

Approved 3-19-84  
Date

MINUTES OF THE House COMMITTEE ON Ways and Means

The meeting was called to order by Bill Buntin at  
Chairperson

1:30 a.m./p.m. on Wednesday, March 14, 1984 in room 514-S of the Capitol.

All members were present except: Representative Wisdom (excused)

Committee staff present: Lyn Goering, Legislative Research  
Gloria Timmer, Legislative Research  
Carolyn Rampey, Legislative Research  
Mary Galligan, Legislative Research  
Jim Wilson, Office of the Revisor  
Dave Hanzlick, Administrative Assistant  
Nadine Young, Committee Secretary

Conferees appearing before the committee:  
Pete McGill, representing Waste Mgt Inc.  
Jim Young, Sr.-Legal Counsel for Chemical Waste Mgt.  
Matt Selby, Sierra Club  
Bill Henry, KS Engineering Society  
Barbara Sabol, Secretary of H & E  
Pat Sinclair, National Marine Assoc.  
Senator Gaines  
Jerry Slaughter, KS Medical Society  
Bill Horn, Bankers Life  
Bill Abbott, Boeing Company  
Marsha Hutchison, Beech Aircraft  
Don Strole, Atty for Board of Healing Arts  
Sister Beth Stover, KS Hospital Assn.  
(Others present -- Attachment 1)

Chairman called the meeting to order at 1:30 p.m.

HB 2725, concerning hazardous waste, powers and duties of H & E secretary, and HB 2726, concerning hazardous waste, establishes clean-up fund. Chairman announced that we are hearing these 2 bills today because they are being heard on the floor next Monday, so we had to get them out today.

Representative Heinemann explained the contents of these two bills and furnished copies of the amended bills showing the changes. (Attachment 2 and 3)

Pete McGill, representing Waste Mgt Inc. of Oakbrook, Il. introduced Jim Young who is legal counsel for chemical waste management. Mr. Young worked with the Legislature in 1981 in drafting the present statue that is on the books.

Bill Henry representing the Kansas Engineering Society spoke in support of the two bills. He said these two bills are the best answer to the presently existing problems with hazardous waste, but pointed out that the present language does put limitations on the powers of the secretary as it stands now.

Barbara Sabol addressed the committee very briefly and explained some of the basic perimeters about which these bills have been drafted. She furnished a map showing surface-water withdrawals and ground-water withdrawals. (Attachment 4).

Chairman turned to SB 713 -- an act relating to the reproduction of products by use of certain manufacturing processes; prohibiting certain acts and providing remedies therefor.

Representative Chronister addressed the committee and explained the provisions of the bill. She introduced Pat Sinclair, President of Cobalt Boats who presented testimony on behalf of the National Marine Association. He urged the committee's support of this bill.

SB 507 -- an act relating to health care providers; concerning professional liability insurance; providing a privilege for peer review proceedings; establishing administrative structures and procedures for discipline; amending

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,  
room 514-S, Statehouse, at 1:30 a.m./p.m. on Wednesday, March 14, 1984

SB 507 -- (continued)

K.S.A. 40-3402, 40-3408, 40-3415 and 65-2838 and K.S.A. 1983 Supp. 40-3403 and 40-3404 and repealing the existing sections.

Senator Gaines addressed the committee and explained the provisions of the bill. He said it is imperative that we pass this bill in some version.

Ron Todd appeared on behalf of the office of Commissioner of Insurance and testified in support of the bill (Attachment 5).

Jerry Slaughter appeared before the committee and spoke in support of the bill on behalf of the Kansas Medical Society (Attachment 6).

Bill Horn, representing Bankers Life of Nebraska also urged the committee's support of this bill (Attachment 7).

Bill Abbott, representing the Boeing Company, also spoke in support of the bill (Attachment 8).

Marsha Hutchison with Beech Aircraft spoke in support of the bill and presented written testimony (Attachment 9).

Don Strole, Attorney for Board of Healing Arts also appeared as a proponent of the bill. He said his board supports that part of peer review that allows us access to the records. His board also supports the creation of a disciplinary administrator or counselor.

Sister Beth Stover, President of St. Joseph Hospital-Concoridia, Ks spoke in support of this bill and provided written testimony (Attachment 10).

Kathleen Sebelius appeared on behalf of Kansas Trial Lawyers and asked the committee's support of this bill (Attachment 11).

Chairman turned back to HB 2725 and asked the committee's pleasure on this bill. Representative Heinemann moved that HB 2725 be recommended favorable for passage. Seconded by Representative Duncan. This committee also recommends adoption of the amendments as recommended by the other committee. Motion carried

HB 2726 -- Representative Heinemann moved that HB 2726 be recommended favorable for passage. Seconded by Representative Duncan. Motion carried.

SB 713 -- an act relating to the reproduction of products by use of certain manufacturing processes; prohibiting certain acts and providing remedies therefor

Representative Chronister made a motion to insert the word "knowingly" before the word "sell" on Line 24. Seconded by Representative Heinemann. Motion carried. Representative Chronister then moved that SB 713 be recommended favorable for passage, as amended. Seconded by Representative Heinemann. Motion carried.

SB 507 -- an act relating to health care providers. Representative Luzzati asked that full committee be present before taking final action on this bill. Chairman Bunten complied with her request.

SB 553 -- an act relating to the state historical society; authorizing the fixing of certain fees for admittance to state-owned historic sites and property; authorizing the purchase of insurance coverage for collections in the care, custody or control of the society; creating the historic properties fee fund and the insurance collection reimbursement/replacement fund; amending K.S.A. 75-2701 and K.S.A. 1983 Supp. 75-2702 and 75-2728 and repealing the existing sections.

Carolyn Rampey of Legislative Research addressed the committee and explained the provisions of the bill.



CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,  
room 514-S, Statehouse, at 1:30 a.m./p.m. on Wednesday, March 14, 1984

SB 553 -- (continued)

Representative Duncan moved that SB 553 be recommended favorable for passage. Seconded by Representative Hoy. Motion carried.

SB 726 -- an act concerning funds of individuals in certain state institutions; relating to custody and management of trust funds therefor; amending K.S.A. 76-173 and 76-175 and repealing the existing section; also repealing K.S.A. 76-174.

Art Griggs explained the provisions of the bill. Representative Chronister moved that SB 726 be recommended favorable for passage. Seconded by Representative Turnquist. Motion carried.

SB 729 -- an act concerning state institutions; relating to canteen and benefit funds; amending K.S.A. 75-3728f and repealing the existing section.

Representative Chronister moved that SB 729 be recommended favorable for passage, as amended. Representative Turnquist seconded. Motion carried.

Concerning the two claims for the two ladies in the sex discrimination case on HB 2992 - Mary Lewis and Jane Vines. Chairman Bunten recommended we amend the amendment to take this money out of the state general fund, saying the people of Kansas should not have to pay. Chairman moved that we take it from the state general fund appropriation of Health and Human Services the amount of \$5,500 for each claimant. Seconded by Representative Hoy. Motion carried.

Meeting adjourned at 4:00 p.m.

3-14-84

Name	Address	Representing
1. Ron Todd	Topeka	Ins. Dept.
2. Wayne Smith	Topeka	Atty - ICH A / ICH S
3. Michel / Smith	Topeka	Ins. Dept
4. LARRY MACILL	"	INDEP. INS AGENTS
5. JIM STELAIN	Neodesha, Ks.	Cobalt Boats
6. Bill Allen	Wichita	<del>Boeing</del>
7. Marsha Hutchinson	Wichita	Boeing Aircraft
8. William E. Allen	Wichita	Bankers Life Nebraska
9. SUSAN J THOMPSON WARD - MRS WOODS	Topeka	Schwee Rice Broom Co.
10. JAMES L. YOUNG	OAK BROOK, ILL.	CHEMICAL WASTE MGMT. INC.
11. Dick Davis	Topeka	Dept. of Corrections
12. Helen Geller	Lanham	Testing & Data Process
13. Don Stude	"	"
14. Matt Kelly	"	Sierra Club
15. JACK ST. CRAIN	NEODESHA KS.	NATIONAL ASSOC. of <sup>MAFG.</sup> Boat
16. Annette Parsons	Kansas City, Mo.	KPA
17. Ken Schaefermeyer	Topeka	KS Pharmacists Assoc.
18. Donald A. Wilson	Topeka	Ks. Hosp Assoc.
19. Sister Elizabeth Stover	Concordia, Ks	Ks. Hosp. Assoc.
20. Frank L. Gentry	Topeka	" " "
21. JIMMY SAUGHTER	TOPEKA	KS MEDICAL SOCIETY
22. D. Gable	Topeka	KDHE
23. DENNIS MURPHEY	Topeka	KDHE
24. PAT SCHAFER	Topeka	DIVISION OF BUDGET
25. J. Joe Meier	HANOVIC	Farm Bureau



