill and Mr. Cashman replied, "That is correct."

Mr. Cashill explained, "The key concept is 'parties to the action' which will ultimately be dealt with later on in the bill, but the concept is that joint liability will be eliminated subject to the various exceptions...but several liability will be decided only among the parties to the action...those who are in fact named and present in the lawsuit. This eliminates the risk of either side being able to argue that some fault should be rested on the shoulders of a person or persons who is not actually a party so that the jury's attention can be focused precisely on those persons who are parties."

Senator Beyer asked, "Does that eliminate the 'Does I - X' named in a lawsuit?" Mr. Cashill replied, "It will not eliminate the necessity early in a lawsuit of naming the 'Does I - X' before adequate facts may be determinable to actually place names and titles with parties, but it will eliminate the

possibility that anyone who has not been made a party to the action will be the subject of any finger pointing in the lawsuit so that only those who are there...will have their fault allocated among themselves."

Mr. Cashill, in continuing his explanation, stated, "The substitution of the word 'comparative' instead of 'contributory' simply brings us better into line with the concept of comparative negligence as it is applied in the state where the negligence of the plaintiff is compared to the negligence of defendant. This bill does not alter the concept that where a plaintiff is more than fifty percent responsible for his own harming, he recovers nothing...that concept is unaffected."

Continuing, Mr. Cashill testified, "Section 3 allows for the treatment of a settlement reached before trial with one of the defendants who is in the case. The terms of the settlement...will not be placed before the jury, therefore, the jury's duty of allocating fault among those defendants and the plaintiff who are left in the case will not be skewed in any way by an negotiative settlement which occurred before trial...any settlement may be reached for any number of reasons...the liability, damages, all sorts of things enter into settlement, but the settlement, in our view, can only cloud the jury's ability to properly determine, as between the plaintiff and defendant, who is at fault, therefore evidence of any pre-settlement is not admissible, but the trial judge is required to reduce the verdict by whatever the amount of any pre-trial settlement, therefore, the remaining defendants will be fixed with the responsibility of paying what the net then is, the net being the total amount of damages which the plaintiff is found to have incurred, less whatever was perceived in any settlement reached...the concept of fairness is addressed here by taking into account whatever has been paid to the plaintiff as an offset against the damage."

Mr. Cashman explained that section 4 of S.B. 511 removes joint liability. Mr. Cashill stated section 5 contains the exceptions to joint liability and testified, "Strict liability in tort has to do with inherently dangerous conduct, such as the keeping of wild animals, or shipment of explosives, for example...strict liability in tort is an exception and still allows for joint liability among whoever the tort feasors are. Intentional torts are torts of a particular nature which are non-negligent, those which are actually intent...so, torts of an intentional nature are specifically excluded as are torts

which involve the emission, disposal, spillage of toxic or hazardous substances...."

Senator Joerg asked, "Wouldn't those activities fall under the concept of strict liability?" Mr. Cashman explained, "It was the feeling of both sides that the toxic and hazardous substances are something that are a nationwide problem and would impact Nevada, and it would be to our benefit to have everyone involved as best we can." Mr. Cashill added, "We felt it better to use the traditional terms to describe two different areas of liability so all bases are covered."

Mr. Cashill continued with his explanation, "Section (d) allows for joint liability where there is concerted action on the part of the defendants. This may be action which is not intentional but which causes harm, but which involves a joint venture or an agreement among various defendants to embark on a course of conduct which creates, and in fact, causes harm...where the conduct of the defendant is somehow in unison as opposed to absolutely diverse, then that is meant to be an exception...."

Senator Wagner questioned, "Tell me how this differs from the 'done in unison' but that's different from intentional?" Mr. Cashill explained, "If you and I jointly...wait outside the legislative building in our car until Jim Cashman comes out of the building and then run him down, that is an intentional act, it may also be a concerted act, but a concerted act need not necessarily be an intentional tort. We could decide, for example, to cut down a tree, and if three or four of us cut down a tree together, and the tree unfortunately falls on Mr. Cashman's house, then we may not have intended the harm, but we have cooperated with one another and acted jointly to cause the harm, and in that circumstances, our actions may be negligent, may not be intentional, but still subject to joint liability."

