

MINUTES OF THE House COMMITTEE ON Ways and MeansThe meeting was called to order by Bill Bunten at  
Chairperson8:00 a.m. ~~p.m.~~ on Wednesday, April 24, 1985 in room 514-S of the Capitol.

All members were present except:

Committee staff present: Gloria Timmer, Legislative Research  
Laura Howard, Legislative Research  
Jim Wilson, Office of the Revisor  
Sharon Schwartz, Administrative Aide  
Nadine Young, Committee SecretaryConferees appearing before the committee:  
Rick Von Ende, Kansas University  
Jerry Slaughter, Kansas Medical Society  
Marlin Rein, Kansas University Med Center  
Representative Branson  
Steve Porter, Health Care Commission  
Art Griggs, Department of Administration  
Others present (Attachment 1)

Chairman Bunten called the meeting to order at 8:10 a.m.

SB 362 -- an act concerning health care providers; relating to the definition thereof; relating to persons engaged in a postgraduate training program approved by the state board of healing arts and operating by the university of Kansas medical center; providing certain exemptions from liability for such persons under the Kansas tort claims act; amending K.S.A. 75-6104 and K.S.A. 1984 Supp. 40-3401 and repealing the existing section.

Rick Von Ende addressed the committee on behalf of University of Kansas in support of the bill. SB 362 would eliminate the requirement that KUMC residents be covered by medical malpractice insurance since they operate under the supervision of a clinical faculty member. Passage of the bill would result in savings of about \$1.7 million in the KU budget. There would be additional costs to physicians and hospitals in the state.

Jerry Slaughter, representing the Kansas Medical Society spoke in opposition to the bill.

Wayne Stratton spoke briefly on behalf of both the Medical Society and the Hospital Association. He said passage of the bill would merely shift the responsibility of insurance coverage to the physicians and supervisors, resulting in passing the cost on to the health care providers.

Marlin Rein also addressed the committee in support of the bill on behalf of the Med Center. Asked how physicians are reacting to the proposal, he replied that they probably will experience a slight increase in premium cost; however, they do support the bill.

Meeting recessed at 9:00 a.m. and reconvened at 10:45 a.m. with Dr. Robert Harder addressing the committee. He suggested an amendment to SB 362, relating to psychiatric hospitals. The amendment takes SRS from the health stabilization act and it was requested by the doctors that work at the state hospitals.

Representative Shriver moved that SB 362, as amended, be recommended favorable for passage. Seconded by Representative Miller. Motion failed.

SB 11 - an act concerning the state scholarship program; affecting the maximum amount of awards thereunder; amending K.S.A. 72-6812 and repealing the existing section.

SB 11 amends the state scholarship program to increase the maximum annual amount that can be awarded to a state scholar from \$500 to \$1,000. The concept was proposed by the Legislative Educational Planning Committee pursuant to its 1984 interim.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,  
room 514-S Statehouse, at 8:00 a.m. ~~p.m.~~ on Wednesday, April 24, 1985

Representative Duncan moved that SB 11 be recommended favorable for passage. Seconded by Representative Ott. Motion carried.

SB 383 -- an act concerning the Kansas highway patrol; relating to job injury leave for certain members of the Kansas highway patrol.

The bill came about because of a recent incident in which a state trooper was injured in the line of duty. During his recuperation, his sick leave expired and he was forced to use vacation time in order to keep his pay going. Workman's comp only pays 2/3 the amount of his salary.

Representative Heineman moved that SB 383 be recommended favorable for passage. Seconded by Representative Louis. After brief discussion, Representative Heinemann amended his motion to have the new law put in the Kansas Register. Seconded by Representative Louis.

The motion was further amended to make the effective date of the law retroactive to the date that the highway patrolman was injured. On the vote, the motion carried.

Representative Miller offered a conceptual motion to also include KBI employees in the same bill. Seconded by Representative Chronister. Motion carried.

Discussion followed concerning the inclusion of other agencies. It was noted that many state agencies have personnel who might be injured in similar situations and the ramifications of the bill could get to be out of hand.

Representative Duncan suggested that language be included that would place limits on any given incident be included in Rules and Regulations.

Chairman appointed a subcommittee consisting of Representatives Heinemann, Duncan and Wisdom to meet with Staff Attorney Jim Wilson and report back to committee later today.

