

DRAFT MINUTES
HOUSE & SENATE INTERIM COMMITTEES ON
STATE AGENCIES AND GOVERNMENTAL AFFAIRS
CONSTITUTIONAL ISSUES SUBCOMMITTEES
Meeting Jointly

Monday, October 7, 2013

The House and Senate Interim Committees on State Agencies and Governmental Affairs Constitutional Issues Subcommittees met jointly on Monday, October 7, 2013, at 1:30 p.m., in Room A of the Multi-Agency Complex.

Members in Attendance

The following subcommittee members attended: Senators Jane English, Chair and Jimmy Hickey. Representatives Jim Dotson, Chair; Andrea Lea, Ex-Officio; and John Catlett.

Other legislators attending were: Senators Cecile Bledsoe, Linda Chesterfield, Alan Clark, Joyce Elliott, Jeremy Hutchinson, Johnny Key, Jason Rapert, Bill Sample, Eddie Joe Williams, and Jon Woods. Representatives Randy Alexander, Bob Ballinger, Scott Baltz, Jonathan Barnett, Nate Bell, Ken Bragg, Ann Clemmer, David Branscum, Mary Broadaway, John Burris, Gary Deffenbaugh, Charlotte Douglas, David Fielding, Justin Harris, John Hutchison, David Kizzia, Sheilla Lampkin, Fred Love, Mark McElroy, David Meeks, Josh Miller, Micah Neal, Jim Nickels, Betty Overbey, James Ratliff, Sue Scott, Nate Steel, Jeff Wardlaw, David Whitaker, and Tommy Wren.

Representative Dotson called the meeting to order.

Status of 2003 Tort Reform Law

[EXHIBIT C]

Brent Gasper, Attorney, Bureau of Legislative Research, referred to Exhibit C and provided details regarding four cases heard in the Supreme Court of Arkansas: *Summerville v. Thrower*; *Johnson v. Rockwell Automation*; *Bayer Cropscience LP v. Schafer*; and *Broussard v St. Edward Mercy Health System*. He explained how these cases relate to the Civil Justice Reform Act and Arkansas's Constitutional Amendment 80, Section 3.

Review of Bills Regarding Tort Reform Considered During the 89th General Assembly

[EXHIBIT D1 & D2]

Matthew Miller, Attorney, Bureau of Legislative Research, provided information and details regarding proposed constitutional amendments (SJR2, SJR6, and SJR5) from the 89th General Assembly's Regular Session.

Discussion of Tort Reform

Brian Brooks and Paul Byrd, Arkansas Trial Lawyers Association, stated Arkansas's Constitutional Amendment 80, Section 3, clarifies that rule-making authority lies within the courts. Mr. Brooks and Mr. Byrd serve on the Supreme Court of Arkansas's Special Task Force on Practice and Procedure in Civil Cases. The group will make recommendations to the Supreme Court for implementing procedural elements in Act 649 of 2003. Mr. Brooks noted, the process is complicated and detailed; but progress is positive.

Mr. Byrd explained how several aspects of the Joint and Several Liability Rule can be considered "unfair." The rule mandates, when a jury finds two people liable for an incident, both parties can be required to pay 100% of awarded damages until fully paid, regardless of what percentage the court declares a defendant guilty. Act 649 of 2003 attempts to eliminate harshness in the Joint and Several

Rule by dividing responsibilities and settlement percentages. Mr. Byrd noted, in 2003 Arkansas's legislature capped punitive damage awards to \$1 million; and explained limiting damage awards to a certain amount makes the rule arbitrary. Tort Law insists no one has freedom to knowingly commit negligible acts and prevents vigilante justice. Without Tort Laws, it might be easy to criminalize negligent behavior, essentially weakening the civil justice system. Regarding non-economic caps, Mr. Brooks stated, it is important that Arkansas's judicial system allow juries to compensate victims for injustices and implements values that maintain a business-friendly state.

Mr. Brooks said the Task Force intends to present its initial report to the Supreme Court Committee on Civil Practice towards the end of December. Upon hearing the Task Force's report, the Committee will review the work and make recommendations to the Supreme Court. Then, the Supreme Court will release the recommendations for public comment. The Task Force might address issues such as Rules of Evidence, Rules of Civil Procedure, Jury-Drafting Instructions, etc. Mr. Brooks said he expects the Court to invite legislators, attorneys, citizens, interest groups, etc. to comment on the proposed recommendations.

In response to a question by Senator Bledsoe, Mr. Brooks stated, Act 649 of 2003 includes significant language pertaining to initiating medical lawsuits and providing burden of proof; but its cornerstone was abrogation of Joint and Several Liability. The Task Force's primary responsibility is to understand the Supreme Court's legislative policies and draft reasonable guidelines that inform everyone what the rules of a lawsuit include. Senator Bledsoe said Arkansas needs laws that punish wrongdoers on an individual-case basis, not laws targeted at punishing entire industries.

Dan Greenburg, Advance Arkansas Institute, provided examples of several kinds of reforms Arkansas might consider. He presented details pertaining to loser-pays legislation; modifying Amendment 80, Section 3; implementing caps on non-economic damages; and rewriting the General Assembly's rules for adopting constitutional amendments.

Jeannie Burlsworth, Secure Arkansas, said Arkansas lawmakers should keep public safety a primary concern and protect citizens' rights to easily access courts. She said maintaining a balance among the three branches of government is important; and policy makers should focus on reducing errors in the medical community rather than reducing accountability for errors.

With no further business, the meeting adjourned at 4:15 p.m.