Senator Wagner commented, "It is amazing to me that lawyers have looked at this bill, examined this bill, and scrutinized this bill and missed that (the products liability section e)...."

Senator Neal asked for a clarification of some language contained in section 3. Mr. Cashill gave an explanation, "If settlement is reached before trial or if during trial, one of the defendants settle, the jury is not told that. The jury may well be told that 'Mr. X is no longer in the case' but

that is all they will be told...when the jury's verdict is returned, then in the final judgment, the judge will be required to deduct from that verdict whatever monies were paid by 'Mr. X' to the plaintiff and then 'Y and Z' will share in whatever the proportions in the payment of those damages that remain unpaid."

Senator Wagner asked, "How do you respond to how this (S.B. 511) will affect the victim?" Mr. Cashill said there was a possibility a victim would be left without a means to obtain compensation. He added, "We are concerned about that possibility, but in our negotiations, we looked at matters that had to do with such a massive attack on and change in the tort system as we know it, that we chose a path which, in our view, would affect a change that was looked for by the other side, but which would not 'throw the baby out with the bath water'...the insurance reforms that will be passed by this legislature, liability insurance rates are brought into line such that the risks of loss can be placed into the insurance pool by people who can both obtain and afford liability insurance, then the likelihood is there will be fewer number of people out there who are absolutely judgment proof...we don't believe a significant number of victims are going to be left without a remedy, but that is certainly a possibility."

Senator Wagner asked who were all of the people involved in the negotiations resulting in S.B. 511. Mr. Cashill replied, "The principal parties were Jim Cashman on behalf of CAALI, Ed Pearce, Mitchell Cobeaga, Howdy Wells, Gary Voss also on behalf of CAALI, Bob Barengo, Rich Pugh, and Dr. Slaughter and Dr. Portenza from Las Vegas on behalf of the medical community, Marty Bibb from National Federation of Independent Businesses, Jim Wadhams, who represents Nevada Insurance Industry, and on behalf of trial lawyers, I was the lead assisted by my colleagues Alan Earl, Peter Neumann, Bill Bradley, Ray Badger, Vicki Riley and Julius Conigliaro."

Senator Wagner inquired about a number of bills dealing with the issues of tort reform which had been dubbed "CAALI bills" and asked Mr. Cashman the status of such bills. He replied, "If S.B. 511 is processed, it would be our suggestion S.B. 159 go no further...it would be CAALI's hope that S.B. 511, as well as the intended modifications of the insurance regulations that are in numerous senate and assembly bills, be passed by this session of the legislature...we would feel that would be a victory for our state and for CAALI."

Senator Neal asked if there was a body of law defining "comparative negligence" or "contributory negligence" or if that would be left to attorneys to make that a judgment. Mr. Cashill stated, "In the days before we adopted comparative negligence in this state, the doctrine of contributory negligence, if proven, would absolutely bar plaintiff's recovery...we then enacted in this state the system of comparative negligence which allows the jury to compare the fault of the plaintiff, if any, to the fault of the defendants, and did not require a verdict in favor of the defendants where the plaintiff was comparatively negligent...."

Mr. Cashman stated, "Part of our negotiations were that the modification of joint liability would end the call for tort reform this session...there would be no attempt to push caps on damages, no attempt to regulate attorneys fees, no attempt to impress any mandatory periodic payments or to in any way tinker with the collateral source rule...I am informed either the association of counties, or a county in particular, is mounting an effort to impose a cap on damages as to any liability on a municipality. That is not something we ever dealt with...frankly, to the contrary we agreed there would be no 'end runs' and I view any attempt at a cap on damages...at making an 'end run' around the agreement we have reached...."

