Approved February 25, 1985
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on February 18, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Wayne Hundley, Office of Attorney General
Steve Garlow, Office of Attorney General
Jerry Slaughter, Kansas Medical Society
Dr. Linda Warren, Family Practitioner, Hanover, Kansas
Dr. James Gleason, Topeka Physician
Sister Elizabeth Stover, Administrator of St. Joseph's Hospital, Concordia
Harold Riehm, Kansas Association of Osteopathic Medicine
Ken Schafermeyer, Kansas Pharmacists Association
Sherman Parks, Jr., Kansas Chiropractic Association
Paul Fleener, Director of Public Affairs for Kansas Farm Bureau
Paul Klotz, Association of Community Mental Health Centers of Kansas

Wayne Hundley, Office of Attorney General, presented a request for a committee bill concerning the purchase and sale of motor vehicles with incorrect mileage or use indicators. Following his explanation, Senator Gaines moved to introduce the bill. Senator Hoferer seconded the motion. The motion carried.

Steve Garlow, Office of Attorney General, presented a request for a committee bill concerning the sale of business opportunities requiring sellers file a bond and furnish to prospective purchasers certain information and documents. Following the explanation, Senator Gaines moved to introduce the bill. Senator Hoferer seconded the motion. The motion carried.

Senate Bill 110 - Medical malpractice procedures and limitations.

Jerry Slaughter, Kansas Medical Society, testified in support of the bill. He stated this is controversial, and it will be opposed by lawyers who want to maintain the status quo. Without it, however, our fund may go bankrupt, and many physicians will stop high risk, but necessary services. A copy of his testimony is attached (See Attachment I).

Dr. Linda Warren, a family practitioner from Hanover, Kansas, testified in support of the bill. She stated she is testifying concerning plight of the rural patient. This is a time of crisis. She stated it is not going to be practical from what they hear to continue to practice medicine in the way they are used to. She has been in practice for thirteen years and is seriously considering changing her type of practice. Fortunately, she has not yet had a law-suit, and she is paying for medical malpractice insurance. An active physician practicing rural medicine said if malpractice premiums go up, he will have to leave his community. One rural physician had to borrow money to pay his malpractice premiums, and he will not do it next year. Doctors say they cannot locate in Kansas if this malpractice continues to grow. Let's solve the plight of Kansas practice.

Senate Bill 110 continued

Dr. James Gleason, a Topeka physician, testified in support of the bill. He stated the Kansas physician is unique. The fees in Kansas are one-third less than the national average. He said from listening to Dr. Warren, those obstetricians are in a crisis which is happening throughout the state. A bad baby is an automatic suit; if they get a bad baby they are at risk. Physicians who have finished medical school have premiums between $20,000 and $30,000 each year, and they can go to Nebraska to practice for one-third of the premium we have in Kansas. In New York premiums are $100,000. Many of the physicians cannot stand a $50,000 premium. We have wonderful rural care in the state, and it is a crisis in obstetrics. According to statistics, every obstetrician in the state will be sued within the next five years. We don't have to wait a year or two, we must have some relief at the present time.

Sister Elizabeth Stover, Administrator of St. Joseph's Hospital in Concordia, appeared on behalf of the Kansas Hospital Association. She testified the association strongly supports the provisions of Senate Bill 110. We feel it is an effective means of bringing much needed reforms to our present system. A copy of her testimony is attached (See Attachment II).

Harold Riehm, Kansas Association of Osteopathic Medicine, appeared in support of the provisions of the bill. He presented written testimony of Dr. James Rider, an osteopathic physician practicing in Valley Falls, Kansas. He emphasized most strongly the problem is immediate and spiraling malpractice rates need to be addressed now. A copy of Dr. Rider's testimony is attached (See Attachment III).

Ken Schafermeyer, Kansas Pharmacists Association, testified the medical malpractice situation is not a matter of concern only to physicians but to all health professionals and the public in general. A copy of his testimony is attached (See Attachment IV).

Sherman Parks, Jr., Kansas Chiropractic, testified in support of the bill. He stated malpractice insurance in Kansas has been skyrocketing in recent years and is affecting all branches of the healing arts. His association feels it is time to reexamine the present Kansas malpractice laws. A copy of the testimony is attached (See Attachment V).

Paul Fleener, Director of Public Affairs for Kansas Farm Bureau, appeared in support of the bill. He stated the general concern of their members is for procedures which will permit the continuation of the generally high level of health care available through dedicated health care professionals in Kansas. A copy of his handout is attached (See Attachment VI).

Paul Klotz, Association of Community Mental Health Centers of Kansas, testified the association is in support of the bill, particularly in the rural areas where they try to maintain psychiatric physicians.

The hearings on Senate Bill 110 were concluded.

Following committee discussion of the bill, it was the consensus of the committee more time is needed than has been allotted to address the issue in a comprehensive manner. The chairman noted the committee will take some action on the bill.

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,

room 514-S, Statehouse, at 10:00 a.m./p.m. on February 18, 1985.

The meeting adjourned.

A copy of the guest list is attached (See Attachment VII).

A copy of the testimony on Senate Bill 110 by Larry W. Magill, Jr., Executive Vice President Independent Insurance Agents of Kansas, is attached (See Attachment VIII).

Copies of handout from Wayne Hundley concerning his bill request is attached (See Attachment IX).

Copies of handout from Steve Garlow concerning his bill request is attached (See Attachment X).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: 2-18-85

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dr. H E. Levenson	2308 Anderson Manhattan	Kansas Podiatric Ass
Tom Bell	Topeka	Ks Hosp. Assn.
Wayne Probasco	"	Ks Podiatry Assn.
Ken Schafermeyer	"	KS Pharmacists Assoc
Cheryl A. Burkett	Kansas City	KUMC
[illegible]	Wichita	Sullivan Higdon Sink
Julie H. Wilson	Wichita	Sullivan Higdon + Sink
Frances Kastner	Topeka	Ks Physical Therapy assn
Mary Ann Bumgarner	Lawrence	Sen. Burke - intern
Jerry Lonergan	Kansas Office Building	KCC
Karl [illegible] MD	10910 W. 120 Terr OV. Park KS.	Phys. associated
DONNA McCAIN	TOPEKA	KANSAS BAR ASSO.
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Jim [illegible]	Topeka	Kansas Medical Society
John [illegible]	Lewis, Ks	—
F. Calvin [illegible], MD	Garden City, Ks	Kansas Medical Society
Jerry [illegible]	Topeka	KMS
Linda Warren, MD	HANOVER, KS	KMS
[illegible]	Topeka, ks	KMA / kms
HAROLD RIEHM	TOPEKA	Ks Assn Osteopathic Med
William L Walker M.O.	Leawood, Ks	—
Sister Beth Stover	Concordia, Ks	Kansas Hosp. Assn.
Donald A. Wilson	Topeka	" " "
Wendell E. W. McAllister	Great Bend Kans	Kans. Med Society
Sherman A. Parks, Jr	Topeka	Kansas Chiropractic Assn.