3-15-84

Name	Address	Representing
1. <i>Carl Lee Weininger</i>	<i>Hollenberg Kans</i>	<i>Farm Bureau</i>
2. <i>Ralph Sloan</i>	<i>Topolka</i>	<i>KTLA</i>
3. <i>Jimmy Long</i>	<i>"</i>	<i>"</i>
4. <i>William Sisson</i>		
5. <i>Jane Weininger</i>	<i>Hollenberg Ks.</i>	<i>Wash. Co. Farm Bureau</i>
6. <i>Charles D. Hamm</i>	<i>Forbesfield - Topolka</i>	<i>K D H E</i>
7. <i>B. Vayin</i>	<i>Topolka</i>	<i>AP</i>
8. <i>CHARLES D. BELT</i>	<i>WICHITA</i>	<i>WICHITA CHAMBER OF COMMERCE</i>
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# HOUSE BILL No. 2725

By Committee on Energy and Natural Resources

1-20

0017 AN ACT concerning hazardous waste; relating to the powers and  
 0018 duties of the secretary of the department of health and envi-  
 0019 ronment; amending K.S.A. 1983 Supp. 65-3443 and repealing  
 0020 the existing ~~section~~. 65-3430 and  
sections

0021 *Be it enacted by the Legislature of the State of Kansas:* see insert-1

0022 ~~Section 1~~ K.S.A. 1983 Supp. 65-3443 is hereby amended to Sec. 2  
 0023 read as follows: 65-3443. (a) If the secretary finds that the

0024 generation, accumulation, management or discharge of a haz-  
 0025 ardous waste by any person (1) is or threatens to cause pollution  
 0026 of the land, air, or waters of the state or (2) is or threatens to

0027 become a hazard to persons, property or public health or safety or

0028 (3) that the rules and regulations adopted pursuant to this act

0029 have been violated, the secretary may order the person to modify

0030 the generation, accumulation or management of the hazardous

0031 waste or to provide and implement such hazardous waste man-

0032 agement ~~systems procedures~~ as will prevent or remove the

0033 pollution or hazard ~~or take any other action deemed necessary.~~

0034 The secretary may order any person having a permit issued

0035 under this act, and who operates a public or commercial hazard-

0036 ous waste management ~~system or any part thereof~~ facility, which

0037 the secretary finds suitable to manage the hazardous waste, to

0038 provide and implement a hazardous waste management ~~system~~

0039 ~~or part thereof~~ procedures to prevent or remove such pollution or

0040 hazard. Such order shall specify a fair compensation to the owner

0041 or permittee for property taken or used and shall specify the

0042 terms and conditions under which the permittee shall provide

0043 the hazardous waste management services. Any order issued

0044 shall specify the length of time after receipt of the order during

0045 which the person or permittee shall provide or implement the

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Attachment 4/  
3-12-81



0046 hazardous waste management system procedures or modify the  
0047 generation, accumulation or management of the hazardous  
0048 waste.

0049 ~~(b) If the secretary after consideration of the economic im-~~  
0050 ~~paet on the generator finds that there is an environmentally more~~  
0051 ~~desirable procedure available other than ground burial for the~~  
0052 ~~disposal of a particualr type of hazardous waste, the secretary~~  
0053 ~~shall order that the use of ground burial for the disposal of that~~  
0054 ~~type of hazardous waste be discontinued. The secretary in de-~~  
0055 ~~veloping such consideration may require the generator to pro-~~  
0056 ~~vide information and plans for potential environmentally more~~  
0057 ~~desirable procedures. *Ground burial of hazardous waste is*~~  
0058 ~~*heraby prohibited in the state of Kansas. Any existing hazardous*~~  
0059 ~~*waste disposal facility which utilizes ground burial shall cease*~~  
0060 ~~*burial activities and shall implement closure and post closure*~~  
0061 ~~*plans and procedures which have been approved by the secre-*~~  
0062 ~~*tary.*~~

see insert-2

0063 ~~(c) Any party aggrieved by an order under this section shall~~  
0064 ~~have the right of appeal in accordance with the provisions of~~  
0065 ~~K.S.A. 1981 Supp. 65-3440, and amendments thereto.~~

(e)

0066 Sec. ~~4~~ K.S.A. 1983 Supp. ~~65-3443~~ hereby repealed.

65-3430 and 65-3443 are

0067 Sec. ~~3~~ This act shall take effect and be in force from and  
0068 after its publication in the statute book.

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Section. 1. K.S.A. 1983 Supp. 65-3430 is hereby amended to read as follows: 65-3430. As used in K.S.A. 1982-Supp. 65-3430 to 65-3448, and amendments thereto:

(a) "Board" means the hazardous waste disposal facility approval board.

(b) "Department" means the Kansas department of health and environment.

(c) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted in the air or discharged into any water in the state.

(d) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land utilized for the purpose of treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units such as (1) one or more landfills; (2) surface impoundments; (3) treatment units or (4) combinations of (1), (2) or (3).

(e) "Generator" means any person producing or bringing into existence hazardous waste.

(f) "Hazardous waste" means waste or combination of wastes which because of its quantity, concentration or physical, chemical or infectious characteristics is determined by the secretary to be dangerous to human health or present a substantial existing or potential hazard to the environment when improperly managed. Such term shall include radioactive hazardous waste. Such term shall not include: (1) Household waste; or (2) agricultural waste returned to the soil as fertilizer; or (3) mining waste and overburden from the extraction, beneficiation and processing of ores and minerals, if returned to the mine site; or (4) drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or



geothermal energy; or (5) fly ash, bottom ash, slag and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels; or (6) cement kiln dust.

(g) "Hazardous waste disposal facility" means all contiguous land, structures and other appurtenances, and improvements on the land utilized for the disposal of hazardous waste.

(h) "Hazardous waste storage facility" means a location where hazardous waste is held for a temporary period at the end of which the hazardous waste is treated, stored or disposed of at another location. Such term shall not include (1) a location at the place of waste generation where hazardous waste is accumulated for a period of 90 days or less in accordance with rules and regulations adopted by the secretary or (2) a transfer facility where a transporter is storing manifested shipments of hazardous waste in containers approved by the secretary for a period of 10 days or less.

(i) "Hazardous waste treatment facility" means any location, except a publicly owned treatment works holding a permit issued under K.S.A. 65-165, and amendments thereto, where any method, technique or process is applied to hazardous waste to change its physical, biological or chemical characteristics or to render such waste nonhazardous, safer for transport or disposal, amenable for recovery or storage or reduced in volume.

(j) "Hazardous waste management system" means the systematic control of the collection, separation, storage, transportation, treatment, recovery and disposal of hazardous waste by any person.

(k) "License" means the document issued to a person by the secretary under the authority of K.S.A. 48-1607, and amendments thereto, which allows such person to construct and operate a radioactive hazardous waste storage or disposal facility in the state.

(l) "Manifest" means the form prescribed by the secretary to be used for identifying the quantity, composition, origin and

the routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage or at any point in between.

(m) "Modification" means the expansion or enlargement of a facility beyond the permitted boundaries established by an existing permit issued by the secretary or any material or substantial alteration or addition to an existing permitted facility which would justify the application of permit conditions that would be materially or substantially different from the conditions of the existing permit or are absent from the existing permit.

(n) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soil on or in the vicinity of a hazardous waste disposal, storage or treatment facility.

(o) "On-site facility" means a facility which is located on property contiguous to or divided only by a public or private way from the source of generation and which is solely owned and operated by the generator exclusively for the treatment, storage or disposal of wastes which have been generated on the contiguous property.

(p) "Permit" means the document issued to a person by the secretary which allows such person to construct and operate a hazardous waste treatment, storage or disposal facility in the state.

(q) "Person" means an individual, partnership, firm, trust, company, association, corporation, institution, political subdivision or state or federal agency.

(r) "Radioactive hazardous waste" means discarded by-product material, source material, or special nuclear material as defined by K.S.A. 48-1603, and amendments thereto.

(s) "Secretary" means the secretary of the department of health and environment.



(t) "Short-term storage" means (1) the accumulation of hazardous waste for a period of 90 days or less at an "on-site facility" in accordance with rules and regulations adopted by the secretary or (2) the temporary storing of manifested shipments of hazardous wastes in containers approved by the secretary on or in the property of the transporter for a period of 10 days or less.