Mr. Wayne Carlson, Nevada Association of Counties, interjected and stated, "That is not an association bill...I understand there is a bill from Clark County and the association has taken no position on that bill...we are in support of this bill (S.B. 511)."

SENATOR JOERG MOVED TO AMEND AND DO PASS S.B. 511.

SENATOR HICKEY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Senate Daily Journal - May 15, 1987

— 9 —

Amend sec. 5, page 4, line 31, by deleting "15" and inserting "[15] 22".

Amend sec. 7, page 5, line 12, by deleting: "484.241 and 484.253 are" and inserting "484.253 is".

Amend the bill as a whole by adding a new section designated sec. 9, following sec. 7, to read as follows:

"Sec. 9. Section 4 of this act becomes effective at 12:01 a.m. on July 1, 1987."

Amend the bill as a whole by deleting the text of repealed section NRS 484.241.

Amend the title of the bill, second line, after the semicolon, by inserting: "requiring garages and repair shops to maintain certain records:".

Senator Rhoads moved the adoption of the amendment.

Remarks by Senators Rhoads and Neal.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 347.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 430.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 445.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 485.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 487.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 511.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:
Amendment No. 743.

Amend section 1, page 2, by inserting between lines 27 and 28:

"(e) *An injury to any person or property resulting from a product which is manufactured, distributed, sold or used in this state.*".

Senator Wagner moved that Senate Bill No. 511 be taken from its position on the Second Reading File and placed at the bottom of the Second Reading File.

Remarks by Senators Wagner and Neal.

Motion carried.

Assembly Bill No. 8.

Bill read second time.

The following amendment was proposed by the Committee on Commerce and Labor:

Amendment No. 568.

Amend sec. 2, page 2, line 26, by deleting the period and inserting: "[.] or offers for sale in this state any unregistered security under state or federal

has been given by the commission. *If the commission does not respond within 15 days after receiving an application, the application shall be deemed approved by the commission.*

2. The commission shall collect a fee not to exceed \$200, which fee [shall] *must* be used to defray the cost of conducting any investigation under the provisions of subsection 1.

3. The provisions of subsections 1 and 2 [shall] *do* not apply in any case where:

(a) The person to furnish the [water] supply *of water* or sewer service has already been granted a certificate of public convenience and necessity by the commission to serve the area described in the application.

(b) Any county, municipality or other form of local government, including but not limited to districts formed under the provisions of chapter 318 of NRS, will furnish the [water] supply *of water* or sewer service to the area described in the application."

Senator Gibson moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 97.

Bill read second time and ordered to third reading.

Assembly Bill No. 316.

Bill read second time and ordered to third reading.

Assembly Bill No. 440.

Bill read second time and ordered to third reading.

Assembly Bill No. 513.

Bill read second time and ordered to third reading.

Senate Bill No. 511.

Senator Wagner withdrew Amendment No. 743.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 798.

Amend section 1, page 2, by deleting line 26.

Amend section 1, page 2, line 27, by deleting "*defendants.*" and inserting: "*defendants; or*

(e) *An injury to any person or property resulting from a product which is manufactured, distributed, sold or used in this state.*"

Senator Wagner moved the adoption of the amendment.

Remarks by Senator Wagner.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 22.

Bill read third time.

Remarks by Senators Townsend and Coffin.

Senator Coffin requested that his remarks be entered in the Journal.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