Attch. VII

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Kathy Wade Apps	1334 S Topeka	Ks. Chiropractic Assn.
Tom MEIERHOFF	2300 W. 95th Overland Park, Ks. 66215	INS. AGENT
Jim Murphy	Topeka	Governor's Office
Mark Z Bennett	Topeka	AIA
Lynn R Johnson	K.C.	Atty
Kathleen C Selbeies	Topeka	KTLA
Pat McCurdy	Overland Park, Ks	Ins Agent
Ron Smith	Topeka	Ks Bar Assn.
Belva Ott	Topeka	Dun & Bradstreet Inc
LEE WRIGHT	MISSION	FARMERS INS GROUP
William W. Sneed	Topeka	Ks. Assn. of Def. Coun.
Sandy Wiggins	Topeka	Indep. Ins. Agents of Ks.
Jim McBride	Topeka	Mid-Tel Corp
Almeda Edwards	Ottawa	Franklin Co Farm Bureau
Lawrence L. Buening	Topeka	Bd of Healing Arts
Mike Slotsky	Lawrence	Intern Sir Branch
Kristi Wiggins	801 N. Springdale Wichita	Student
Pat Wiggins	Wichita	
Charles Wiggins	Wichita	Private Citizen
TOM HERCH	WICHITA	KWCH-TV NEWS
Barbara Hranicek	Kingman	Hosp Assn. of Kansas
Diane M. Klotz	Topeka	Assoc. of CMHCs Ks

Attch. VII

2-18-85

KANSAS MEDICAL SOCIETY
1300 Topeka Avenue · Topeka, Kansas 66612 · (913) 235-2383

SENATE JUDICIARY COMMITTEE

February 18, 1985

SB 110; Concerning Medical Malpractice

By

Jerry Slaughter
Executive Director

2/18/85
Attch. I

SB 110; Concerning Medical Malpractice

The Kansas Medical Society appreciates the opportunity to comment on SB 110, and we'd like to thank you again for introducing this legislation. During the next couple of days you are going to be asked to absorb a tremendous amount of information about medical malpractice. We are here because the legislature plays an important role in this debate. Much of the immediate solution to the problem is within your ability to change.

The particularly frustrating thing about this issue is that there really aren't any convenient culprits in the system we can blame for causing the problem. It is not primarily a problem of substandard medical practice, solvable through disciplinary action against doctors. It is not primarily a controversy between physicians and trial attorneys, although the news media may convey this interpretation. It is not primarily a problem of the insurance industry, manifested by rising premiums, although they are certainly involved. It is a problem of personal injury to patients in an environment of high technology, modern health care, multiple treatment modalities, an astronomical number of decisions and individual judgments for delivery of care, and the occurrence of bad results, negligence or treatment failures, sometimes in patients who formerly might not have survived. The fact is, that doctors, lawyers, hospitals, insurance companies, and patients, all want the same thing: good results, good medical practice, and fair compensation if someone is injured through negligence. We don't want to get negligent doctors off the hook. We do want to see that the injured patient gets the bulk of the award, and that the spiraling cost of the malpractice system is brought under control.

Attch. I

The facts are that the number of lawsuits filed grows every year -- seven times as many in 1984 as in 1979. Million dollar-plus awards are common now, whereas in 1976 we hadn't had any. Premiums for insurance coverage have increased tenfold since 1975. What's behind all this?

Opponents of reform will tell you that "there's just more malpractice committed by negligent doctors." The data, however, doesn't support that. Physicians in this country are better trained and more closely regulated and reviewed than anywhere else in the world. The medicine practiced here is second to none, yet we have more lawsuits per capita than anybody. Last year we sponsored legislation which beefed up our Healing Arts Board. We hired a full-time disciplinary lawyer who does nothing but investigate and help prosecute physicians who aren't up to standard. If there are "bad doctors" out there, we will deal with them.

It's not just bad doctors getting sued. Data shows that it is often the most highly trained doctors, doing the most difficult cases, that get sued. Our surveys show that there are only a handful of physicians who have multiple claims against them (Attachment A). Almost 2/3 (63.5%) of Kansas doctors have never been sued, and another 24% have been sued just once. However, as the number of suits grows, it is unlikely that any physician will make it through his or her career without being hit.

In the next fiscal year there will probably be over 235 malpractice suits filed (Attachment A). That's about 8 per 100 doctors. When you consider that there are about 7 million separate physician-patient encounters a year in this state, that's a pretty good success rate. However, that relatively small number of suits is causing huge problems.

It has had a devastating effect on premiums (Attachment C). Many doctors in Kansas are paying $20,000 or more for liability insurance. Within two years the cost will double again. The trends indicate that the Florida and New York premiums of $75,000 to $100,000 are not far away. These premiums have been exploding while doctors' fees have been frozen. About three-fourths of Kansas physicians voluntarily froze their fees last year in recognition of a tough economy. Medicare has frozen fees at 1982 levels. Medicaid fees are essentially frozen at 1975 levels. Blue Shield has frozen fees since last year. It's been interesting to watch the plaintiffs' lawyers protest our proposal to place a reasonable limitation on contingent fees, when physicians have been living with government-set fee limits for years.

Opponents of change will tell you tomorrow that rising premiums aren't a burden because doctors and hosiitals are rich -- they can afford it. It's that very "deep pocket" mentality that is driving our malpractice system to such excess. At what point, we ask, does it become unaffordable? As a rural family practice doctor, is it worth doubling your premium to deliver 15 to 20 babies a year, and live under the constant threat of suit? Unquestionably, doctors earn good incomes. But they average 55 to 60 hours a week at their practice. The work is difficult, demanding and stressful, especially these days. Doesn't it ignore the problem to simply say that "doctors can afford it?" Ultimately, the patient pays the bill. When premiums double and triple, health costs go up.

Studies indicate that "defensive medicine" adds significantly to the cost of care. We've enclosed a graphic from a survey (Attachment D) we did this year which indicates this point. That same survey showed that about a third of the doctors who do obstetrics are going to stop delivering babies if the liability situation doesn't improve. Another conferee will address this aspect of the problem a little later.

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You will also hear tomorrow that insurance companies are just profit-takers, ripping doctors off with higher premiums. The data doesn't support that, either. We've attached a chart which shows that physician owned malpractice insurance companies have had losses exceeding premiums since 1980 (Attachment E). A fundamental problem is that there are so few doctors over which the risk can be spread. There are only about 400,000 doctors in the United States, and about 3,000 in Kansas. It doesn't take too many multimillion dollar awards to trigger incredible premium increases if a company only has 15,000 to 20,000 insureds. An auto insurance company, on the other hand, which may insure 3 to 4 million people, can absorb a multimillion dollar loss with insignificant effect on premiums.

I would like to briefly highlight the major provisions of SB 110. Our bill calls for limits on awards, a change in the collateral source rule, and a limit on contingent fees in high dollar cases. We are also asking for a codification of case law relating to standard of care, some geographic restrictions on the use of expert witnesses, and a technical amendment to allow for the purchase of annuities by our Health Care Stabilization Fund. An abbreviated bill summary is enclosed (Attachment F).

The key parts of the bill are the award limitations and the collateral source rule change. In a comprehensive analysis of the effects of the 1970s tort reforms, the Rand Corporation Institute for Civil Justice (1982) found that states which enacted award limits and a mandatory offset of compensation from collateral sources had lower awards by roughly 20% and 50%, respectively. Additionally, limits on contingent fees showed some sign of reducing awards and total claim costs.

Interestingly, in another study by the Rand Corporation (1984) of personal injury cases in Cook County, Illinois, the researchers found that for similar injuries, plaintiffs in medical malpractice cases received four times the compensation that their counterparts in automobile accidents received. The findings suggest that juries may be applying two tiers of justice, and imposing larger awards against "deep pocket" defendants like doctors and hospitals.

We built our program around these key reforms because they offer the only effective alternative for lowering claim costs, and thereby stabilizing premiums. We have concluded from the experience of other states and the available literature, that these two reforms, in conjunction with stringent peer review and disciplinary activity, will significantly improve the malpractice environment. If the legislature passed a reasonable limit on awards and a change in the collateral source rule, it would be of tremendous help.

A feature of the limit on awards which we feel is important is the "safety valve" provision. It would allow for the payment of extraordinary medical expenses above the statutory limitation, up to $3.2 million, which corresponds with the insurance limits health care providers are required to carry. While we believe an award limit is necessary, we also recognize a responsibility to cover medical expenses to the extent of required insurance limits, hence the "safety valve" concept.

A frequent criticism of award caps is that it may leave someone's catastrophic damages uncompensated. Another part of our bill is designed to address this point. In Section 10, we authorize the Health Care Stabilization Fund to purchase an annuity to pay large claims. Annuities, or structured settlements, are an increasingly popular way to pay large claims because they

guarantee benefits over a specified period of time, the benefits are not taxable, and they minimize the dollars necessary up front to guarantee long term financial security to plaintiffs. We've attached some information from a report by March and McLennan on structured settlements (Attachment G). The tremendous purchasing power they offer is illustrated in the attached examples. For $500,000, a structured settlement worth several million dollars can be purchased, guaranteeing the injured person financial security in future years. Such settlements make a dollar cap on awards a viable way to compensate plaintiffs while holding down awards and insurance premiums.