Representative Duncan called to committee's attention a technical amendment needed on SB 11. The effective date on the bill should be July 1, 1985. Seconded by Representative Ott. Motion carried.

Representative Duncan moved that SB 11, as amended, be recommended favorable for passage. Seconded by Representative Ott. Motion carried.

Representative Mainey moved that committee be allowed to reconsider action taken previously on SB 362 and amend the bill to include the portion that Dr. Harder reported on. That amendment would exclude mental health psychiatric hospitals. Seconded by Representative Hamm.

Chairman Buntin commented that the Medical Society and the Med Center people are visiting and announced that with Representative Mainey's permission, we would bring this up for discussion later on today.

Representative Solbach offered a motion that substitute for SB 121 be recommended favorable for passage. Representative Chronister seconded. This bill would amend the statutes to add accident and sickness insurance to the lines of insurance for which the Insurance Commissioner may require the creation of a risk pool. The motion carried.

SB 303 -- an act concerning the division of architectural services of the department of administration; authorizing certain fees for services; amending K.S.A. 75-1269 and repealing the existing section.

Art Griggs explained the bill and also presented a proposed amendment (Attachment 2) that eliminates collection procedures and provides for automatic transfer.

Representative Luzzati moved that the amendment be adopted. Seconded by Representative Louis. Motion carried. Representative Luzzati moved that SB 303, as amended, be recommended favorable for passage. Seconded by Representative Duncan. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means

room 514-S, Statehouse, at 8:00 a.m./~~p.m.~~ on Wednesday, April 24, 1985

HB 2133 -- an act concerning the Kansas civil service act; relating to performance ratings of persons in the classified service thereunder; amending K.S.A. 75-2943 and 75-2949e and repealing the existing sections.

The bill would reduce from five categories of ratings to three categories and gives authority to adopt temporary regulations and get them into effect immediately. Representative Duncan offered an amendment on Line 51, the word "may" should be changed to "shall". Representative Louis seconded. Motion carried.

Representative Duncan then moved that HB 2133, as amended, be recommended favorable for passage. Seconded by Representative Ott. Motion carried.

Jean Fagan, assistant counsel for the Board of Regents, appeared before the committee and requested introduction of a bill concerning educational institutions under the control and supervision of the Board of Regents. The bill would amend legislation passed last year and effective this year to allow faculty to participate in reduced service program. There is no fiscal impact. (Attachment 3 - old SB 160)

Representative Duncan noted that the bill should be amended to change the word "policies" to rules and regulations in order to allow uniformity of the law.

Meeting recessed at 11:45 a.m. and reconvened at 1:30 p.m.

HB 2612 -- an act concerning compensation and benefits for state officers and employees; relating to cafeteria plans for benefits as part of the state health care benefits program; amending K.S.A. 75-6508 and repealing the existing section.

Representative Branson appeared before the committee and explained the bill. It is designed to benefit state employees and allows for salary reduction in the amount of the coverage for dependent health insurance. (Attachment 4)

Claudia Orton, representing Regent's Classified Council, provided written testimony in support of the bill (Attachment 5).

Representative Solbach moved that HB 2612 be recommended favorable for passage. Seconded by Representative Miller. Motion carried.

Representative Guldner presented a draft bill concerning the act for judicial review and civil enforcement of agency actions (Attachment 6) and moved the bill be introduced. Seconded by Representative Rolfs. Motion carried.

Representative Duncan presented a draft bill (Attachment 7) concerning the Kansas law enforcement training act and moved it be introduced. Representative Solbach seconded. Motion carried.

SB 383 -- Subcommittee reported back that the provisions of the bill relating to employee benefits would include only Highway Patrol and KBI employees at this time. Also, that language in the bill would stipulate that only "un-avoidable" injuries would be covered. Subcommittee also recommends that the Chairman be directed to include this topic in the interim study requests.

Representative Duncan moved conceptually that a standard be added that regulations would be set up to specify those cases that are covered by the law. Representative Heinemann seconded. Motion carried.

Representative Louis moved that SB 383, as amended, be recommended favorable for passage. Representative Hamm seconded. Motion carried.