S.B. 511

SENATE BILL NO. 511—COMMITTEE ON JUDICIARY

MAY 11, 1987

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing comparative negligence. (BDR 3-2191)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to civil liability; revising the provisions governing comparative negligence; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 41.141 is hereby amended to read as follows:
2 41.141 1. In any action to recover damages for death or injury to
3 persons or for injury to property in which [contributory negligence may be]
4 *comparative negligence* is asserted as a defense, the [contributory]
5 *comparative* negligence of the plaintiff or his decedent does not bar a
6 recovery if that negligence was not greater than the negligence or gross
7 negligence of the [person or persons] *parties to the action* against whom
8 recovery is sought . [, but any damages allowed must be diminished in
9 proportion to the amount of negligence attributable to the person seeking
10 recovery or his decedent.]
11 2. In those cases, the judge [may and when requested by any party] shall
12 instruct the jury that:
13 (a) The plaintiff may not recover if his [contributory] *comparative*
14 negligence or that of his decedent [has contributed more to the injury] *is*
15 *greater* than the negligence of the defendant or the combined negligence of
16 multiple defendants.
17 (b) If the jury determines the plaintiff is entitled to recover, it shall
18 return:

1 (1) By general verdict the total amount of damages the plaintiff would
2 be entitled to recover without regard to his [contributory negligence.]
3 *comparative negligence; and*

4 (2) A special verdict indicating the percentage of negligence
5 attributable to each party [.

6 (3) By general verdict the net sum determined to be recoverable by the
7 plaintiff.] *remaining in the action.*

8 3. *If a defendant in such an action settles with the plaintiff before the*
9 *entry of judgment, the comparative negligence of that defendant and the*
10 *amount of the settlement must not thereafter be admitted into evidence nor*
11 *considered by the jury. The judge shall deduct the amount of the settlement*
12 *from the net sum otherwise recoverable by the plaintiff pursuant to the*
13 *general and special verdicts.*

14 4. Where recovery is allowed against more than one defendant in such an
15 action, [the defendants are jointly and severally liable to the plaintiff, except
16 that a defendant whose negligence is less than that of the plaintiff or his
17 decedent is not jointly liable and] *except as otherwise provided in subsection*
18 *5, each defendant is severally liable to the plaintiff only for that portion of*
19 *the judgment which represents the percentage of negligence attributable to*
20 *him.*

21 5. *This section does not affect the joint and several liability, if any, of*
22 *the defendants in an action based upon:*

23 (a) *Strict liability;*

24 (b) *An intentional tort;*

25 (c) *The emission, disposal or spillage of a toxic or hazardous substance;*

26 (d) *The concerted acts of the defendants; or*

27 (e) *An injury to any person or property resulting from a product which is*
28 *manufactured, distributed, sold or used in this state.*

29 Sec. 2. The provisions of this act do not apply to a claim that accrues
30 before July 1, 1987.

5-18-87

Roll call on Senate Bill No. 504:

YEAS—21.

NAYS—None.

Senate Bill No. 504 having received a constitutional majority, Mr. President declared it passed.

Senator Raggio moved that all rules be suspended and that Senate Bill No. 504 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 66.

Bill read third time.

Roll call on Senate Bill No. 66:

YEAS—20.

NAYS—None.

Not voting—Mello.

Senate Bill No. 66 having received a constitutional majority, Mr. President declared it passed, as amended.

Senator Raggio moved that all rules be suspended and that Senate Bill No. 66 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 248.

Bill read third time.

Roll call on Senate Bill No. 248:

YEAS—21.

NAYS—None.

Senate Bill No. 248 having received a constitutional majority, Mr. President declared it passed, as amended.

Senator Raggio moved that all rules be suspended and that Senate Bill No. 248 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 340.

Bill read third time.

Roll call on Senate Bill No. 340:

YEAS—21.

NAYS—None.

Senate Bill No. 340 having received a constitutional majority, Mr. President declared it passed, as amended.

Senator Raggio moved that all rules be suspended and that Senate Bill No. 340 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 511.

Bill read third time.

Remarks by Senators Wagner, Townsend and Neal.

Senator Wagner requested that the following remarks be entered in the Journal.

SENATE

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SENATOR WAGNER:

I appreciate a few moments to make some comments before I describe the bill.

I would like to thank my committee for their endurance, patience and good humor (for the most part) during the 20 plus hours of hearings on tort reform. I think we got the message during that marathon week that there is an affordability and availability insurance problem. Obviously, the reasons given were varied and contradictory.