But will this really stabilize insurance costs? The answer is yes. In Indiana, a state which enacted an absolute $500,000 limit on awards in 1975, the cost of insurance is considerably less than in Kansas. We've attached graphs from the Medical Protective Company (Attachment H) which compares Indiana rates with other states, including Kansas. The number of lawsuits filed in Indiana is comparable to Kansas when you adjust for physician density and population, but premiums are significantly lower because of the cap on awards. To the extent malpractice premiums are passed on to patients, the Indiana experience has shown that costs can be contained.

Without question, the reforms we are suggesting are a big step. However, unless we restore balance to the malpractice environment, the fabric of medical services will unravel in Kansas. If our surveys are accurate reflections of physician attitudes, we will see access to high risk services such as obstetrics become less available. In a state that is trying hard to get young physicians to come to our rural areas, the unresolved malpractice problem presents a real barrier.

A final comment about the liability environment in Kansas. In December, 1984, we also surveyed the public about the malpractice problem (Attachment I). We found that Kansans were aware of the problem, and ready for reform. The public knows who pays the freight for our expensive and excessive system. Eight out of ten Kansans said their health care bills were higher because of the effect large malpractice awards have on insurance premiums. Sixty-three percent favored a limit on awards. Almost nine out of ten thought there should be a limit on contingent fees in malpractice suits. In short, the public, we believe, is willing to accept change.

I urge you to give serious consideration to SB 110. It is controversial and will be opposed by lawyers who want to maintain the status quo. Without it, however, our Fund may go bankrupt, and many physicians will stop high risk, but necessary services. We can't tinker around the margins of reform and hope to solve the problem. It takes direct and decisive action. Lawyer groups will tell you to delay, to study the issue. But in the meantime the situation will continue to worsen at a faster pace. And after a couple years of study don't expect the KTLA and KBA to support any reforms that will really make a difference. You can't blame them. Lawyers on both sides make their living by litigating. The incentives in our system are all wrong. We encourage expensive, time consuming litigation, instead of quick and inexpensive resolution of claims. It's time to make a first step to change the incentives. Thank you for your consideration of our comments.

Jerry Slaughter
Executive Director

JS:arb

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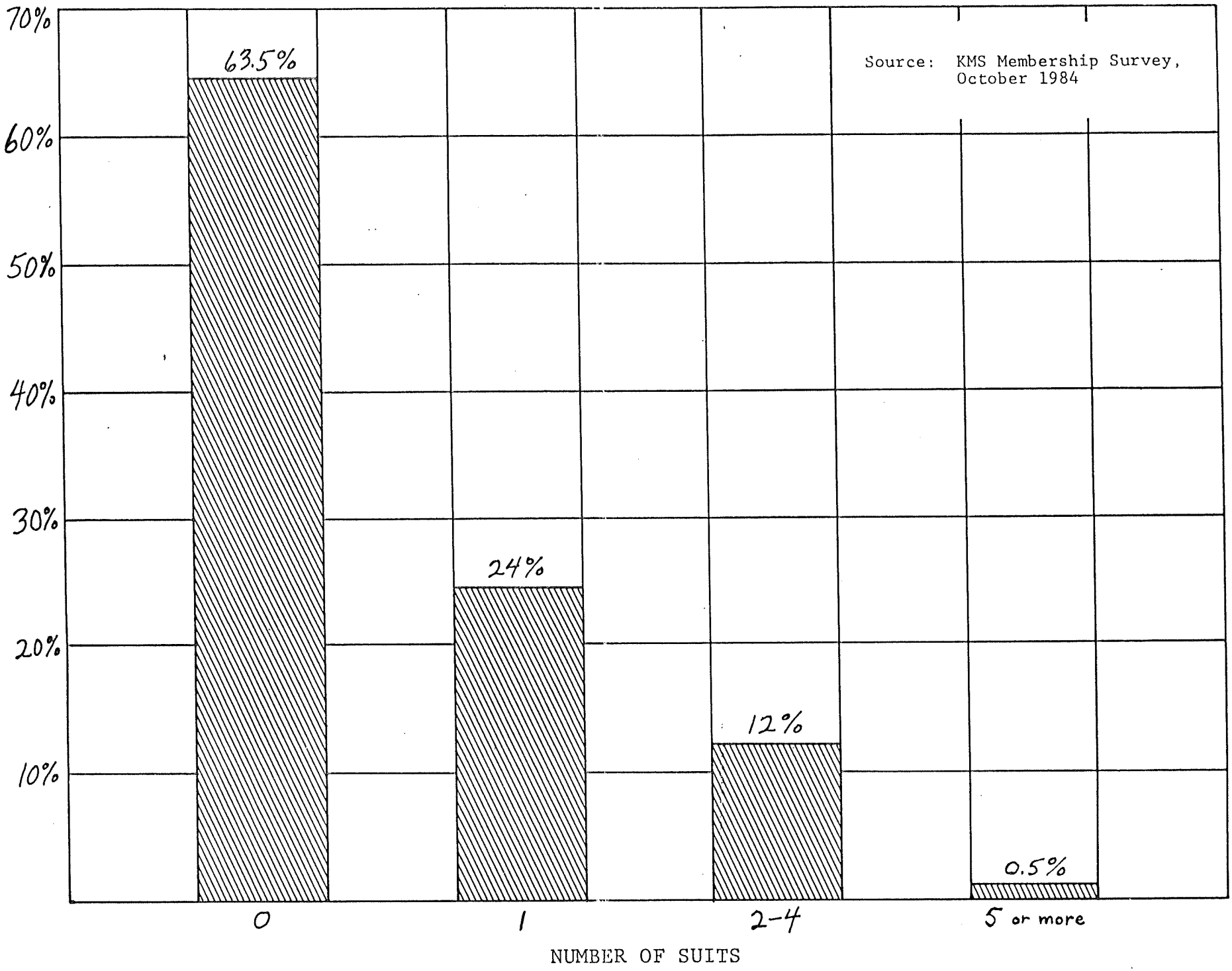
ATTACHMENT A