(u) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of the hazardous waste. "Short-term storage" as defined in subsection (t), does not constitute "storage".

(v) "Transporter" means any person who conveys or moves hazardous waste from the point of its generation or any other point to a treatment, storage or disposal facility or any point in between.

(w) "Treatment" means any method, technique, or process designed to change the physical, chemical or biological characteristics or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery or storage, convertible to another usable material or reduced in volume and suitable for ultimate disposal.

(x) "Waste" means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural activities; and including discarded by-product material, source material, or special nuclear material as defined in K.S.A. 48-1603, and amendments thereto. Waste does not include solid or dissolved materials in domestic sewage, in irrigation return flows, or solid or dissolved materials or industrial discharges which are point sources subject to permits under K.S.A. 65-165, and amendments thereto.

(y) "Mound landfill" means a disposal process by which

gradient

hazardous waste is placed above the natural surface of the ground and where the waste will remain after closure. The landfill upon closure shall be covered with materials approved by the secretary to prevent infiltration of liquids into the landfill.

(z) "Underground injection" means the subsurface emplacement of fluids through a well for which a permit has been issued by the secretary.

(aa) "Land treatment" means the practice of applying hazardous waste onto or incorporating hazardous waste into the soil surface so that it degrades or decomposes and renders the waste nonhazardous.

(bb) "Above ground storage" means the placement of containerized hazardous waste into an above ground structure for a temporary period prior to the reuse or ultimate treatment or disposal of such waste.

(cc) "Closure plan" means a written document which identifies the procedures by which the owner or operator of a hazardous waste management facility will close such facility so as to control, minimize or eliminate, to the extent necessary to prevent a threat to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall or waste decomposition products to the ground, groundwater, surface waters or to the atmosphere.

(dd) "Post-closure plan" means the written document which identifies the procedures by which the owner or operator of a hazardous waste management facility shall provide, for a minimum of 30 years, for groundwater protection, site security and maintenance of cover and leachate collection systems.

(b) The below ground burial of hazardous waste is hereby prohibited in the state of Kansas. Such prohibition shall not be construed as prohibiting mound landfill, above ground storage, land treatment or underground injection of hazardous waste. Any existing hazardous waste disposal facility which utilizes below ground burial shall cease such burial practices and with the approval of the secretary, shall implement closure and post-closure plans on all hazardous wastes which have been disposed of below ground.

(c) The secretary shall adopt rules and regulations providing for approval of closure and post-closure plans, establishing standards for mound landfill, underground injection, land treatment and above ground storage of hazardous waste and establishing standards for the granting of exceptions to the prohibition of below ground burial of hazardous wastes.

(d) The secretary may grant an exception to the prohibition of below ground burial of hazardous waste. If the person seeking such exception demonstrates that the hazardous waste intended to be buried below ground does not pose a present or potential threat to the public health or the environment pursuant to rules and regulations adopted by the secretary, the secretary shall grant an exception.

New Sec. 3. (a) All generators of more than  $\sqrt{75}$  kilograms of hazardous waste each month shall be subject to regulation by the secretary pursuant to K.S.A. 1983 Supp. 65-3430 et seq., and amendments thereto, on and after July 1, 1984.

(b) All generators of more than  $\sqrt{50}$  kilograms of hazardous waste each month shall be subject to regulation by the secretary pursuant to K.S.A. 1983 Supp. 65-3430 et seq., and amendments thereto, on and after July 1, 1985.

(c) All generators of more than  $\sqrt{25}$  kilograms of hazardous waste each month shall be subject to regulation by the secretary pursuant to K.S.A. 1983 Supp. 65-3430 et seq., and amendments thereto, on and after July 1, 1986.



(d) All generators of more than 10 kilograms of hazardous waste each month shall be subject to regulation by the secretary pursuant to K.S.A. 1983 Supp. 65-3430 et seq., and amendments thereto, on and after July 1, 1987.

# HOUSE BILL No. 2726

By Committee on Energy and Natural Resources

1-20

0016 AN ACT concerning hazardous waste; establishing a hazardous  
0017 waste clean-up fund; prescribing certain powers and duties to  
0018 the secretary of health and environment.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. (a) There is hereby created the hazardous waste  
0021 clean-up fund. All moneys received by the secretary of the  
0022 department of health and environment as grants, gifts, bequests  
0023 or state or federal appropriations to carry out the provisions of  
0024 this act shall be deposited in such fund. All expenditures from  
0025 the hazardous waste clean-up fund shall be made in accordance  
0026 with appropriations acts and upon warrants of the director of  
0027 accounts and reports issued pursuant to vouchers approved by  
0028 the secretary of the department of health and environment.

0029 (b) The secretary is authorized to receive from the federal  
0030 government or any of its agencies or from any private or govern-  
0031 mental source any funds made available under laws, rules or  
0032 regulations for hazardous waste clean-up or other response to  
0033 health and environmental situations where any hazardous waste  
0034 is or threatens to create a health or environmental hazard.

0035 Sec. 2. The secretary shall have the power to: (a) Determine  
0036 that the clean-up of a hazardous waste site is necessary to protect  
0037 the public health and safety or the environment; (b) expend and  
0038 authorize the expenditure of moneys from the hazardous waste  
0039 clean-up fund; (c) recover moneys from persons responsible for  
0040 the health or environmental hazard created by the hazardous  
0041 waste; ~~(d)~~ assign personnel and equipment necessary to carry out  
0042 the purpose of this act; and ~~(e)~~ enter into contracts or agreements  
0043 with any person or company to conduct the necessary clean-up

issue clean-up orders to persons responsible for  
the health and environmental hazard created by  
the hazardous waste; (d)

(e)

delete

(f)

; and adopt rules and regulations to carry out  
provisions of sections 2, 3 and 4 of this act.

3

0045 Sec. 3. The secretary is authorized to use funds from the  
 0046 hazardous waste clean-up fund to pay the cost of: (a) Investiga-  
 0047 tion activities; (b) health assessments; (c) monitoring; (d) evalu-  
 0048 ation of sites; (e) contract for services; (f) clean-up plan, design  
 0049 and review; (g) any consultation needed concerning clean-up  
 0050 activities; (h) epidemiological studies; (i) research required in  
 0051 order to carry out the purpose of this act; (j) mitigation of adverse  
 0052 environmental impacts; (k) emergency or long term clean-up  
 0053 activities undertaken in accordance with this act; (l) legal costs  
 0054 incurred in recouping fund expenditures from responsible par-  
 0055 ties; and (m) any other program related to protecting the health  
 0056 or environment because of a hazard created by or threatened to  
 0057 be created by a hazardous waste.

0058 Sec. 4. Any person responsible for the discharge, abandon-  
 0059 ment or disposal of hazardous waste which the secretary deter-  
 0060 mines is necessary to be cleaned up pursuant to section 2 shall  
 0061 be responsible for the repayment of the costs of the clean-up  
 0062 work. If the responsible person fails to pay for such costs, such  
 0063 payment shall be recoverable in an action brought by the secre-  
 0064 tary in the district court of Shawnee county. Any money re-  
 0065 covered under this section shall be deposited in the hazardous  
 0066 waste clean-up fund.

0067 Sec. 5. The provisions of this act shall be supplemental to  
 0068 article 34 of chapter 65 of the Kansas Statutes Annotated.

0069 Sec. 6. This act shall take effect and be in force from and  
 0070 after its publication in the statute book.

delete

(b)

(c)

(d)

(e)

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delete

(g)

(h)

(i)

(j)

*Shall be borne by the  
 responsible party.*

*X II.*

payment of the costs of investigation to determine whether remedial action is necessary at the site and where remedial action is required to protect the public health and environment, the costs of that remedial action, or where the secretary incurs costs or expends funds for such activities, the responsible person shall be notified of such costs and expenditures and shall make repayment of all costs incurred for response to the site in accordance with section 3 of this act

delete

or repayment

Sec. 5. Any person aggrieved by an order under this act shall have the right of appeal in accordance with the provisions of K.S.A. 65-3440 and amendments thereto.

6.

7.