Chairman turned to SB 362 which was voted on earlier today and failed to pass. A proposal was presented for consideration by the committee. The suggestion was made and agreed to by the Medical Society and the Med Center to allow mental health doctors to come out, also that the Med Center would become self insured up to \$200,000, but they would make contributions to the Health Care Stabilization Act fund. This saves the \$900,000 additional money that would have been added to the Med Center. It also provides the coverage of the Health Care Stabilization Fund for anything above the \$200,000 and provides

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Ways and Means,  
room 514-S, Statehouse, at 8:00 a.m./~~p.m.~~ on Wednesday, April 24, 1985

those doctors out in the State to be covered. Chairman Buntun moved that this amendment be adopted. Representative Rolfs seconded. Motion carried.

Representative Rolfs moved that SB 362, as amended, be recommended favorable for passage. Motion carried.

Meeting adjourned at 2:45 p.m.

Note: Attachment (8) is testimony from State Department of Insurance relating to SB 362.

1985  
GUESTS

Date 4-24-85

Name

Address

Representing

PAT SCHAEFER

TOPEKA

DIVISION OF BUDGET

Kitby L. Stogman

MAHARAJA

DIV. of Budget

STEVE PORTER

TOPEKA

HEALTH CARE COMMISSION

Marked Reed

KC

KUMC

Claudia Smith Britton

LAWRENCE

Region 5 Council on

Jay H. Harris

TOPEKA

Dept. of Admin

Art Griggs

||

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4/24/85 (1)

For consideration by Committee on Ways and Means

4-24-85

0047 (e) All moneys received by the secretary of administration  
 0048 under this section shall be credited to the architectural services  
 0049 recovery fund, which is hereby created in the state treasury. All  
 0050 expenditures from the architectural services recovery fund shall  
 0051 be for operating expenditures of the division of architectural  
 0052 services in accordance with appropriations acts upon warrants of  
 0053 the director of accounts and reports issued pursuant to vouchers  
 0054 approved by the secretary of administration or by a person or  
 0055 persons designated by the secretary. *On July 1, 1986, the direc-*  
 0056 *tor of accounts and reports shall transfer all moneys in the*  
 0057 *architectural services recovery fund to the state general fund.*  
 0058 *On July 1, 1986, all liabilities of the architectural services*  
 0059 *recovery fund are hereby imposed on the state general fund and*  
 0060 *the architectural services recovery fund is hereby abolished.*

0061 Section 1. K.S.A. 75-1269 is hereby amended to read as fol-  
 0062 lows: 75-1269. (a) Whenever the total cost of a capital improve-  
 0063 ment project for a state agency is expected to exceed \$250,000 or  
 0064 the secretary of administration provides architectural services for  
 0065 the project under K.S.A. 75-1254 and amendments thereto and  
 0066 the estimated construction cost of the project is more than  
 0067 \$10,000, the secretary shall charge and collect a fee for architee-  
 0068 tural services and management services provided for such proj-  
 0069 ect. The amount of the fee shall be fixed in each case by the  
 0070 secretary of administration and shall be equal to 1% of the  
 0071 estimated construction cost of the capital improvement project.  
 0072 Upon notification by the secretary of the amount of the fee for a  
 0073 capital improvement project, the state agency for which the  
 0074 project is being undertaken shall pay the fee from moneys  
 0075 appropriated for the project or available therefor. For capital  
 0076 improvement projects funded from the Kansas educational  
 0077 building fund or state ~~institutional~~ building fund for which the  
 0078 department of administration will provide architectural ser-  
 0079 vices, engineering services or management services, the secre-  
 0080 tary of administration shall ~~charge~~ a 1% fee for such services.  
 0081 Subject to the provisions of subsection (b), commencing on July  
 0082 1, 1986, and each July 1 thereafter, the director of accounts and  
 0083 reports shall transfer from appropriation accounts ~~from~~ the

institutions

receive

as provided in this section

of

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0084 *Kansas educational building fund and state ~~institutional~~ building*  
 0085 *fund to the architectural services recovery fund an amount*  
 0086 *equal to 1% of the appropriations made from the Kansas edu-*  
 0087 *cational building fund and state ~~institutional~~ building fund for*  
 0088 *the current fiscal year.*