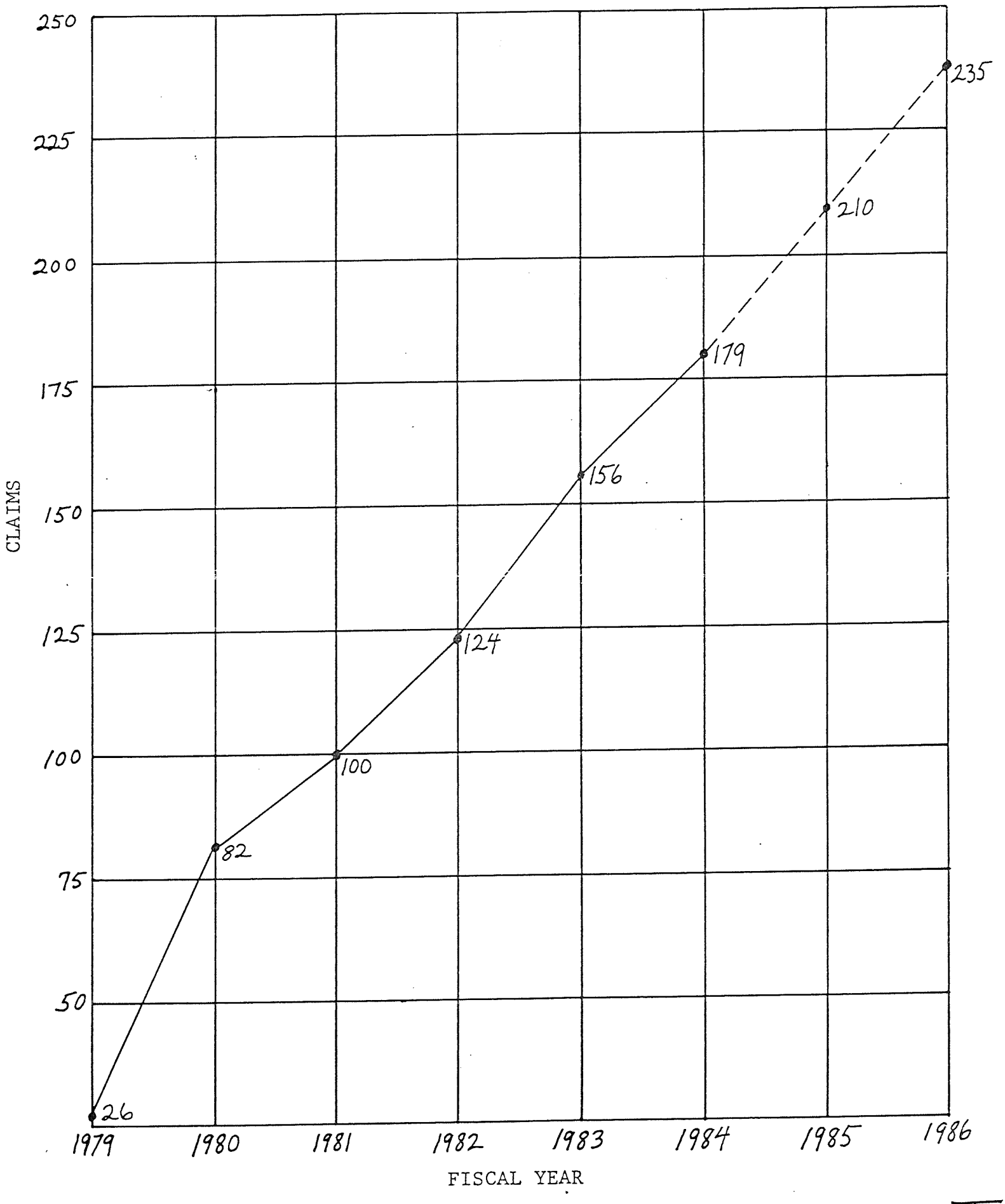
H

FREQUENCY OF MALPRACTICE SUITS AGAINST KANSAS PHYSICIANS



ATTACHMENT

CLAIMS FILED AGAINST HCSF, FY 1980 -- FY 1986



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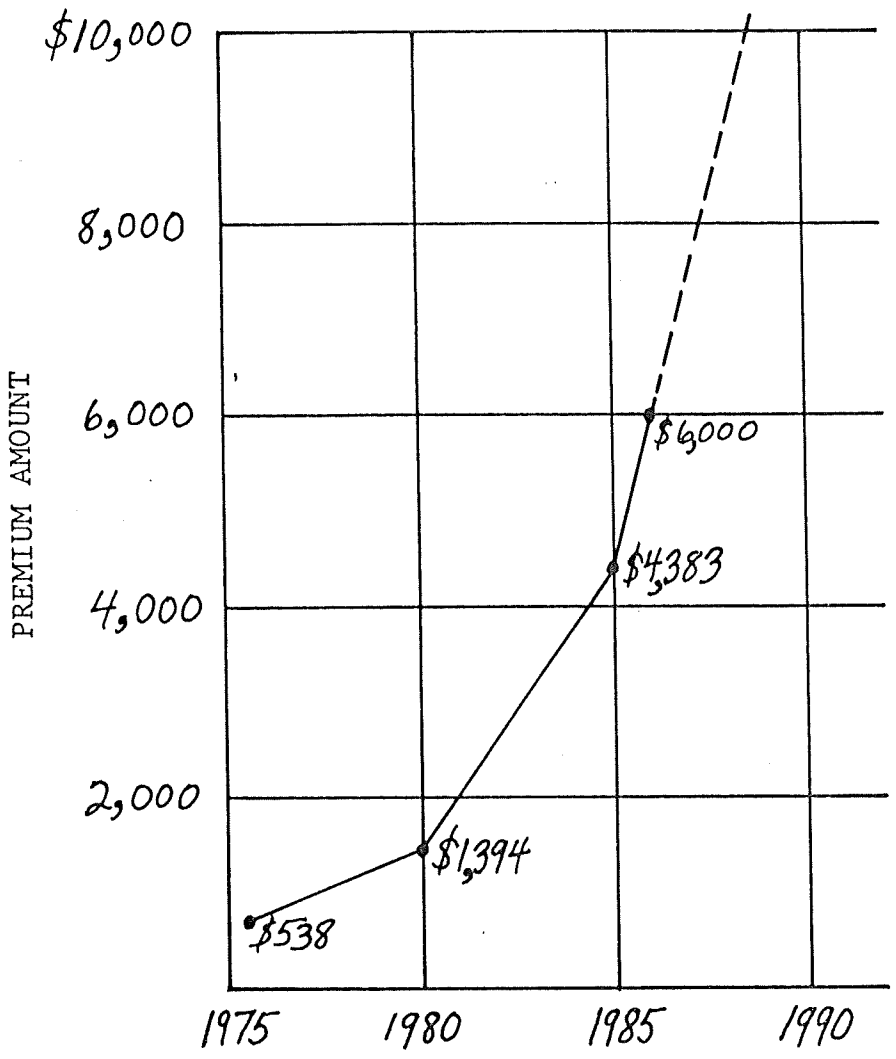
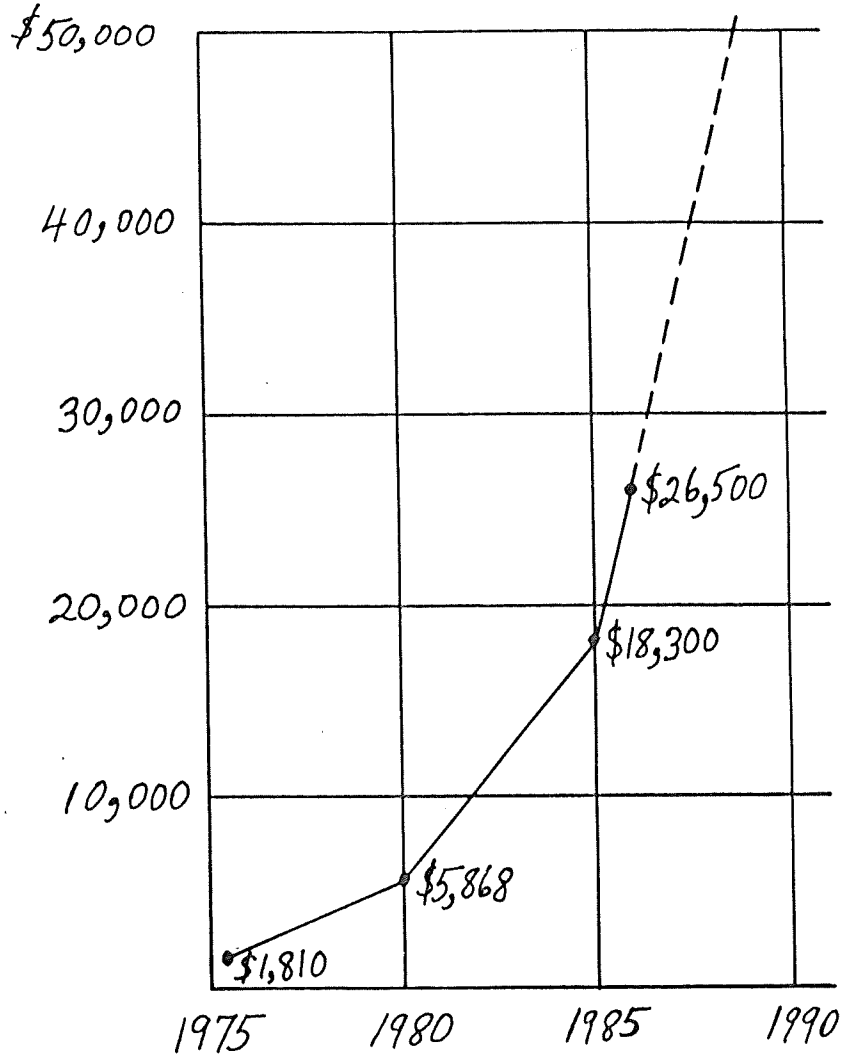
PHYSICIAN MALPRACTICE PREMIUMS FOR REQUIRED COVERAGE