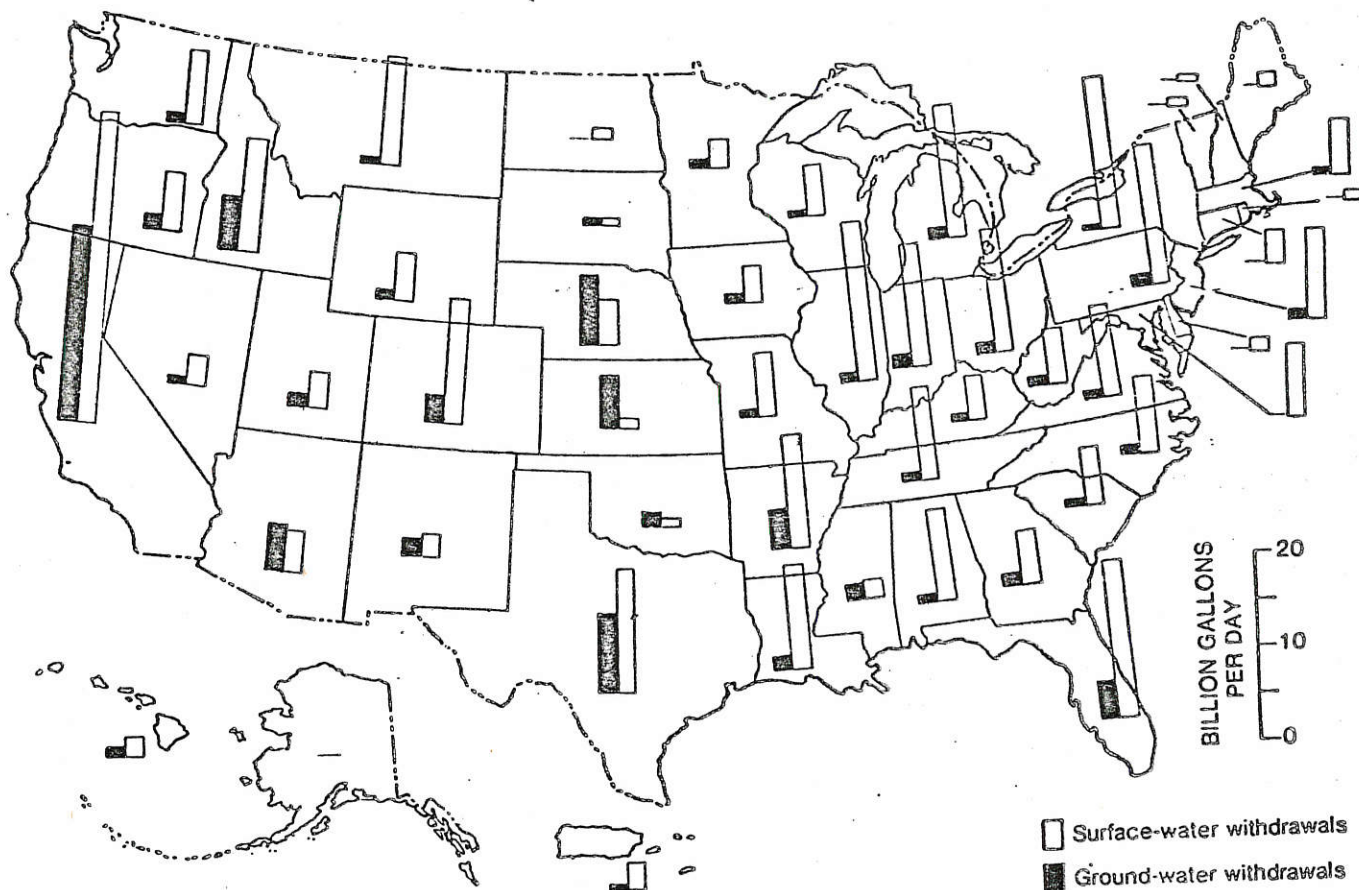


FIGURE 12. Withdrawals from ground water and surface water, by State, 1980. (From Solley and others, 1983.)

4

STATEMENT OF POSITION ON SENATE BILL NO. 507

From:  
Fletcher Bell  
Commissioner of Insurance  
as Administrator of the  
Health Care Stabilization Fund

Senate Bill No. 507 represents a culmination of effort between members of my office and representatives of the various health care provider groups to shore up the Health Care Provider Insurance Availability Act which was originally passed by the 1976 Kansas Legislature. The Health Care Provider Insurance Availability Act became effective on July 1, 1976 and was originally enacted to stabilize the medical malpractice climate in Kansas by insuring the availability of insurance coverage for various health care providers and by providing a reservoir of money from which malpractice claims could be paid through the Health Care Stabilization Fund. As such, the Act not only protected the health care providers by insuring the availability of coverage but protected the public as well by insuring that the health care provider rendering care in Kansas would have coverage to protect them from claims arising out of the negligent rendering of professional services in Kansas. The Commissioner of Insurance was appointed as administrator of the Health Care Stabilization Fund.

Since the original enactment of the Health Care Provider Insurance Availability Act, there have been no major changes made to the Act itself in spite of the fact that the medical malpractice climate in Kansas has worsened because both the frequency and severity of medical malpractice claims in Kansas have increased. For example, in the last three (3) completed fiscal years the number of claims filed against the Health Care Stabilization Fund has increased by twenty-five percent (25%) each year. During that same time, the awards granted against the Fund, which include both settlements and judgments, doubled from one year to the next. For example, during Fiscal Year 1981, 1.7 million dollars was awarded against the Fund. During Fiscal Year 1982, claims in the amount of 3 million dollars were awarded against the Fund. In Fiscal Year 1983, 6.5 million dollars in claims was awarded against the Fund. It appears that this trend will continue. So far for Fiscal Year 1984, awards against the Fund have been 8.5 million dollars. And, of course, we still have approximately four (4) months remaining in this fiscal year.

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The fact the frequency and severity of claims against the Fund has increased is important because of the method in which the revenue in the Fund is generated. The Health Care Provider Insurance Availability Act, as passed in 1976, prevented the assessment of any surcharge against providers unless the cash balance of the Fund was below \$10,000,000. In the first four (4) years of the Fund (Fiscal Years 1977-1980), surcharges were assessed which created a Fund balance in excess of \$10,000,000. At that time no further surcharges could be assessed even though the claims began to mature and the payouts increased. It was not until this past fiscal year that a surcharge could again be imposed because at the start of Fiscal Year 1984 the balance of the Fund had dropped below \$10,000,000. And even though a fifty percent (50%) surcharge was assessed, the balance of the Fund at this time is only about \$7,000,000.

As a result of this experience, meetings were held all throughout this summer with my staff and health care provider groups to consider changes in the Health Care Provider Insurance Availability Act which would help stabilize the existing medical malpractice climate in Kansas. These meetings have resulted in Senate Bill No. 507. My office is fully in support of this bill.

Senate Bill No. 507 consists of three interrelated and indivisible parts which we believe are consistent with the original concept and theory behind the enactment of the Health Care Provider Insurance Availability Act as passed by the 1976 Kansas Legislature and held to constitutional by the Kansas Supreme Court in Schneider v. Liggett, 223 Kan. 610, 576 P.2d 221. If enacted, Senate Bill No. 507 will update the Health Care Provider Insurance Availability Act and ensure that the Act will continue to meet the objectives originally sought which was to ensure the availability of coverage for health care providers and provide a means of protection for the public from the negligent rendering of professional care in Kansas by taking steps to improve the quality of health care rendered in the State.

The changes in the Health Care Provider Insurance Availability Act provided in Senate Bill No. 507 can be broken down into three parts. The first change protects the viability of the Health Care Stabilization Fund. These changes propose to raise the primary coverage required to be maintained by health care providers in Kansas from \$100,000/\$300,000 to \$200,000/\$600,000. Also, a cap on recoveries against any one health care provider in any one claim would be limited to \$3,000,000 from the Health Care Stabilization Fund. A cap on recoveries against the health care provider in any one given year would be limited to \$6,000,000. The funding mechanism would be changed so that the Fund is set up on an actuarially sound basis. The current pay-as-you go scheme will be changed to require that surcharges be assessed against health care providers to protect future losses as well as requiring that existing deficits be made up. To do this, the current cap on the amount of surcharge will



be removed. Finally, to assure the Fund can protect itself from a repeat violator, the Board of Governors will be empowered with the ability to remove a provider from Fund coverage if it is demonstrated that the provider represents a material and significant risk to the Fund.

