

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 311

As Amended by House Committee of the Whole

Brief*

SB 311, as amended, would revise the Code of Civil Procedure with regard to caps on non-economic damages and witness and expert witness testimony.

The bill would amend the limits to be applied for non-economic damages in personal injury actions as follows:

- \$250,000 for causes of action accruing from July 1, 1988, to July 1, 2014;
- \$300,000 for causes of action accruing from July 1, 2014, to July 1, 2018;
- \$325,000 for causes of action accruing on or after July 1, 2018, to July 1, 2022; and
- \$350,000 for causes of action accruing on or after July 1, 2022.

The rule of evidence governing opinion testimony would be amended to clarify the opinion testimony that may be offered by a witness not testifying as an expert. The standard for admissibility of expert testimony would be amended so that, where scientific, technical, or other specialized knowledge would help the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may offer opinion testimony if the testimony is based on sufficient facts or data, if the testimony is the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

product of reliable principles and methods, and if the witness has reliably applied the principles and methods to the facts of the case. The bill would establish a procedure by which, upon motion of a party, the court may hold a pretrial hearing to determine a witness' qualifications as an expert and whether the witness' testimony satisfies the requirements set forth above. The bill would establish that facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived or made known to the expert. If such facts or data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences, the facts or data would not need to be admissible into evidence for admission of the opinion or inference. Facts or data otherwise inadmissible could not be disclosed to the jury by the proponent unless the court determines the probative value outweighs any prejudicial effect.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of the Kansas Medical Society and the Kansas Chamber. As introduced and passed by the Senate, the bill would have amended provisions related to caps on non-economic damages, witness and expert witness testimony, and evidence of collateral source benefits.

In the Senate Committee, representatives of the Kansas Medical Society, Kansas Chamber, Kansas Association of Defense Counsel, Kansas Association of Osteopathic Medicine, and Kansas Hospital Association testified in support of the bill. Representatives of the Kansas Academy of Family Physicians and the National Federation of Independent Business submitted written testimony supporting the bill. The proponents stated the non-economic damages cap adjustment was requested in response to the Kansas Supreme Court's decision in *Miller v. Johnson*, 295 Kan. 636 (2012), the amendments regarding expert witnesses would implement the federal "*Daubert* standard" for expert witness testimony, and the collateral source benefit amendment was

requested in response to the Kansas Supreme Court's decision in *Thompson v. KFB Ins. Co.*, 252 Kan. 1010 (1993), declaring the collateral source benefit amendments unconstitutional.

A representative of MADD Kansas submitted written neutral testimony.

Representatives of AARP Kansas, Kansas Advocates for Better Care, the Kansas Association for Justice, and the Kansas Bar Association testified in opposition to the bill. Citizens advocates submitted written opponent testimony.

The Senate Committee adopted an amendment suggested by the Kansas Chamber repealing statutes that provide a procedure to determine net collateral source benefits and reduce a judgment by such amount and amending the collateral source benefits definitions statute to reflect the repeal. The Committee also adopted an amendment suggested by the Kansas Association of Defense Counsel clarifying the standard for lay witness opinion testimony and the facts or data that may be relied upon by an expert witness.

The House Committee of the Whole amended the bill by deleting the provisions pertaining to the admissibility of evidence of collateral source benefits.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the expert testimony provisions could require additional court time, but an accurate estimate of the fiscal effect cannot be provided until the courts have operated with the provisions of the bill in place.