FAMILY PRACTICE AND
INTERNAL MEDICINE SPECIALTIES



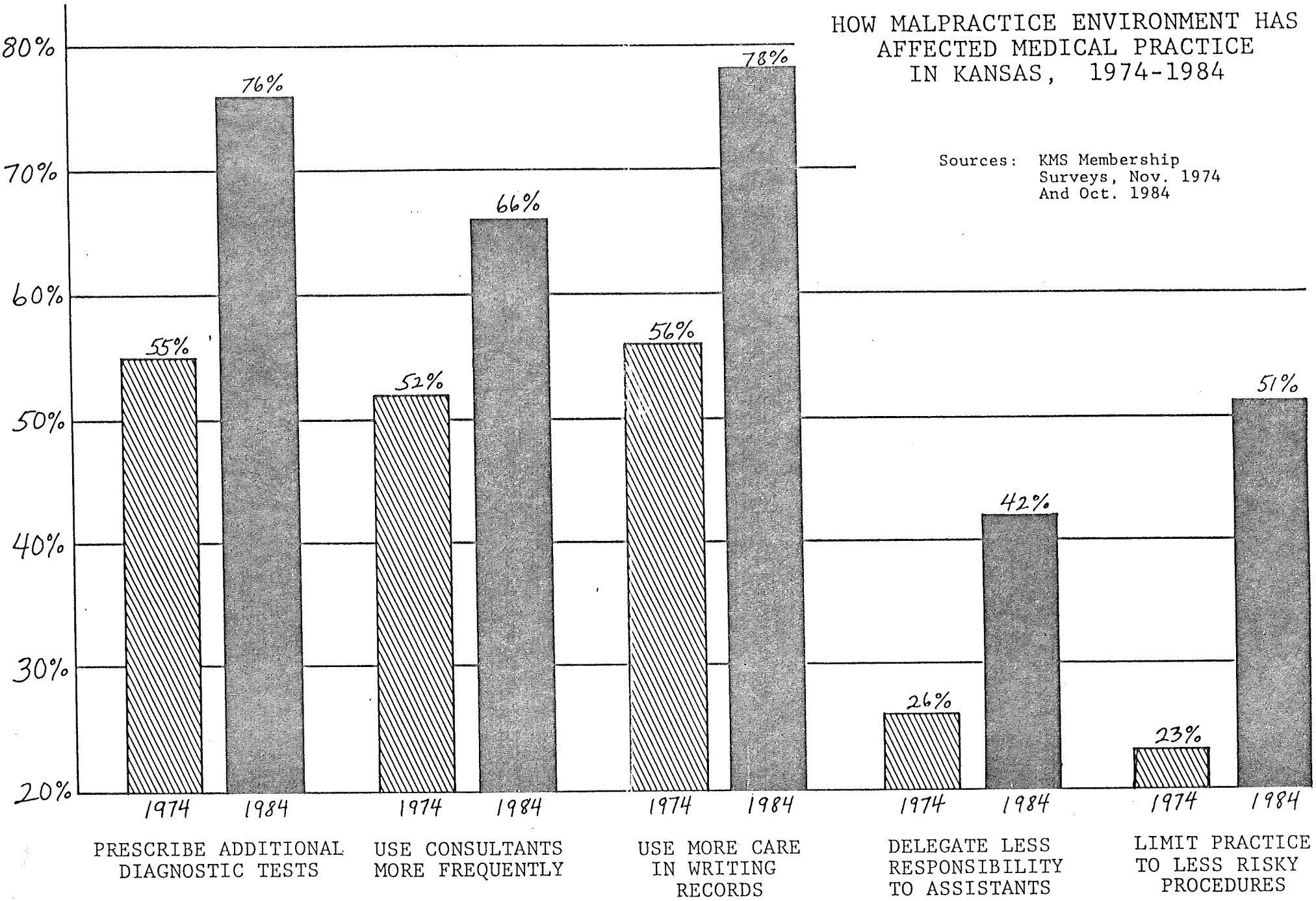
SURGICAL SPECIALTIES
INCLUDING OBSTETRICS

H

ATTACHMENT

HOW MALPRACTICE ENVIRONMENT HAS AFFECTED MEDICAL PRACTICE IN KANSAS, 1974-1984

Sources: KMS Membership Surveys, Nov. 1974 And Oct. 1984



Professional liability premiums and losses: 1977-1983

	Premiums Written	Losses (Losses and loss expenses incurred)
1977	$1.20 billion	$817 million
1980	1.27 billion	1.5 billion
1982	1.48 billion	1.6 billion
1983	1.57 billion	2.0 billion

(selected years)

———— Premiums Written
---------- Losses

Data source: *Best's Insurance Management Reports*, 1983-1984

By the late 1970s losses and loss adjustment expenses exceeded premiums written for professional liability insurance. From 1982 the losses sharply increased compared to the increase in premiums written.

Summary of SB 110

Section 1.

Section 1 defines the purpose of the Act as the assurance of affordable health care to Kansas residents.

Section 2.

Section 2 defines terminology used in the Act.

Section 3.

Section 3 allows for severance of any section of the Act in the event that section is invalidated.

Section 4

Section 4 governs the claimant's right to recover damages in a malpractice action. It evaluates providers according to local health care practices and presumes that providers act in accord with local standards of care. A claimant who contends that he was not fully informed regarding treatment, must show that the information would normally have been given and he would have refused treatment based upon that information. The claimant must show by expert testimony of a provider licensed to practice in Kansas or a neighboring state, that the provider's negligence was more likely than not the cause of his injury. The expert must be directly involved in patient care and be personally familiar with the medical subject forming the basis of the claim. Under this section the jury may be instructed that damage awards are free from state or federal taxes. The jury may also hear evidence that the claimant has received reimbursement for his expenses from outside sources.

Section 5.

Section 5 sets out what an injured party can recover under the Act. The total amount recoverable, excluding future medical care cost, is limited to 500,000. Damages for pain and suffering are limited to 100,000 and punitive damages may not be awarded. Amounts may be awarded for future medical care and benefits, but the total award cannot exceed 3,200,000. When damages for future care are awarded, it becomes a monthly judgment which may be modified if necessary.

Section 6.

Section 6 limits attorneys fees in medical malpractice cases to 15% of amounts payable from the Fund.

Section 7.

Section 7 provides that an annuity may be purchased by the Fund to settle a claim or pay a judgment obtained under the Act.

Section 8.

Section 8 pertains to the effective date of the legislation.

Marsh & McLennan

STRUCTURED SETTLEMENTS - OBSERVATIONS

What are Structured Settlements?

Rather than pay a claimant a single lump sum, the injured party is paid over a period of time.

Background

In the last decade, U.S. juries have awarded $388,000,000 in judgements for product liability cases alone. The malpractice insurance industry has faced even more explosive shock judgements. As a result the defense industry has sought innovative ways to reach equitable settlements. Structured settlements, although not a new concept, is rapidly gaining widespread acceptance on both sides of the Bar.

Advantages for the Claimant

Flexibility - A structured settlement can be tailored to the needs of the individual claimant.

Tax Advantages - Periodic payments are not taxable according to Public Law 97-473 approved on January 14, 1983. The settlement must stipulate that; (1) the benefits are paid because of personal injury or sickness, and (2) that the recipient of the benefits is not the owner or purchaser of the annuity. In other words the plaintiff cannot have constructive receipt of the annuity premium.

Guaranteed Income - A recent survey noted that over 90% of all lump sum gains are totally dissipated within five years. A structured settlement can provide the claimant income over a certain period without the burdens and risks of investing a lump sum.

Freedom from Harassment - Recipients of large sums of money are often deluged by friends, relatives and salesmen eager to lend their advice and share in the new found wealth. Structured settlements minimize this hazard.