I would also like to thank Senator Townsend and the Commerce Committee for timing their insurance regulation package so well with this bill.

As most of you now must be aware, this bill has been endorsed by the Nevada Trial Lawyer's Association, CAALI, Nevada Medical Association and the National Federation of Independent Businesses.

Senate Bill No. 511 deals with joint and several liability, the so-called "deep pockets" doctrine.

In my judgment, the bill answers the concerns of the business community, and the doctors that fault not be equated with ability to pay, yet does not sacrifice the critical needs of victims to obtain just compensation for their injuries. I will briefly explain the changes in this bill:

Sections 1 and 2—Contributory/Comparative Negligence:

Clarifies the language of NRS 41.141 by deleting the term "contributory negligence" and inserting "comparative negligence." Under existing Nevada law, a plaintiff's own negligence does not automatically bar his recovery (as was the case when the defense of contributory negligence was available), but is *compared* to the negligence of the defendant(s). The plaintiff's own negligence bars his recovery only when it is greater than the negligence of the defendant or combines negligence of the defendants.

Sections 2 and 3—Scope of the Analysis of Negligence:

The comparison of negligence is only applicable to parties to the litigation. Thus, the misconduct of non-parties is inadmissible.

Section 3—Setoff for Settlements:

If before entry of judgment any defendant settles with the plaintiff, the amount of the comparative negligence and amount of settlement of shall be deducted from the verdict plaintiff obtains. Thus defendants remaining in the suit shall benefit by the setoff.

Section 4:

Abolishes joint liability, subject to the exceptions in Section 5.

Section 5:

There are exceptions to this bill which eliminates joint liability. The doctrine of joint and several liability will continue to apply to wrongful acts involving:

- (a) Strict liability (inherently dangerous activities);
- (b) Intentional torts;
- (c) Emission, disposal or spillage of toxic or hazardous substances;
- (d) Concerted acts of the Defendants; and
- (e) Injuries arising from the manufacture, distribution, sale, or use of defective products in this state.

I caution my colleague that this bill is but part of the tort reform/insurance reform package. Other key ingredients are the bills being processed by the Committee on Commerce and Labor; S.B. 51, S.B. 235, S.B. 236 and the bills being processed by the Assembly Commerce Committee which Senator Townsend will comment upon.

I think S.B. 511 is a major piece of legislation. It addresses what I believe we heard over and over again was the major concern of most proponents of tort reform, joint and several liability. I would like to say for myself, I don't think this will produce overnight miracles but it needs to be combined with the insurance regulation that is now making its way through the legislative process. I do hope it helps in making insurance more affordable and available. Many of my own committee members felt this bill went too far, many others not far enough but all were willing to support it in the spirit of compromise.

SENATOR TOWNSEND:

I would like to thank Senator Wagner for her generous remarks regarding the insurance

reform package. We dealt with a great number of bills; however, I think her committee spent significantly a greater amount of time on this bill. I would like to make part of the record three other bills that we will be hearing in this body that are part of the agreement and had the support of those groups mentioned by Senator Wagner.

One of those bills has to do with affirming the rights of the insured against the companies. We should be seeing that in the latter days of the session. It has been delayed due to some technical agreements.

The other bill is Assembly Bill No. 214 which revises provisions concerning cancellation and renewal of contracts of casualty insurance basically requiring the company to notify the commissioner of insurance a minimum of 60 days before cancellation of certain types of insurance.

The third bill is Assembly Bill No. 308 which prohibits the insurer from cancelling, refusing to renew or increasing premiums for certain policies as a result of claims for which the insured was not at fault.

Those three areas have been addressed, agreed to and supported. We will be reporting on those bills in the next few weeks.

Roll call on Senate Bill No. 511:

YEAS—21.

NAYS—None.

Senate Bill No. 511 having received a constitutional majority, Mr. President declared it passed, as amended.

Senator Raggio moved that all rules be suspended and that Senate Bill No. 511 be immediately transmitted to the Assembly.