The second part of Senate Bill No. 507 proposes to amend the Health Care Provider Insurance Availability Act for the purpose of improving the quality of health care rendered in Kansas and protecting the solvency of the Fund by assuring that health care providers covered by the Fund be encouraged to have open, frank and unfettered peer review by making the records of peer review committees confidential and not subject to discovery. We believe this to be a very important provision in protecting the liability of the Fund because it should encourage candid peer review by the health care providers which will increase professional competency and improve the quality of the health care rendered in this state. This will have a direct and significant impact upon the number and severity of instances of the negligent rendering of medical care in this State and not only protect the Health Care Stabilization Fund by reducing the number of claims filed against it, but will be of major benefit to the public of the State as well.

In our opinion, such legislation is necessary if peer review by health care provider is to be effective. We are of the belief that effective peer review is of vital importance in attacking the problem of malpractice. The need for legislation encouraging peer review is even more urgent now because of the recent Kansas Supreme Court decision in Wesley Medical Center v. Clark, 234 Kan. 13 (1983). In that case, the Court held that, absent statutory authority, there was no privilege protecting peer review committee records. The court also noted that at least forty-six (46) states do provide some kind of legislative protection for the records. The United States Congress has passed similar legislation relating to Veterans Administration hospitals.

The third part of Senate Bill No. 507 proposes to establish a disciplinary administrator to monitor, investigate and prosecute claims of unprofessional conduct on the part of the health care providers who are covered by the Fund. This provision will also protect the Health Care Stabilization Fund and the consuming public of this State by establishing a system whereby aggressive and candid review of the health care providers who are rendering care in Kansas can be conducted which will improve the quality of care rendered in the State. This will have a direct effect upon the liability of the Health Care Stabilization Fund in that it will lead to a reduced number of claims and injuries resulting out of instances of medical negligence. Hopefully, this system will assist in identifying those health care providers who represent a more than average exposure to the Health Care Stabilization Fund so that their activities may be monitored or suspended so as to protect the consumers and the Fund.

Senate Bill No. 507 is a comprehensive piece of legislation which in our opinion will have a significant and long-lasting effect upon the Health Care Stabilization Fund in Kansas and the quality of health care services rendered in the State. The integral parts of Senate Bill No. 507 are designed to work together towards that end and are consistent with the original enactment of the Kansas Health Care Provider Insurance Availability Act in 1976 and address the problems which now exist in the malpractice climate in this State.

MEDICAL MALPRACTICE: SB 507

BACKGROUND and ISSUES

Prepared by  
Kansas Medical Society  
February 1984

BACKGROUND

The package of bills enacted in 1976 provided stability to the volatile medical malpractice situation. However, increasing numbers of claims and large awards has brought the problem to very serious proportions again. This bill does several things which should help considerably. A few facts about the current situation:

1. The Health Care Stabilization Fund, to which doctors, hospitals and other providers pay premium surcharges for malpractice coverage, is in an unstable financial position. Experts estimate a deficit of several million dollars unless changes are made this year.
2. The threat of malpractice suits causes doctors to order more tests and procedures to protect themselves from liability. National studies show that about 30-35% of all tests ordered are the result of defensive medicine. This inflates medical and hospital costs significantly.
3. The average award or settlement in Kansas is almost \$300,000, and growing. If something is not done to solve the overall problem soon, our system of compensating injured patients will be bankrupt.
4. National studies show that total malpractice costs contribute significantly to rising health costs, inflating them as much as 25-30%.
5. The trends for the future point to even higher awards, insurance premiums and overall costs to the public. Malpractice costs have tripled since 1974, and will probably triple again within five years.

SB 507: MAJOR PROVISIONS

I. AMENDMENTS TO HEALTH CARE STABILIZATION FUND

1. The basic insurance required for health care providers is doubled from \$100,000 per occurrence, to \$200,000.
2. A Board of Governors is created to advise the Insurance Commissioner. The Board would be composed of health providers, with public representation. The Board of Governors may drop a health care provider from the Fund who presents a significant risk to the financial integrity of the Fund.
3. The Fund's liability is limited to \$3 million per claim. Providers wanting additional excess limits will have to purchase it from the commercial market.

II. PEER REVIEW COMMITTEES

Records of certain peer review committees are granted privilege from discovery. There are several limitations on the privilege, including when such information is used by the licensing agency in disciplinary hearings.

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### III. DISCIPLINARY ADMINISTRATOR: HEALING ARTS BOARD

An independent disciplinary administrator is created to handle complaints and matters involving competence to practice, which come before the Healing Arts Board. This provision parallels the disciplinary system for attorneys, and should result in more effective handling of disciplinary actions involving doctors.

#### ISSUES

Will this bill result in higher malpractice premiums for doctors and hospitals?

Yes. However, in order to avert a catastrophic financial collapse of the Fund, this action is necessary.

Does this bill limit awards in malpractice?

No. The Fund's exposure is limited to \$3 million per claim, and providers seeking higher limits of coverage must buy it on the commercial market.

Does this bill limit attorneys fees?

No. Plaintiffs attorneys will still be able to take cases for contingency fees ranging on average from 33%-50%, plus expenses, of the award or settlement.

Why shouldn't records of peer review committees be subject to discovery?

It is a difficult question that requires balancing interests on both sides. Opponents of the privilege provision argue that such records should be available to help complete the necessary information to evaluate a malpractice case. However, the state's leading plaintiffs lawyer, Gerald Michand, testified in committee that the peer review records would not make any difference in an actual malpractice case. Hospitals and physicians believe if such information was subject to discovery, that the review process would cease to be effective. Physicians participating on peer review committees do so without pay and with the only purpose of enhancing the care rendered to patients. It is a public service which should be encouraged. Critical comment and open discussion is essential to the effective performance of committee functions. A committee may be either a rubber stamp which glosses over difficult issues or it may serve to constantly dig and examine all aspects of patient care. Physicians are not likely to participate with candor if they fear what they say may end up in court. Without this protection the educational process inherent in peer review would become meaningless. Efforts to increase quality of care through the peer review process would be diminished significantly. Consequently, an effective means of increasing competence through professional review would be lost.

Do other states grant protection to peer review committees?

Yes. Forty-six (46) states afford such protection, as does the United States government in VA hospitals.

Is this contrary to the philosophy of the open records law recently enacted?

No. First, these peer review proceedings are not functions of government. Second, peer review activities have largely been voluntarily initiated by doctors and hospitals to improve the quality of care. Their primary purpose is educational, and as such needs an environment of open and candid discussion. The facts of life are that good peer review requires physicians to be candidly critical to other physicians and opening committee records to malpractice lawyers will have a stifling effect on that candor.

Would such records be available to the Healing Arts Board in its investigations?

Yes. The disciplinary administrator has authority to obtain such records for use in his investigations. The Board of Healing Arts cannot begin to perform the detailed work necessary to assure a high quality of care across the state of Kansas. It must rely upon such committees. Records of such committees are available under Senate Bill No. 507 for use by the Board of Healing Arts. In this respect, the peer review committees are analogous to the ethics and grievance committees of local Bar Associations and review committees appointed by the Supreme Court. Pursuant to Rule No. 222 of the Supreme Court, all proceedings, reports and records of disciplinary investigations and hearings are privileged, except by order of the Supreme Court. Surely Kansas physicians should have the same encouragement to critically review the work of their peers as do Kansas attorneys.

Will this hinder an attorney's ability to get information about a particular case?

No. It is important to emphasize that the creation of a privilege of peer review records in no way alters the availability of all the original evidence pertaining to the case being litigated. All of the original medical records, x-rays and other such matters are available for the trial. Nor is there any basis to claim that a retrospective review is not available to the plaintiff. The testimony by many physicians on behalf of the plaintiff has become a common and accepted practice.

Did the Kansas Supreme Court rule on this issue?

Yes. The Supreme Court said without a specific statutory privilege, the records are open in certain instances. It went on to say that the legislature must ultimately decide the public policy question of granting protection for these committee records. There are many examples of statutory privileges throughout Kansas law.

Why will discovery of such records harm the peer review process?

It is the knowledge that the records are discoverable and that participants in the proceedings may be subpoenaed to testify in some matter unrelated to the purpose of the committee's work which has a chilling effect upon the quality of that work. As quoted by Chief Justice Schroeder in his dissent to the decision rendered in the Wesley case:

"(T)he intent of the peer review process is to control the quality of patient care, and the misuse of committee records as weapons brought by physicians denied privilege or by patients in malpractice lawsuits will destroy effective review -- and the patients and the public will be the losers. The exposure to liability is ever present, but to require the production of committee records is to invite disaster by discouraging doctors from participating or inhibiting their participation. The facts of life are that good peer review requires physicians to be candidly critical of other physicians, and opening committee records to malpractice lawyers will have a stifling effect on that candor."

What does this protection have to do with the overall malpractice situation?