ADVANTAGES FOR THE DEFENDENT

Settlement of Claims - Structured settlements often make quick and efficient settlements possible when otherwise a plaintiff would have pursued litigation.

Improved Availability and Affordability of Reinsurance - Large court awards can severely tighten the reinsurance market because of the high cost of malpractice claims. A properly constructed structured settlement program can lead to real benefits as reinsurance treaties are negotiated because of the tendency to lower claim cost that otherwise might be paid.

Lower Cost - The purchase of an annuity often minimizes cost while making ample provisions for the plaintiff's long-term financial security.

DISADVANTAGES

Security of the Annuity Underwriter - Structured settlement cases often pay benefits over the lifetime of the claimant. Nobody can be certain of the long-term stability of annuity underwriters. However, Marsh & McLennan has established stringent guidelines for prospective annuity markets.

FLEXIBILITY OF PLANS

The ultimate form a structured settlement plan may take varies to the degree of individual claimant's needs, defendents constraints and imagination of the various parties.

- Cash Payments -
  for lost wages and medical expenses incurred to the date of settlement.

- Medical Annuity -
  for ongoing treatment and medical expense sometimes with reversion features.

- Rehabilitation Account -
  funds for special rehabilitation equipment, for making residence suitable for the handicapped.

FLEXIBILITY OF PLANS (continued)

- Income Annuity -
  periodic payments based on an assessment of the claimant's income status prior to injury.

- Educational Annuity -
  funds for the education of dependent children.

- Deferred Lump-Sum Annuities -
  single sums to be paid at future dates to combat inflation, or as an estate planning tool.

- Plaintiff Attorney Fees -
  usually determined through separate negotiation, payable in a lump-sum or in installments over several years.

When Are Structured Settlements An Appropriate Approach?

Any malpractice claim may lend itself to a structured settlement. Among the more common cases resulting in periodic payments are:

- Serious permanent injuries such as brain damage, amputation, paraplegia or operated backs which require on-going medical attention or diminished wage earning potential.

- Minors and incompetent claimants and other situations where there is a reason to be concerned about protecting the claimant's financial security and ensuring claimant never becomes a ward of the state.

- Wrongful death cases where annuity payments become guaranteed income for the surviving spouse or children.

- Any case where negotiations may be at a deadlock.

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EXHIBIT I

Case Background: Failed to diagnose appendicitis. Claimant probably sterile - severe scarring due to five surgeries pertaining to the appendicitis and subsequent infections.

PLAN	COST	BENEFITS	GUARANTEED BENEFITS
Up-front cash	$30,000	$ 30,000	$ 30,000
College fund consisting of $10,000/yr. for 4 years income commencing 8-13-90		$ 40,000	$ 40,000
$ 50,000 payable 8-13-96		$ 50,000	$ 50,000
$ 75,000 payable 8-13-01		75,000	75,000
$125,000 payable 8-13-06	44,948	125,000	125,000
TOTAL COST AND BENEFITS	$74,958	$320,000	$320,000

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EXHIBIT II

Case Background: Claimant suffered brachial palsy (fractured right clavicle) at birth resulting in a short, withered arm.

PLAN	COST	BENEFITS	GUARANTEED BENEFITS
Up-front cash	$30,000	$ 30,000	$ 30,000
To Claimant: Lifetime income, guaranteed for 30 yrs., providing:			
$250/mo. for 1st 10 years		$ 30,000	$ 30,000
$500/mo. for 2nd 10 years		60,000	60,000
$1,000/mo. for 3rd 10 years		120,000	120,000
$1,500/mo. for life thereafter		$806,400*	- 0 -
College Fund			
$10,000/yr. beginning 8-23-97	49,259	40,000	40,000
TOTAL COST AND BENEFITS	$79,259	$1,086,400	$280,000

*Benefits based on the normal additional life expectancy of a 4 year old female - 74.8 years.

EXHIBIT III

Case Background: Claimant suffered severe scarring of left leg and permanent retardation and deformity of left foot - Primary injury occurring at birth.

PLAN	COST	BENEFITS	GUARANTEED BENEFITS
Up-front cash	$55,000	$ 55,000	$ 55,000
$600/mo. for life, 30 years certain income commencing 12-1-83		$509,760*	$216,000
$10,000 payable 12-1-93			
$10,000 payable 12-1-94			
$10,000 payable 12-1-95			
$10,000 payable 12-1-96	$ 78,785	$ 40,000	$ 40,000
TOTAL COST AND BENEFITS	$133,785	$604,760	$311,000

*Benefits based on the normal additional life expectancy of an 8 year old female - 70.8 years.

Marsh & McLennan

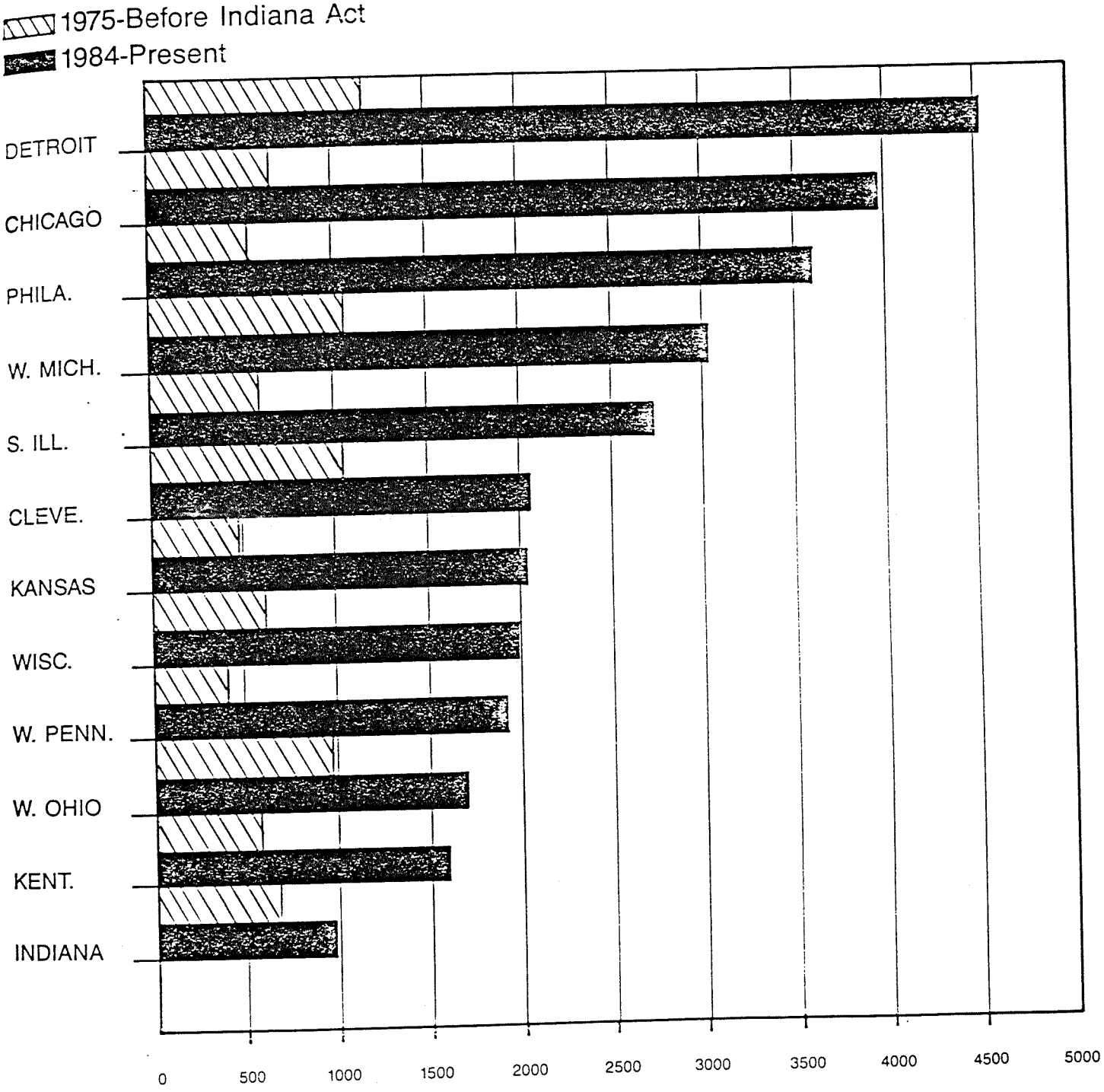
EXHIBIT VII

Case Background: Infant boy severely retarded as a result of failure to do a C-section after signs of fetal distress became evident.