Motion carried unanimously.

Senate Bill No. 31.

Bill read third time.

The following amendment was proposed by the Committee on Human Resources and Facilities:

Amendment No. 804.

Amend sec. 8, page 3, by deleting lines 2 and 3 and inserting: "*the ethics institute is subject to all laws relating to*".

Senator Rawson moved the adoption of the amendment.

Remarks by Senator Rawson.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senate Concurrent Resolution No. 19.

Senator O'Donnell moved the adoption of the resolution.

Remarks by Senators O'Donnell, Gibson and Rhoads.

Senator Gibson requested that the following remarks be entered in the Journal.

SENATOR O'DONNELL:

Spring Mountain Road has been a bone of contention in the Las Vegas area for some time. One of the reasons for this concurrent resolution is the fact that the city of Las Vegas had planned Desert Inn Road to be an overpass over the freeway thus relieving congestion in the Las Vegas area east and west bound. It is this particular concurrent resolution that will shed some light on the fact that we need to take a look at Spring Mountain Road as the thoroughfare east and west in our city and the gate, further looking at Desert Inn Road, as an overpass.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-Fourth Session
June 11, 1987

The Assembly Committee on Judiciary was called to order by Chairman Robert M. Sader at 8:00 a.m. on Thursday, June 11, 1987, in Room 240 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda; Exhibit B is the Attendance Roster.

MEMBERS PRESENT: Robert M. Sader, Chairman
Myrna Williams, Vice Chairman
Matthew Q. Callister
John C. Carpenter
John DuBois
Robert E. Gaston
Ken Haller
Bill Kissam
David D. Nicholas
Gene T. Porter
Gaylyn J. Spriggs
Vincent L. Triggs
Bob Thomas

Since Lieutenant Governor Miller was not present at this time, Chairman Sader asked for testimony on AB 567 which extended privilege against testifying or otherwise disclosing information to committees for review of dental care under certain circumstances. No witnesses were present.

SENATE BILL NO. 554: Revises designation of household goods exempt from execution.

Robert Barengo, representing Nevada Consumer Finance Association, testified problems on executions have arisen with the definition of "household goods". The present definition simply stated "necessary household goods, appliances, furniture, home and yard equipment". No real definition existed in the statutes. This created problems every time an execution was taken to court. He suggested clearly defining these items as defined in 16 CFR, Exhibit C attached, which included clothing, furniture, appliances, one radio, one television, linen, kitchenware, etc.,.... provided that the following were not included as exemptions from execution: works of art, electronic entertainment equipment, antiques, jewelry, etc.

MINUTES OF THE NEVADA STATE LEGISLATURE
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benefits of the bill related to the procedure of habeas corpus and the ability of the courts to process the flood of post-conviction petitions inundating the courts. This provided a more standardized procedure to allow a more expeditious process.

THE MOTION WAS PASSED UNANIMOUSLY BY ALL PRESENT.

Mr. Haller brought up SB 402 regarding deleting the psychologists. The Chairman agreed this provision should be deleted and he was still working on the bill.

ASSEMBLYMAN NICHOLAS MOVED DO PASS SB 511.

ASSEMBLYMAN TRIGGS SECONDED THE MOTION.

Under discussion, Mrs. Spriggs wanted the record to indicate that she felt the bill did not go far enough though it was better than nothing. Mr. Carpenter, though in favor of the bill, felt product liability should be deleted. Mr. Carpenter, also in favor of the bill, felt innocent manufacturers contributing to a product were blamed for errors beyond their control. Mr. DuBois stated he would vote for the bill but was disappointed that more legislation was not passed on tort reform, including attorney contingency fees being reduced from 40% to 10%. He said joint and several liability was nothing unique since 28 states had already adopted it.

Mrs. Williams also stated she would vote for the bill but felt it did not go far enough for different reasons. As a member of an interim study committee, she found that in other states where tort reform was passed insurance rates did not decrease. The insurance industry only assured the legislature attempts would be diligently made to try to hold down increases, not to decrease premiums.