institutions

institutions

0089 (b) *On July 1, 1986, and each July 1 thereafter, the secretary*  
 0090 *of administration or the secretary's designee shall submit to the*  
 0091 *director of accounts and reports a listing of capital improve-*  
 0092 *ment projects funded for the current fiscal year from the Kansas*  
 0093 *educational building fund and state ~~institutional~~ building fund*  
 0094 *for which the department of administration will not be provid-*  
 0095 *ing architectural services, engineering services or management*  
 0096 *services. The appropriations for such projects shall not be*  
 0097 *included by the director of accounts and reports in computing*  
 0098 *the amount to be transferred pursuant to subsection (a).*

institutions

0099 (b) (c) *As used in this section:*

0100 (1) *"Architectural services" has the meaning ascribed*  
 0101 *thereto by K.S.A. 75-1251 and amendments thereto;*

0102 (2) *"engineering services" has the meaning ascribed thereto*  
 0103 *by K.S.A. 75-5802 and amendments thereto; and*

0104 (2) (3) *"management services" means management, consul-*  
 0105 *tation, direction, oversight, inspection and other services per-*  
 0106 *formed by the secretary of administration under K.S.A. 75-1250*  
 0107 *to 75-1268, inclusive, 75-3740 to 75-3742, inclusive, 75-3783 to*  
 0108 *75-3785, inclusive, and ~~75-1250 to 75-1268, 75-5801 to 75-5807,~~*  
 0109 *inclusive, and any amendments to such statutes.*

0110 (e) (d) *All moneys received by the secretary of administration*  
 0111 *under this section shall be credited to the architectural services*  
 0112 *recovery fund, which is hereby created in the state treasury. All*  
 0113 *expenditures from the architectural services recovery fund shall*  
 0114 *be for operating expenditures of the division of architectural*  
 0115 *services in accordance with appropriations acts upon warrants*  
 0116 *of the director of accounts and reports issued pursuant to*  
 0117 *vouchers approved by the secretary of administration or by a*  
 0118 *person or persons designated by the secretary.*

0119 *Sec. 2. K.S.A. 75-1269 is hereby repealed.*

0120 *Sec. 3. This act shall take effect and be in force from and*  
 0121 *after ~~July 1, 1986, and~~ its publication in the statute book.*

SENATE BILL No. 160

By Committee on Education

2-5

0018 AN ACT concerning educational institutions under the control  
0019 and supervision of the state board of regents; relating to the  
0020 reduced-service program; amending K.S.A. 76-746 and re-  
0021 pealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 76-746 is hereby amended to read as fol-  
0024 lows: 76-746. The state board of regents is hereby authorized to  
0025 develop and implement a reduced-service program for faculty  
0026 members of educational institutions under the control and su-  
0027 pervision of the board in accordance with the provisions of this  
0028 act. Subject to policies and procedures adopted by the state  
0029 board of regents therefor, each educational institution may enter  
0030 into reduced-service agreements under this section with officers  
0031 and employees of the institution who are faculty members in the  
0032 unclassified service under the Kansas civil service act and who  
0033 are at least 60 years of age but who are under 65 years of age.  
0034 Reduced-service agreements shall provide that the faculty  
0035 member shall accept an appointment in a position which is less  
0036 than the faculty member's current appointment but which is at  
0037 least 1/4 time, and the educational institution shall pay on behalf  
0038 of the faculty member (a) the amount specified by the Kansas  
0039 state employees health care commission under K.S.A. 75-6508  
0040 and amendments thereto as if the faculty member is serving  
0041 under a full-time appointment as an employee of the educational  
0042 institution and participating in the state health care benefits  
0043 program to provide for such participation of the faculty member,  
0044 and (b) the amount required to assist in the purchase of retire-  
0045 ment annuities under K.S.A. 74-4925 and amendments thereto as  
0046 if the faculty member is serving under a full-time appointment as

New bill  
Wednesday

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0047 an employee of the educational institution, and (c) the amount  
0048 required as contributions under subsection (2) of K.S.A. 74-  
0049 4927a and amendments thereto as if the faculty member is  
0050 serving under a full-time appointment as an employee of the  
0051 educational institution at the full-time equivalent salary. For  
0052 each faculty member who has entered into a reduced-service  
0053 agreement with an educational institution under this section  
0054 and who is at least 60 years of age but who is under 65 years of  
0055 age, the full-time equivalent salary, calculated as if the faculty  
0056 member is serving under a full-time appointment as an em-  
0057 ployee of the educational institution, shall be utilized for the  
0058 purposes of calculating all employer provided benefits, includ-  
0059 ing but not limited to, compensation for accumulated sick leave,  
0060 the insured death benefit and the insured disability benefit  
0061 under K.S.A. 74-4927 and amendments thereto and calculating  
0062 final average salary as defined in subsection (17) of K.S.A.  
0063 74-4902 and amendments thereto.