It is an important element in improving the care rendered in hospitals. There should be fewer instances of malpractice as professional competency improves through this educational process.



# BANKERS LIFE NEBRASKA

GROUP CLAIMS DIVISION  
Wichita Claim Office  
955 Parklane  
Wichita, Kansas 67218  
Telephone (316) 685-1437

For Presentation to the Kansas House Committee on Ways & Means

Mr. Chairman, Committee Members and Interested Parties

My name is William E. Horn. The opportunity to express a few words for the adoption of Senate Bill 507 is appreciated. Although I've been in the insurance business for 32 years my comments today are on behalf of the Sedgwick County Roundtable for Cost Containment.

The Roundtable is made up of representatives from labor unions, management, physicians, hospital representatives and the insurance industry. For the past five years the group has studied problems of rising medical costs. The group annually has sponsored an informational day long seminar program with open, frank discussions by all in attendance to express their views as they relate to cost containment. Those attending are interested parties from the varied interests in the community.

We have often disagreed with various approaches to the problems of medical delivery systems and costs. We all, however, are in agreement to our support of Senate Bill 507 and feel all three sections of the proposed bill are necessary for the continuation of our cost containment efforts.

The Stabilization fund is just as important today as when it was first formed and its financial integrity must be maintained. It truly has been a stabilizer in controlling unnecessary fee increases because of "panic" or because it "might" be needed to cover costs.

An effective peer review is necessary to eliminate procedures or people if necessary, to prevent the use of professional liability coverage. We have seen excellent results from peer pressures in the medical delivery system for several years. These pressures are a definite deterrent to cost increases while providing quality control. Section seven will help establish a meaningful peer review and even more so when coupled to new section eight.

New section eight of the bill will add credence and support to the peer review system with its appointment of a disciplinary administrator. This in turn can only serve to control the stabilization fund.

This bill blends well with the goals of our roundtable in providing the very best medical care available at reasonable costs, yet well controlled for any possible abuses. It also provides the mechanism for removing a potential problem before an injury occurs.

Thank you for listening and trust these comments will be used in your favorable consideration of Senate Bill 507.

Sincerely,

A handwritten signature in cursive script that reads "William E. Horn".

William E. Horn, FLMI

Member sedgwick County Roundtable for Cost Containment

jy



# **BOEING**

## **BOEING MILITARY AIRPLANE COMPANY**

A Division of The Boeing Company  
Wichita, Kansas 67210 • Seattle, Washington 98124

March 14, 1984

House Ways & Means Committee  
State House  
Topeka, Kansas

Mr. Chairman:  
Members of the Committee:

My name is Bill Abbott; I am the Public Affairs Manager for the Boeing Military Airplane Company in Wichita.

I am appearing today in support of the medical peer review portion of S.B. 507. We do not feel that the other sections of S.B. 507 have a direct impact on our company so we will not speak to them. We do; however, support a statute to protect the confidentiality of findings and reports made by a medical peer review committee as provided in S.B. 507.

The practice of medicine, insofar as our Company's medical insurance programs are concerned, has been altered thru the cooperative efforts of our health care community as directed by a peer review committee.

In 1979, our Company and those who provide our group medical insurance, commenced work with the Sedgwick County Medical Foundation to develop a medical peer review committee. That organization became operational in our four (4) public hospitals October 1, 1980.

From the original medical peer review committee concept, it was recognized a confidentiality statement was required. The nature of the data to be gathered, reviewed and how the findings were to be used, created the need for limiting access to the committee. It was agreed the Foundation would control all data, and that they were to use the information for educational purposes.

As a result of the peer review committee findings and actions, some changes have occurred in our health care delivery system. For example, inpatient hospital confinements are rarely used for extraction of teeth or for D&C's as these procedures are now considered more appropriately accomplished on an outpatient basis. The Foundation has also consulted with member physicians relative to their practice patterns. This approach has resulted in patients being released earlier; and, in some cases, eliminated the need for hospitalization.

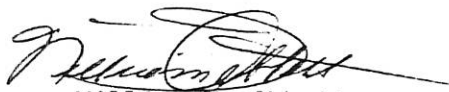
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House Ways & Means Committee  
March 14, 1984  
Page 2

These changes have been made thru efforts initiated by the medical peer review committee. It was necessary they oversee the collection, review and use of specific medical history. It is necessary such findings and records have statutory immunity from legal processes if we are going to have the medical profession direct changes required in the health care industry that will assure continued quality health care provided at the appropriate setting and at costs we can afford.

We respectfully request passage of S.B. 507 with a strong provision protecting the confidentiality of the peer review committees.

Respectfully,



William T. Abbott

Beech Aircraft Corporation  
Wichita, Kansas 67201  
U. S. A.

STATEMENT BEFORE THE  
KANSAS HOUSE WAYS & MEANS COMMITTEE  
MARCH 14, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MARSHA HUTCHISON; I'M MANAGER OF LEGISLATIVE AFFAIRS FOR BEECH AIRCRAFT CORPORATION IN WICHITA.

I AM APPEARING TODAY IN SUPPORT OF S.B. 507. THE PROVISION OF THIS BILL THAT IS OF UTMOST SIGNIFICANCE TO BEECH AIRCRAFT DEALS WITH RECORDS OF PEER REVIEW COMMITTEES WHICH WOULD BE GRANTED PRIVILEGE FROM DISCOVERABILITY AND WOULD BE INADMISSIBLE EVIDENCE IN COURT.

WE HAVE BEEN ADVISED BY RESPECTED MEMBERS OF OUR MEDICAL COMMUNITY, THAT WITHOUT THIS CONFIDENTIALITY GUARANTEE, PHYSICIANS WOULD BE RELUCTANT TO CRITICALLY EVALUATE, IN A PEER REVIEW SETTING, THE SERVICES OF OTHER PHYSICIANS.

BEECH AIRCRAFT FEARS THAT PHYSICIAN RELUCTANCE TO CRITICALLY JUDGE AND EVALUATE THE QUALIFICATIONS, COMPETENCE

AND PERFORMANCE OF FELLOW PHYSICIANS WILL ADVERSELY AFFECT THE STANDARD AND QUALITY OF PATIENT CARE. FURTHERMORE, THE FREE EXCHANGE OF NEW TECHNIQUES AND PROCEDURES MAY BE HINDERED BECAUSE OF DECREASED PHYSICIAN INVOLVEMENT IN THE REVIEW PROCESS.

OUR CORPORATION AND ITS HEALTH INSURANCE COMPANY, BANKERS LIFE NEBRASKA, DEPEND ON A PHYSICIAN PEER REVIEW PROGRAM TO CERTIFY THE MEDICAL APPROPRIATENESS OF CARE RECEIVED IN HOSPITALS. THIS PROGRAM HAS BEEN VERY EFFECTIVE IN CONTAINING OUR HEALTH CARE EXPENDITURES BY PREVENTING UNNECESSARY UTILIZATION OF HOSPITAL SERVICES. THE INTERNAL WORKINGS OF THIS PROGRAM NEED TO REMAIN CONFIDENTIAL TO ENSURE THE PROGRAM'S PROPER FUNCTIONING. ANYTHING WHICH WOULD HANDICAP AN OPEN AND CRITICAL PHYSICIAN PEER REVIEW PROCESS GOES AGAINST KANSANS OBTAINING THE HIGHEST QUALITY CARE AT AN AFFORDABLE COST.

WE RESPECTFULLY URGE THE PASSAGE OF S.B. 507.

THANK YOU.



TESTIMONY OF THE KANSAS HOSPITAL ASSOCIATION

Before the House Ways & Means Committee

Senate Bill 507

March 14, 1984

I am Sister Elizabeth Stover, President of St. Joseph Hospital, Concordia, Kansas. I am here today, as Chairwoman of the Kansas Hospital Association Board of Directors, to present the position of the Kansas Hospital Association on Senate Bill 507.

The Kansas Hospital Association and its member hospitals wholeheartedly support Senate Bill 507. The bill is a result of many long hours of study and meetings between health care providers and the Insurance Department. The Kansas Hospital Association was pleased to participate in these meetings and appreciates the opportunity we had to assist in the development of this legislation.

HEALTH CARE STABILIZATION FUND

Sections 1 through 6 of this bill amend the law relating to the Health Care Stabilization Fund, which provides liability coverage for health care providers. It is generally agreed by those involved that the Fund faces some serious financial problems. This committee heard testimony to that effect last year and as a result passed Senate Bill 284. Senate Bill 284 made some amendments to the Health Care Provider Insurance Liability Act but these were seen as a "band-aid" to the problem. The Insurance Department and health care providers were directed to meet during the interim and find a more long-term solution. We believe the provisions of Senate Bill 507 will go far to alleviate many of the problems the Fund now faces.