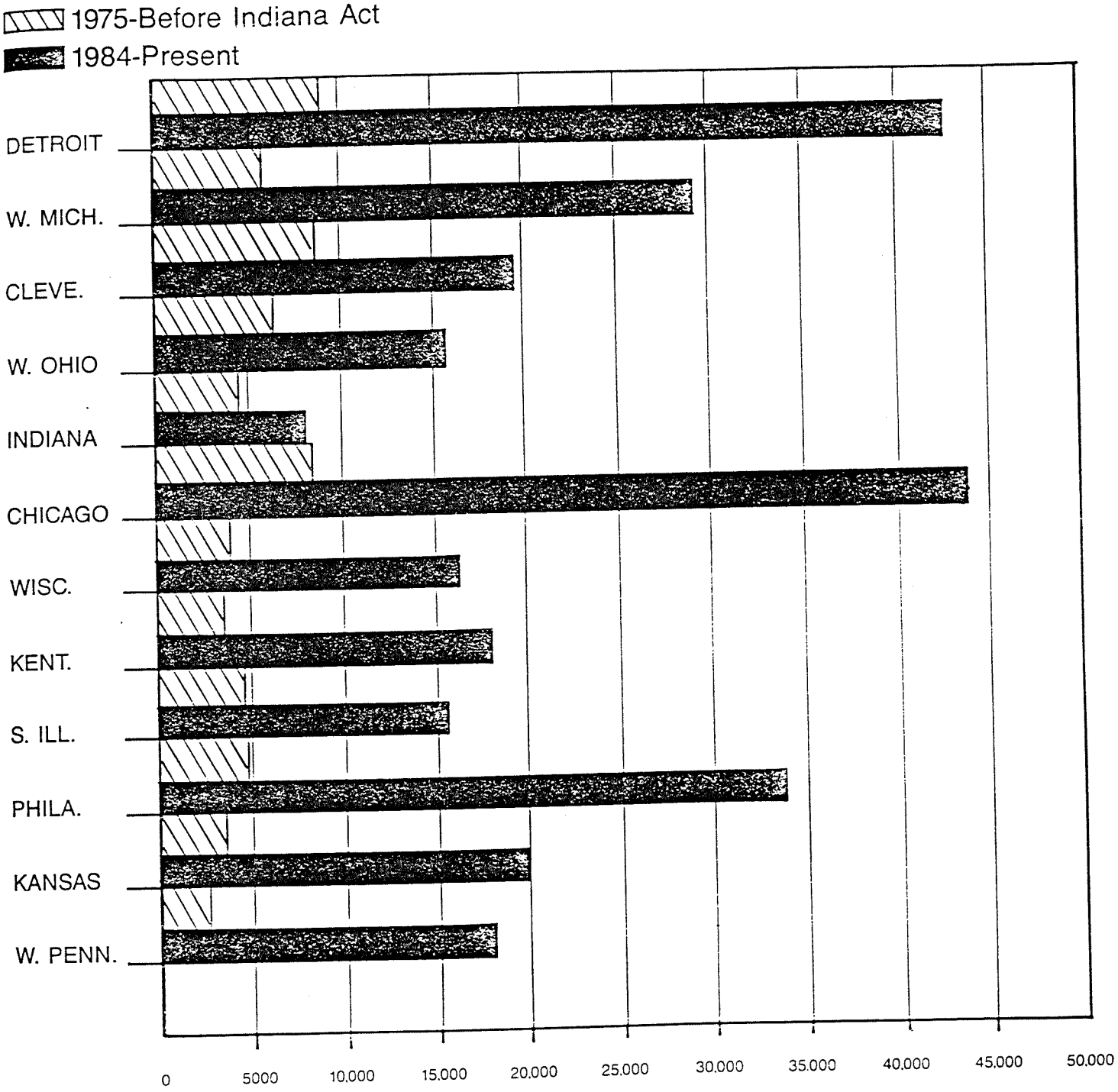
PLAN	COST	BENEFITS	GUARANTEED BENEFITS
Up-Front Cash	$120,000	$120,000	$120,000
$1,400/mo. for life with 30 years guaranteed 3% compounded annually	$249,717	$2,922,403.60*	$829,699.70
TOTAL COST AND BENEFITS	$369,717	$3,042,403.60	$949,699.70

*Benefits based on the normal additional life expectancy of an 11 year old male - 60.5 years.

RATE COMPARISON
LOWEST CLASS SPECIALTIES



RATE COMPARISON
HIGHEST CLASS SPECIALTIES



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ATTACHMENT

A Study of Attitudes Toward Medical Malpractice Issues in the State of Kansas

January 8, 1985

Marketing and Research Consultants, Wichita, Kansas

SUMMARY OF RESPONSES

"Do you think the amount of money awarded in malpractice suits is usually too much, not enough, or about right?"

Too Much	33.9%
Not enough	5.5
About Right	18.1
Don't Know	42.5
	100.0%

"Lawyers who represent patients in malpractice suits usually charge from 1/3 to 1/2 of any award for their fee, which is the so-called contingent fee. Do you think there should be a limit on lawyers' fees in malpractice suits?"

Yes	86.6%
No	6.4
Dont' Know	7.0
	100.0%

"The number of multimillion dollar malpractice awards has been increasing. Do you think there should be a limit on the amount of money that can be awarded to someone in a malpractice suit?"

Yes	62.7%
No	20.3
Don't Know	17.0
	100.0%

"Currently, patients who file malpractice lawsuits don't have to disclose whether their medical insurance will cover any care they need resulting from their medical injury. Do you think that information should be disclosed?"

Yes	59.6%
No	28.2
Don't Know	12.2
	100.0%

"Do you think that consumers pay higher health care costs because of the effect large malpractice awards have on malpractice insurance premiums?"

Yes	82.0%
No	8.9
Don't Know	9.1
	100.0%

2-18-85

Testimony of the Kansas Hospital Association
Before the Senate Judiciary Committee
February 18, 1985

Thank you Mr. Chairman and members of the Committee. I am Sister Elizabeth Stover, Administrator of St. Joseph's Hospital in Concordia, Kansas. I am appearing today on behalf of the Kansas Hospital Association, an organization representing 165 hospitals in the State of Kansas. This past year I served as chairwoman of the Board of the Kansas Hospital Association.

The Kansas Hospital Association strongly supports the provisions of Senate Bill 110. We feel it is an effective means of bringing much needed reforms to our present system.

In cold facts and figures, the effect of the current malpractice problem on hospitals closely parallels the situation of physicians. For example, the frequency of malpractice claims against hospitals has steadily increased. The St. Paul Companies, which insure 1550 hospitals in 46 states, advise that since 1979, the number of hospital claims reported on a calendar year basis increased 76 percent. This, of course, has led to increases in liability insurance premiums for hospitals. Kansas hospitals have seen an average of an 80 percent increase in premiums for primary coverage over the last year, along with a corresponding increase in the Health Care Stabilization Fund surcharge. The cost of excess insurance for hospitals in the state has also jumped drastically. It is now estimated that if nothing is done to curb the present malpractice situation, Kansas hospitals can

anticipate a 200 - 300 percent increase in the cost of insurance by the end of 1985. The bottom line is this -- malpractice costs add an average of $5.00 to the cost of every patient hospital day.