0064 Sec. 2. K.S.A. 76-746 is hereby repealed.

0065 Sec. 3. This act shall take effect and be in force from and  
0066 after its publication in the statute book.

For purposes of this section, and subject to the policies and procedures adopted by the state board of regents, faculty members shall be eligible for participation in a reduced-service program during the academic year in which they reach 60 years of age and until the end of the academic year in which they reach 65 years of age.

JESSIE M. BRANSON  
REPRESENTATIVE, FORTY-FOURTH DISTRICT  
800 BROADVIEW DRIVE  
LAWRENCE, KANSAS 66044  
(913) 843-7171



TOPEKA  
HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
PENSIONS, INVESTMENTS AND BENEFITS  
PUBLIC HEALTH AND WELFARE

April 24, 1985

TO: Honorable Bill Buntten, Chairman  
and Members House Ways and Means Committee

FROM: Representative Jessie Branson

RE: HB 2612

*Jessie*

Thank you very much, Mr. Chairman and Members of the Committee for the opportunity of speaking in support of HB 2612.

HB 2612 basically makes three provisions:

- 1) Authorizes the Kansas State Health Care Commission to develop and establish a cafeteria plan, pursuant to provisions of the federal internal revenue code. (New Section 1, (a) ).
- 2) Allows employees <sup>and</sup> ~~or~~ officers of the state to receive reduced compensation and have the state's contribution pay for the cost of dependent coverage for health care benefits. (New Section 1, line 31)
- 3) Provides that any such reduction in compensation shall not be for the purposes of employment security, workmen's compensation, or KPERs. (New Section 1, (b) ).

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- 4) Prohibits the reduction of compensation for purposes of the Kansas income tax act (Line 46 - 47, p. 2)
- 5) Requires that implementation of such a plan shall be permissive and subject to approval of the Secretary of Administration to assure adequate data processing resources within DISC. (page 2, lines 49 - 52)

This plan would provide considerable benefit to state employees. For example, an employee in the 20% bracket for income tax purposes, would realize approximately \$280.00/yr savings.

This legislation is flexible, allowing the Secretary of Administration to implement it as computer capacity allows.

The only cost to the state would be that of programming for the computer.

I urge your favorable action on HB 2612.

REGENT'S CLASSIFIED COUNCIL  
EMPLOYEES OF KANSAS

HB 2612

April 24, 1985

Ladies and gentlemen of the House Ways and Means Committee, thank you for this opportunity to speak in favor of HB 2612, a benefit long sought for by the classified employees from Fort Hays State University, Pittsburg State University, Wichita State University, and the University of Kansas. Tax sheltering the contribution for the family health insurance premium will not only be a boon for the employee, but also for the state of Kansas. The employee will realize more take-home pay, more money in the pocket, and more money to spend here in Kansas. The State as the employer will reap not only the estimated \$3-6 million in revenue generated from the extra spending, but also the achievement of open-minded, progressive legislation.

Realizing the implementation of HB 2612 is subject to available capacity on the computer, the Regent's Classified Council urges the committee to positively consider the bill and to look toward the future. HB 2612 will open the door for the long-needed, flexible, "cafeteria style benefits package" -- a bonus for all involved.

Again, thank you for the opportunity to speak in favor of tax sheltering the federal portion of the premium paid for family health insurance coverage.

Respectfully submitted,

*Claudia S. Orton*

Claudia S. Orton  
Lobbyist, Regent's Classified Council

4/24/85 (5)

HOUSE BILL NO. \_\_\_\_\_

By Committee on Ways and Means

AN ACT concerning the act for judicial review and civil enforcement of agency actions; exempting certain actions of the commission on civil rights from the provisions thereof; amending K.S.A. 77-618 and repealing the existing section.