Mr. Gaston stated Nevada was far beyond other states in enactment of tort reform measures. In this session, several very strong tort reform bills had been processed by the committee. He brought out the troubling fact that passage of the bill was perceived by the public as affecting insurance premiums. Since this bill was a compromise, he felt essential consumer insurance bills had been lost.

Mr. Triggs stated he had spoken to no one who was elated with the bill but many respected members of the community spent two months working for this product and a very responsible job was done.

Mr. Haller stated his elation with the bill. The Chairman agreed to hold the bill for Mr. Thomas' return.

SENATE BILL NO. 270 - Revises provisions governing forfeiture of property related to criminal activities.

The Chairman called for discussion on SB 270, the forfeiture bill. He reminded the committee the bill had been before them twice, debated, voted on, passed once and then been reconsidered. Tentative agreement had been reached between the parties and an amendment was distributed. (Exhibit E attached)

Mr. Gaston and District Attorney Bill Koot took seats as witnesses and explained the attached amendments to the committee. The Chairman noted representatives from the Nevada Trial Lawyers, the District Attorney's Association and representatives from law enforcement all participated in the amendments. One correction in the amendment was in Section 9(b) where the word "otherwise" was to be deleted.

John Aebi from the Trial Lawyers stated his organization was happy with the proposed amendment but that Section 10 was unnecessary. He also wanted to see Section 11, line 16 changed from 60 days to 30 days, but if these changes endangered the bill, the wording should be left as it was.

Mrs. Williams stated her objection to property being seized before conviction in cases other than drug cases. Mr. Gaston stated the problem was addressed. Mr. Koot stated forfeiture laws began appearing shortly after the US Constitution was written and had no connection with criminal conduct except that criminal conduct might underlie the forfeiture. In 1921 a US Supreme Court case found the criminal charge, if anything, was incidental to the in rem action. Every forfeiture law in the United States was an in rem civil action not requiring charging or convicting the criminal.

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Mrs. Williams stated she would vote against the bill.

Mr. DuBois asked to what degree the deletion of Section 9(a) weakened the bill. Mr. Koot said it weakened the bill in that property used in furtherance of a conspiratorial act cannot be forfeited.

SENATE BILL NO. 511 - Revises provisions governing comparative negligence.

With the return of Mr. Thomas, the Chairman called for a vote on SB 511, the joint and several bill.

THE MOTION WAS UNANIMOUSLY PASSED BY THOSE PRESENT.

ASSEMBLYMAN WILLIAMS MOVED TO INDEFINITELY POSTPONE SB 270.

ASSEMBLYMAN PORTER SECONDED THE MOTION.

THE MOTION FAILED WITH MR. PORTER, MRS. WILLIAMS AND MR. THOMAS VOTING AYE. (Mr. Callister and Mr. Nicholas were absent for this vote.)

ASSEMBLYMAN GASTON MOVED AMEND WITH AMENDMENT 1468 AND DO PASS SB 270.

ASSEMBLY KISSAM SECONDED THE MOTION.

THE MOTION WAS PASSED WITH MR. PORTER, MRS. WILLIAMS AND MR. THOMAS VOTING NO. (Mr. Callister and Mr. Nicholas were absent for this vote.)

Regarding SB 190, the Chairman suggested discussing the bill on the floor after a report from the subcommittee.

SENATE BILL NO. 144 - Imposes taxes on illegally sold controlled substances.