Section 2(a) increases the primary coverage limit to \$200,000 per occurrence, with a \$600,000 annual aggregate. We believe this is a more realistic figure and that it will make the primary insurance carrier more concerned about defending the initial claim. Section 3(b) creates a Board of Governors to provide technical assistance, expertise and advice to the Commissioner. This section is important as it makes providers and public representatives involved in the administration of the Fund.

Section 3(e) limits the liability of the Fund to \$3 million per claim. The Fund's liability must be limited if it is to stay solvent and \$3 million per claim seems more than adequate. Section 4(c) removes the statutory maximum on premium surcharges. This allows the Commissioner the flexibility to assess the surcharge at a level that will assure the Fund's solvency.

We believe that the amendments noted above will be very beneficial to the financial condition of the Fund.

#### QUALITY ASSURANCE/PEER REVIEW COMMITTEES

New Section 7 creates a statutory privilege protecting peer review committee minutes and proceedings from discovery in most litigation. We believe it is essential that the Legislature create this privilege in order to insure that high quality health care continues to be maintained in Kansas hospitals.

As you are probably aware, hospitals establish peer review committees to assure quality health care in the institution. These committees also provide an important educational forum for physicians. In order for peer review committees to function effectively, an atmosphere conducive to

candid and open discussion must be created. Prior to September of 1983, I believe most of our physicians felt comfortable being candid in peer review committee meetings since there was a regulation of the Department of Health & Environment protecting records of these committees from review by other than medical staff members.

In September, 1983, the Kansas Supreme Court held the Department regulation invalid, saying that the Department did not have statutory authority to promulgate the regulation. The decision has created much concern among hospital administrators and physicians that peer review committees will no longer be able to function effectively unless the proceedings and the participants in the peer review process have protection. We, therefore, are asking the Legislature to create a statutory privilege for peer review proceedings and records of the same.

Forty-six of the fifty other states have created this privilege by statute. We believe that to insure the continuation of quality health care for Kansas citizens, this Legislature must act this session to protect the candid atmosphere necessary for effective medical peer review. Section 7 of Senate Bill 507 affords this protection, while at the same time assuring that the records and proceedings are available to the Board of Healing Arts for its use in disciplinary investigations and actions.

#### HEALING ARTS BOARD - DISCIPLINARY PROCEEDINGS

New Sections 8 through 11 relate to disciplinary proceedings by the Board of Healing Arts. The Kansas Hospital Association supports the changes in these sections and applauds the Board of Healing Arts and the Kansas Medical Society for developing these proposals.

In summary, the Kansas Hospital Association supports Senate Bill 507 and urges this committee to recommend it favorably.

Thank you for the opportunity to appear today and express the position of the Kansas Hospital Association.



# ktla

suite 300 columbian building  
112 west sixth  
topeka, kansas 66603  
(913) 232-7756

March 14, 1984

TO: Kansas Representatives.  
FROM: Kansas Trial Lawyers Association.  
RE: S.B. 507 on Medical Malpractice.

Today the House Committee on Ways and Means is considering S.B. 507 dealing with the medical malpractice fund. The bill contains three basic ideas:

- I. Sections 1-6 make several changes and new additions to the Health Care Stabilization Fund, the insurance pool established in 1976 to pay for medical malpractice claims. The suggestions would make the Fund actuarially sound, and are generally supported by the Kansas Trial Lawyers Association.
- II. New Sections 8-11 establish a disciplinary board for doctors, modeled after the disciplinary procedure which has been operating for years for lawyers in Kansas. KTLA strongly supports the concept that doctors should review the activities of their peers and should have some strengthened methods of assuring the continuation of quality medical care in Kansas.
- III. A. New Section 7 deals with Peer Review Committees, and the Kansas Trial Lawyers Association **strongly opposes** this section of the bill. The section is aimed at overturning a 6-1 Kansas Supreme Court case on the Wesley Medical Center which said that the records of hospital peer review committees were subject to discovery, following judicial review.

Hospitals are public institutions, supported by public funds. The public has a right to be protected, and we feel that sealing these records from any judicial review could be very dangerous for Kansas consumers.

Most doctors are very skilled and the vast majority of procedures are careful and correct. But there are those within the medical profession who, on a continuous basis, demonstrate faulty judgment and severely injure or maim innocent victims. If new Section 7 is passed, no judge or jury in Kansas would ever have access to an independent review of a doctor by his or her peers.

The Kansas Supreme Court felt that the overwhelming public policy was in protecting the public, and ruled emphatically that peer review records were subject to discovery.

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B. In the alternative of striking the entire section we would strongly urge the Committee to consider the following language:

Replacement for language commencing at 0385, substitute for section (c):

"Except as provided by K.S.A. 60-437 and amendments thereto and by subsections (d) and (e) of this section, the reports, statements, memorandum, proceedings, findings and records of peer-review committees, shall be qualifiedly privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in any evidence in any judicial or administrative proceedings unless a party makes an application to the Court and makes a showing of exceptional circumstances under which it is impracticable for the party seeking the discovery to obtain the facts otherwise, and the Court determines that after balancing the interests of the peer-review committee and the litigant that the public interest will best be served by allowing the party access to the materials sought. If the Court makes that finding it shall make such protective orders as are necessary to see that the materials are used appropriately and that the concerns thereof shall not be disclosed to any other person or entity without prior court approval nor shall they be used for any purpose other than discovery, preparation for trial and the trial of the proceeding out of which the order arises. This qualified privilege may be claimed by the legal entity creating the peer-review committee, or by the Commissioner of Insurance for any records or proceedings of the Board of Governors."

Rationale for this Approach:

There is a substantial public interest in peer-review committees operating. The rule specified here essentially is that adopted by the Supreme Court and by Judge Clark which was the subject matter of Wesley Medical Center v. Clark, 234 Kan. 13. It is drafted in line with that opinion as well as the requirements for making discovery of adverse party's expert witnesses when those expert witnesses are not to be called at trial. If a claimant can get the information otherwise then they shouldn't be able to invade the peer-review committee notes. If that party seeks the discovery material notes, there is such a substantial interest for the protection of the peer-review committee that it should be done by a prior application and hearing and the Court should weight that it is in the public's interest to release the records for the individual litigant's purposes. Moreover, once the records are released, they should be protected and restricted to the particular use in that litigation unless the Court enters some other order with respect to the dissemination of the materials.

Kansas Representatives

March 13, 1984

Page 3.

The peer-review committee should have some protection but it should not be inviolate as it does not arise to the same level as physician-patient privileges, priest-penitent or attorney-client. Those special relations arise out of the trust that the individual will not use the physician, the lawyer or the priest if he does not have someone that he can totally confide in without the opportunity for that information to be reached. In this case we have circumstances where institutions are looking into the privileges (not the rights) of those who practice within these institutions. To some extent those bodies are public and not private and they are affected with the public interest, and since reputations and the confidence of the public in professionals may be adversely affected by a free flow of information prior to the finding of a probable cause and actual hearing, there is a reason to protect those materials from general public scrutiny. However, in the individual and very rare case such as Dr. Mirza there may be a compelling public interest to release those records for purposes of a specific piece of litigation and it should not be put beyond the reach of a court to make that judgment. Once the claimant has taken the trouble to go to court, make a special request for the records, show that the materials are not otherwise available, make the requisite showing that the public interest requires the records to be released, then it should be within the judgment of a court to release the records and since a court order will be involved restricting the use of the materials for their only and proper purpose in that litigation, little damage to the peer-review system would be sustained.

Since judges do exercise different discretion and since all judges may not have adopted the same stringent standards as Judge Clark did in his opinion, this then will be a statutory recognition of the qualified privilege and specify the only circumstances under which the records may be released, and this should offer a considerable amount of protection to the peer-review committees so that they can operate with as free a flow of information as they were likely to get under the system before the Clark decision.

Summary.

As amended by the Senate Committee and approved by the full Senate, lines 423-424 on page 12 opens records to the general public once a petition or action has been filed.

Striking new Section 7 in its entirety, or codifying Judge Clark's decision would offer more protection for the peer review process. At the same time important safeguards are provided for the public.

We urge you to amend S.B. 507 by substituting the language provided or striking new Section 7 in its entirety.