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

New Section 1. Determinations under K.S.A. 44-1005 or 44-1019, and amendments thereto, by the civil rights commission that no probable cause exists for crediting the allegations of a complaint under the Kansas act against discrimination or the Kansas age discrimination in employment act are hereby specifically exempted from the act for judicial review and civil enforcement of agency actions (K.S.A. 77-601 through 77-627, and amendments thereto).

Sec. 2. K.S.A. 77-618 is hereby amended to read as follows:  
77-618. Judicial review of disputed issues of fact shall be confined to the agency record for judicial review as supplemented by additional evidence taken pursuant to this act, except that review ~~shall be by trial de novo in appeals~~ of:

(a) Orders of the director of workers' compensation under the workmen's compensation act shall be in accordance with K.S.A. 44-556, and amendments thereto;

(b) orders of the commission on civil rights under the Kansas act against discrimination or the Kansas age discrimination in employment act shall be in accordance with K.S.A. 44-1011 and 44-1021, and amendments thereto; or

(c) any order of any agency if violation of the order is a crime for which a fine exceeding \$500 or imprisonment exceeding six months may be imposed shall be by trial de novo.

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Sec. 3. K.S.A. 77-618 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

*Duncan  
2nd floor*

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT amending the Kansas law enforcement training act; concerning reimbursement by other state or local agencies of certain costs incurred by the training center; amending K.S.A. 1984 Supp. 74-5609a and repealing the existing section.

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

Section 1. K.S.A. 1984 Supp. 74-5609a is hereby amended to read as follows: 74-5609a. (a) The law enforcement training center is authorized to charge tuition for each railroad policeman enrolled in a course at the training center. Such tuition shall not exceed the training center's average operating cost per trainee. Tuition charges authorized by this section shall cover the cost of room, board and all necessary instructional supplies and material for any railroad policeman attending the law enforcement training center.

(b) Any city, county or state agency which commences employment of a police officer or law enforcement officer within one year of the time such police officer or law enforcement officer has completed a course of instruction at a state or local law enforcement training school shall reimburse the city, county or state agency which paid the tuition for training such officer. This reimbursement shall include the amount of the tuition paid, the officer's salary and travel expenses and any other expenses incurred which were incidental to training such officer.

(c) The law enforcement training center is hereby authorized to make a charge for each police officer or law enforcement officer enrolled in a course of instruction at the training center. Such charge shall be in an amount equal to 25% of the training center's average operating cost per trainee and

*4/24/85 (17)*

shall be paid by the city, county or state agency authorizing such person to attend the training center. Such charge shall be determined, fixed and collected in accordance with rules and regulations adopted by the commission as authorized by K.S.A. 74-5607, and amendments thereto. All revenue received pursuant to this section shall be deposited in the state treasury and credited to the law enforcement training center fund.

Sec. 2. K.S.A. 1984 Supp. 74-5609a is hereby repealed.

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



# INSURANCE DEPARTMENT

TOPEKA

## MEMORANDUM

TO: The Honorable August Bogina, Chairman  
Senate Ways and Means Committee

The Honorable Bill Bunten, Chairman  
House Ways and Means Committee

FROM: Ron Todd, Assistant Commissioner  
Kansas Insurance Department

SUBJECT: Senate Bill No. 362 (As Amended by Senate on Final Action)

DATE: April 23, 1985

This memorandum is offered in our capacity as administrator of the Health Care Stabilization Fund and is intended to call your attention to the possible ramifications of enactment of Senate Bill No. 362 on the fiscal and administrative operation of such Fund and related medical malpractice insurance matters.

First, it is a fundamental precept of insurance that if you eliminate contributions to the pool you have fewer entities and individuals with whom the risk can be shared. Enactment of this bill will shrink the "base" of the Fund. Four psychiatric hospitals, approximately 78 psychiatric physicians and approximately 300 residents will be removed from the Health Care Stabilization Fund. These entities and individuals would no longer be afforded the protections of the Fund and would cease to contribute to the Fund. The annual revenue loss to the Fund would be approximately \$737,000 beginning July 1, 1985.

Second, Senate Bill No. 362, in effect, would shift the responsibility for residents' actions to the supervising physician and to the Kansas University Medical School. Presently, the law recognizes the shared responsibility of a medical school resident with his supervising physician. A resident may or may not have conducted himself in a manner independent from that of his supervisor. The law recognizes that the supervising physician may not be vicariously responsible for all conduct of the resident. Senate Bill No. 362 would make all acts, negligent or otherwise, attributable to the supervising physician.