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Amendment adopted.
Bill ordered reprinted, re-engrossed and to third reading.
Senate Bill No. 212.
Bill read third time.
Remarks by Assemblymen Spinello, Gaston and Brookman.
Roll call on Senate Bill No. 212:
YEAS—40.
NAYS—Evans.
Absent—Nicholas.
Senate Bill No. 212 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.
Senate Bill No. 286.
Bill read third time.
Remarks by Assemblyman Spriggs.
Roll call on Senate Bill No. 286:
YEAS—41.
NAYS—None.
Absent—Nicholas.
Senate Bill No. 286 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.
Senate Bill No. 509.
Bill read third time.
Remarks by Assemblymen Arberry, Fay and Sedway.
Roll call on Senate Bill No. 509:
YEAS—41.
NAYS—None.
Absent—Nicholas.
Senate Bill No. 509 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.
Senate Bill No. 511.
Bill read third time.
Remarks by Assemblymen Sader, DuBois, Getto, Thomas and Adler.
Roll call on Senate Bill No. 511:
YEAS—41.
NAYS—None.
Absent—Nicholas.
Senate Bill No. 511 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.
Senate Bill No. 537.
Bill read third time.
Remarks by Assemblymen Humke and Jeffrey.

Senate Bill No. 511--Committee on Judiciary

CHAPTER 709

AN ACT relating to civil liability; revising the provisions governing comparative negligence; and providing other matters properly relating thereto.

[Approved June 22, 1987]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 41.141 is hereby amended to read as follows:

41.141 1. In any action to recover damages for death or injury to persons or for injury to property in which [contributory negligence may be] *comparative negligence* is asserted as a defense, the [contributory] *comparative* negligence of the plaintiff or his decedent does not bar a recovery if that negligence was not greater than the negligence or gross negligence of the [person or persons] *parties to the action* against whom recovery is sought. [, but any damages allowed must be diminished in proportion to the amount of negligence attributable to the person seeking recovery or his decedent.]

2. In those cases, the judge [may and when requested by any party] shall instruct the jury that:

(a) The plaintiff may not recover if his [contributory] *comparative* negligence or that of his decedent [has contributed more to the injury] *is greater* than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return:

(1) By general verdict the total amount of damages the plaintiff would be entitled to recover without regard to his [contributory negligence.] *comparative negligence; and*

(2) A special verdict indicating the percentage of negligence attributable to each party [.

(3) By general verdict the net sum determined to be recoverable by the plaintiff.] *remaining in the action.*

3. *If a defendant in such an action settles with the plaintiff before the entry of judgment, the comparative negligence of that defendant and the amount of the settlement must not thereafter be admitted into evidence nor considered by the jury. The judge shall deduct the amount of the settlement from the net sum otherwise recoverable by the plaintiff pursuant to the general and special verdicts.*

4. Where recovery is allowed against more than one defendant in such an action, [the defendants are jointly and severally liable to the plaintiff, except that a defendant whose negligence is less than that of the plaintiff or his decedent is not jointly liable and] *except as otherwise provided in subsection 5, each defendant is severally liable to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to him.*

5. This section does not affect the joint and several liability, if any, of the defendants in an action based upon:

- (a) Strict liability;
- (b) An intentional tort;
- (c) The emission, disposal or spillage of a toxic or hazardous substance;
- (d) The concerted acts of the defendants; or
- (e) An injury to any person or property resulting from a product which is manufactured, distributed, sold or used in this state.

Sec. 2. The provisions of this act do not apply to a claim that accrues before July 1, 1987.

Senate Bill No. 156--Committee on Commerce and Labor

CHAPTER 710

AN ACT relating to the healing arts; requiring a prescription issued by an ophthalmologist or optometrist for an ophthalmic lens to be in a certain form; and providing other matters properly relating thereto.

[Approved June 22, 1987]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 630 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The form for any prescription which is issued for an ophthalmic lens by an ophthalmologist in this state must contain lines or boxes in substantially the following form:

Approved for contact lenses
Not approved for contact lenses

2. The prescribing ophthalmologist shall mark or check one of the lines or boxes required by subsection 1 each time such a prescription is issued by him.

Sec. 2. Chapter 636 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The form for any prescription which is issued for an ophthalmic lens by an optometrist in this state must contain lines or boxes in substantially the following form:

Approved for contact lenses
Not approved for contact lenses