KTLA:jlc



# Kansas Association of Osteopathic Medicine

March 14, 1984

To: Chairman and Members, House Ways and Means Committee

From: Kansas Association of Osteopathic Medicine, Buddy L. Hulsman, D.O., President (Parsons; Harold E. Riehm, Executive Director

Subject: Support for Passage of SB 507

The Kansas Association of Osteopathic Medicine supports passage of SB 507. KAOM was one of several medical provider groups that met many times with the Insurance Commissioner throughout the interim to discuss alternatives for addressing the problems of the Health Care Stabilization Fund, the need for greater policing of providers, and the discoverability of peer review records.

SB 507 is a compromise bill. Some of its contents will cause physicians to incur greater costs and greater licensing scrutiny. Yet KAOM supports this measure because it appears to be a reasonable way of insuring the financial viability of the Fund and enhancing the self-policing and Board of Healing Arts policing of those licensed to practice.

The section dealing with nondiscoverability of peer review records deserves passage. While it does provide confidentiality for peer review, this is tempered by provisions that permit such records to be in the public domain at a defined stage of the Board's investigation.

In support of SB 507, KAOM wishes to express its appreciation to the Kansas Legislature for its past and present efforts to work with provider groups in resolving the difficult problems of malpractice insurance. This is a fine example of private and public cooperation which serves well the citizens of Kansas.

1325 TOPEKA BOULEVARD  
TOPEKA, KANSAS 66612, (913) 234-5563  
HAROLD E. RIEHM, EXECUTIVE DIRECTOR



3.14-84 minutes

## REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Ways and Means

Recommends that Senate Bill No. 507, As Amended by Senate  
Committee of the Whole

"AN ACT relating to health care providers; concerning professional liability insurance; providing a privilege for peer review proceedings; establishing administrative structures and procedures for discipline; amending K.S.A. 40-3402, 40-3408, 40-3415 and 65-2838 and K.S.A. 1983 Supp. 40-3403 and 40-3404 and repealing the existing sections."

Be amended:

On page 4, in line 147, by striking all after "members"; in line 148, by striking all preceding the semicolon and inserting in lieu thereof "licensed to practice medicine and surgery in Kansas who are doctors of medicine"; also in line 148, by striking all after "members"; in line 149, by striking all preceding the semicolon and inserting in lieu thereof "who are representatives of Kansas hospitals"; also in line 149, by striking all after "members"; in line 150, by striking all preceding the semicolon and inserting in lieu thereof "licensed to practice medicine and surgery in Kansas who are doctors of osteopathic medicine"; in line 151, by striking all after "member"; in line 152, by striking all preceding the semicolon and inserting in lieu thereof "licensed to practice chiropractic in Kansas";

On page 11, in line 412, by striking "a petition or other" and inserting in lieu thereof "an"; also in line 412, preceding "disciplinary" by inserting "formal";

On page 12, in line 423, by striking "a petition or other" and inserting in lieu thereof "an"; in line 424, preceding "shall" by inserting "dealing with the licensee and related to the action"; in line 426, by striking "administrator" and inserting in lieu thereof "counsel"; in line 427, preceding "act" by inserting "this"; in line 428, by striking "administrator" and

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inserting in lieu thereof "counsel"; in line 429, by striking "administrator" and inserting in lieu thereof "counsel"; in line 435, by striking "administrator" and inserting in lieu thereof "counsel"; in line 441, by striking "administrator" and inserting in lieu thereof "counsel"; in line 443, by striking "administrator" and inserting in lieu thereof "counsel"; in line 444, by striking "administrator" and inserting in lieu thereof "counsel"; in line 447, by striking "administrator" and inserting in lieu thereof "counsel"; in line 448, by striking "administrator" and inserting in lieu thereof "counsel"; in line 454, by striking "administrator" and inserting in lieu thereof "counsel";

On page 13, in line 457, preceding "shall" by inserting "shall be forwarded to the state board of healing arts by the disciplinary counsel and the informal admonition"; in line 458, by striking "disciplinary administrator" and inserting in lieu thereof "board"; in line 470, following the period by inserting the following: "No person who presented any matter to the review committee shall be a hearing officer or otherwise advise the state board of healing arts in any hearing on that matter.";

On page 14, in line 497, by striking "administrator" and inserting in lieu thereof "counsel"; in line 498, by striking "a petition" and inserting in lieu thereof "an action"; in line 500, by striking "petition" and inserting in lieu thereof "action"; in line 501, by striking "administrator" and inserting in lieu thereof "counsel"; in line 503, by striking "administrator" and inserting in lieu thereof "counsel"; in line 505, by striking "administrator" and inserting in lieu thereof "counsel"; in lines 507 and 508, by striking "administrator" and inserting in lieu thereof "counsel"; in line 516, by striking "petition" and inserting in lieu thereof "action"; in line 521, by striking "administrator" and inserting in lieu thereof "counsel"; also in line 521, by striking "petition" and inserting in lieu thereof "action";

On page 15, following line 555 by inserting the following material to read as follows:

"Sec. 13. K.S.A. 65-2841 is hereby amended to read as follows: 65-2841. The following rules shall govern the form of the petition action in such cases: (a) The board shall be named as plaintiff and the licensee as defendant. (b) The charges against the licensee shall be stated with reasonable definiteness. (c) Amendments may be made as in ordinary actions in the district court. (d) All allegations shall be deemed denied, but the licensee may plead in response to the ~~petition-if~~ he action if the licensee so desires.

Sec. 14. K.S.A. 1983 Supp. 65-2842 is hereby amended to read as follows: 65-2842. (a) Upon the ~~presentation-of-the--petition~~ to filing of an action with the secretary of the board, the secretary shall make an order fixing the time and place for the hearing which shall not be less than 30 nor more than 45 days thereafter. Upon written request of the licensee, filed with the secretary of the board not less than 10 days after the licensee is served notice of the hearing, the secretary may grant, for good cause shown, a continuance of the hearing for a period not to exceed 30 days from the original time fixed for the hearing. The secretary of the board shall notify promptly the licensee of the grant or denial of any request for a continuance.

(b) Whenever the board directs, pursuant to subsection (k) of K.S.A. 65-2836 and amendments thereto, that a licensee submit to a mental or physical examination, the time from the date of the board's directive until the submission to the board of the report of the examination shall not be included in the computation of the time limit for hearing prescribed by subsection (a) ~~of this section~~.

Sec. 15. K.S.A. 65-2843 is hereby amended to read as follows: 65-2843. Notice of the filing of such petition action, together with a copy thereof, and of the time and place of the hearing, shall be served upon the licensee at least ~~twenty--(20)~~ 20 days before ~~said the~~ the hearing. ~~Said The~~ The notice may be served by any person specially appointed by the secretary of the board. ~~Said The~~ The service of notice may be made either upon the licensee

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personally, or by leaving at ~~his-or-her~~ licensee's usual place of residence or by certified mail with return receipt to the licensee's last known address.";

And by renumbering sections accordingly;

Also on page 15, in line 560, by striking "and" and inserting in lieu thereof a comma; in line 561, by striking all after "2838" and inserting in lieu thereof the following: ", 65-2839, 65-2840, 65-2841 and 65-2843 and K.S.A. 1983 Supp. 40-3403, 40-3404 and 65-2842 are hereby";

On page 1, in the title, by striking all in line 30 and inserting in lieu thereof the following: ", 65-2838, 65-2841 and 65-2843 and K.S.A. 1983 Supp. 40-3403, 40-3404 and 65-2842 and"; in line 31, preceding the period by inserting "; also repealing K.S.A. 65-2839 and 65-2840";

And the bill be passed as amended.

\_\_\_\_\_Chairperson



REPORTS OF STANDING COMMITTEES

Your committee on House Ways and Means

Recommends that SB 726

"AN ACT concerning funds of individuals in certain state institutions; relating to custody and management of trust funds therefor; amending K.S.A. 76-173 and 76-175 and repealing the existing sections; also repealing K.S.A. 76-174.

be passed.

Edmund J. Anton Chairman.

REPORTS OF STANDING COMMITTEES

Your committee on House Ways and Means

Recommends that SB 553

"AN ACT relating to the state historical society; authorizing the fixing of certain fees for admittance to state-owned historic sites and property; authorizing the purchase of insurance coverage for collections in the care, custody or control of the society; creating the historic properties fee fund and the insurance collection reimbursement/replacement fund; amending K.S.A. 75-2701 and K.S.A. 1983 Suppl. 75-2702 and 75-2728 and repealing the existing sections.

be passed.

Thomas J. Austin Chairman.