Moreover, the Kansas University School of Medicine would be implicated in all of these lawsuits involving residents. Currently, K.U. is not named as a party in every action involving a resident. Under Senate Bill No. 362, claims of Kansas University Medical Center will merely increase to accommodate the loss, and the exposure to supervising physicians will be enlarged. Consequently, the ultimate premium rates for Kansas University Medical Center and each individual supervising physician will rise

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# INSURANCE DEPARTMENT

TOPEKA

Memorandum Continued  
April 23, 1985  
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to absorb the additional claims and exposure. In this regard, no potential loss to the Fund will be eliminated.

Third, the state would have to bear the costs of defense and any indemnity contributions in lawsuits against state mental institutions and their physician-employees under the Tort Claims Act. These are costs which are not now borne by the state. Defense costs are incurred every time a suit is filed and can run from an average minimum of \$5,500 per defendant to over \$100,000, depending on the case. Indemnity costs are even greater. The Fund has paid an average indemnity per claim filed of approximately \$40,964. This average cost includes the benefit of the primary policy limits which would not be available to the state with the passage of Senate Bill No. 362.

Fourth, Senate Bill No. 362 does not appear to contemplate the legal implications of removal of these entities and individuals from the Health Care Provider Insurance Availability Act. Residents are full fledged medical doctors in the eyes of the law. They, therefore, have a dual role in the practice of medicine. They are perceived not only as employees of K. U. Medical Center, but they are also perceived as independent contractors comparable to other physicians. Independent contractors are not addressed under the Kansas Tort Claims Act. Senate Bill No. 362 therefore may expose each of these residents practicing medicine in the State of Kansas to personal liability.

Fifth, Senate Bill No. 362 would adversely impact the Fund's coverage of an "inactive health care provider". Arguably, providers exempted from the definition of the Fund become inactive health care providers. It is incumbent upon the Fund to defend and pay claims of inactive health care providers without the benefit of a surcharge or primary coverage limits. The current surcharges include an assessment for retrospective losses. In 1981, 1982 and 1983 the law did not permit the Fund to assess a surcharge. With Senate Bill No. 507, effective July 1, 1984, the legislature permitted the Fund to "catch-up" for those years when no surcharge was assessed. The active health care providers, the number of which would shrink with Senate Bill No. 362, would have to bear the burden of the surcharge which includes an offset for past losses partially attributable to residents, state psychiatric hospitals and their physician employees. The surcharge calculations are based upon a certain number of contributing health care providers and would be thrown off balance to some degree by the modifications proposed by Senate Bill No. 362.

Finally, Senate Bill No. 362 does not appear to contemplate the consequence of residents or state psychiatric hospital employees who wish to moonlight or contribute volunteer time by rendering professional care in the State of Kansas. These physicians, acting in a capacity not covered by the Fund nor by the Tort Claims Act, would have to obtain the mandatory liability insurance protection. No doubt, the insurance would be prohibitive for most physicians, particularly residents and would

# INSURANCE DEPARTMENT

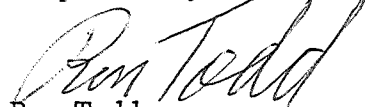
TOPEKA

Memorandum Continued  
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work a disincentive on the contribution of volunteering their medical expertise and training to Kansas communities. Also, the bill would appear to discourage participation of Kansas physicians not directly employed on site at the Kansas University Medical Center in the outreach education programs. Kansas physicians who offer their expertise and hands-on training across the state may be best advised to curtail this practice with the passage of Senate Bill No. 362. Smaller rural communities in this state that benefit from having another doctor available for a time may be deprived of the service.

In conclusion, if the purpose of Senate Bill No. 362 is to save the state money, it is very questionable that this purpose will be realized. The long range impact would be to cost the state more in increased defense costs and insurance costs. Moreover, the Health Care Stabilization Fund would suffer a notable loss of revenue. Those health care providers remaining in the pool would have to bear an increase in premium and surcharge to compensate for this measure. Thus, both in terms of economics and the availability of health care services, Senate Bill No. 362 poses some very serious questions and concerns that deserve careful consideration.

Respectfully submitted,



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LE/2546