Despite these direct costs, Kansas hospitals are more concerned that the current malpractice situation is threatening patient access to affordable and effective health care. For example, health care consumers are already picking up the tab for the costs of "defensive medicine," the alteration of medical practice patterns to reduce the threat of lawsuits brought by patients. One estimate is that between 25 percent and 40 percent of medical charges in certain situations, such as the management of high-risk pregnancies and deliveries, are ascribable to the practice of defensive medicine. The American Medical Association estimates defensive medicine adds $15.1 billion annually to the nation's health care bills.

The practice of defensive medicine also threatens continued access to health care for some. A 1982 study by the American College of Obstetricians and Gynecologists showed that about 1/3 of the obstetricians in the nation cut back on high-risk deliveries and about 10 percent left the field altogether. Others have taken early retirement. This is not surprising when figures show that 60 percent of the obstetricians in the United States have been sued at least once.

Besides these problems, some Kansas communities face the additional difficulty of competing for doctors with Nebraska, which has a $1 million cap on awards. Some physicians in the northern portion of the state have expressed the concern that the cost of malpractice premiums in Kansas is driving them across the border to Nebraska, where the cost is significantly lower.

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When a community loses a physician or physician services, no matter what the reason, access to care is reduced. In rural Kansas, where many of our small hospitals are struggling to survive, access is already limited. If these hospitals are to remain a viable source of health care, they must be able to attract and keep physicians and services without fear of losing them to the medical malpractice crisis.

Ultimately, society pays for the malpractice crisis, whether in terms of defensive medicine, liability insurance premiums or reduced access to health care. Senate Bill 110 is a reasonable effort to reduce those costs. The Kansas Hospital Association urges that this bill be recommended favorably for passage.

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Attch. II

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Attch. II

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2-18-85

Kansas Association of Osteopathic Medicine

TESTIMONY OF THE KANSAS ASSOCIATION OF OSTEOPATHIC MEDICINE ON S. B. 110

Mr. Chairman and Members of the Committee:

My name is Dr. James Rider, and I am an osteopathic physician practicing in Valley Falls, Kansas. I also am the Legislative Committee Chairman of The Kansas Association of Osteopathic Medicine. On behalf of the practicing osteopathic physicians in Kansas, I urge your serious consideration and support for S.B. 110.

We support the provisions of this bill. We also realize that not all will agree. What we want to emphasize most strongly, though, is that the problem is immediate and spiraling malpractice rates need to be addressed now. We hear that malpractice rates are about to take another major jump upwards, and what is now a serious problem will become more acute in months ahead. As such, we think it needs to be addressed in this session, and that is what we respectfully request.

As you know, the osteopathic profession in Kansas consists largely of physicians in general or family practice. Though we have specialists in practice, about 90 per cent of our physicians are in general practice--many in rural areas and small towns. Though the dollar figure of premiums paid by these general practitioners may not be as dramatic as those of specialists, as a percentage of gross, they paint a serious picture. And in rural areas and small towns they pose a special set of problems. I personally know from talking with many of my D.O. colleagues, that many have made changes in their practice or are planning to do so, short of malpractice premium relief.

About two months ago, the Osteopathic Association conducted a written survey of its membership. The response rate was about 78 percent, and included among responses were the following:

*** APPROXIMATELY 25% OF RESPONDING D.O.S ARE CONSIDERING EARLIER RETIREMENT THAN PLANNED BECAUSE OF MALPRACTICE PREMIUM COSTS.

*** APPROXIMATELY 20% OF RESPONDING D.O.S HAVE CONSIDERED LEAVING KANSAS TO SEEK A LOCATION WITH LOWER MALPRACTICE PREMIUMS.

*** APPROXIMATELY 35% OF RESPONDING D.O.S HAVE MADE A MAJOR CHANGE IN THEIR PRACTICE BECAUSE OF MALPRACTICE PREMIUMS. THE MOST FREQUENT CHANGES ARE CEASING ALL OR PART OF THEIR OBSTETRICAL PRACTICE AND CEASING TO CONDUCT MINOR SURGERY.

*** APPROXIMATELY 44% ARE CONSIDERING A MAJOR CHANGE IN THEIR PRACTICE, DUE TO MALPRACTICE PREMIUMS. AGAIN, MOST FREQUENTLY MENTIONED ARE IN OBSTETRICS.

Our physicians do not want to make these changes. And, probably some will not carry through with them. But enough already have that we know that malpractice premium rates have probably more to do with practice changes than any single phenomenon of recent times--particularly in rural areas and small towns in Kansas.

In northwest Kansas, for example one of our physicians ceased doing any cesarean sections as, to continue, would have required a premium increase greater than the amount of income generated for the few such surgeries he did each year. That physician is considering ceasing obstetrics altogether.

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Physicians want to practice medicine! The overwhelming majority of them practice with great care and we are in concurrance with those policing efforts that insure that this remains the case. But, due to a combination of circumstances, we now face premiums that have and will continue to affect how much practice and what kind of medical care services we deliver.

In my four years of practice, my malpractice premiums have increased 270%. I assure you none of my fees have increased anywhere near that much. I practice in Valley Falls and in some rural hospitals. They are in trouble and their trouble is compounded by my own costs in staying in the business of being a physician. Malpractice costs are now my most serious problem.

It is unfortunate that this malpractice problem has taken the form of physicians vs. attorneys. Yet the legal profession must understand that bad results do not always suggest poor performance.

What we seek is reasonable relief that is fair for all parties concerned. We do not think the present system is fair to physicians. And, from the cost perspective, sooner or later, if physicians are to continue to practice, those costs must be allocated, and we all know that the ultimate settling will be on patients thus becoming a part of the statistic of spiraling health care costs. This is why we urge you to act in this session. Given a year of continuing trends-----I fear for physician services in rural Kansas.

In conclusion, Mr. Chairman, I want to express considerable regret that the Malpractice Committee appointed by Insurance Commissioner Bell does not include an osteopathic physician among its members, nor does it include any full-service physicians who are in general or family practice. We think both of these are glaring omissions.

Thank you for this opportunity to appear before you today.

Attch. III

2-18-85

THE KANSAS PHARMACISTS ASSOCIATION
1308 WEST 10TH
PHONE (913) 232-0439
TOPEKA, KANSAS 66604

KENNETH W. SCHAFERMEYER, M.S., CAE
PHARMACIST
EXECUTIVE DIRECTOR

STATEMENT TO SENATE JUDICIARY COMMITTEE

FEBRUARY 18, 1985

SUBJECT: SENATE BILL 110 REGARDING MODERATION OF MALPRACTICE INSURANCE RATES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS KEN SCHAFERMEYER AND I AM EXECUTIVE DIRECTOR OF THE KANSAS PHARMACISTS ASSOCIATION - AN ORGANIZATION REPRESENTING APPROXIMATELY 1,000 PRACTICING PHARMACISTS IN THE STATE OF KANSAS. I APPRECIATE THE OPPORTUNITY TO ADDRESS YOU IN SUPPORT OF SENATE BILL 110 WHICH WILL HELP MODERATE MALPRACTICE INSURANCE RATES.

SOME OPPONENTS OF THIS BILL HAVE REFERRED TO IT AS A "FINANCIAL RELIEF MEASURE FOR THE RICH DOCTORS." THIS, OF COURSE, IS A DISTORTION OF THE FACTS.

AS YOU KNOW, ALL PRACTICING PHARMACISTS MUST PURCHASE MALPRACTICE INSURANCE. MANY MEMBERS OF OUR ASSOCIATION ARE EMPLOYEES AND THEIR SALARIES GENERALLY START IN THE MID AND HIGH 20's. MOST EMPLOYEE PHARMACISTS PAY FOR THEIR OWN MALPRACTICE INSURANCE AND THESE COSTS CANNOT BE RECOVERED BY PASSING THEM ON TO THE PUBLIC.

WHILE PHARMACISTS' MALPRACTICE INSURANCE WOULD NOT SEEM TO BE VERY EXPENSIVE IN COMPARISON TO PHYSICIANS, THESE INSURANCE RATES HAVE DOUBLED IN THE LAST YEAR OR TWO AND WILL INCREASE AGAIN. IN TWO YEARS KANSAS HAS GONE FROM THE LOWEST PHARMACIST MALPRACTICE

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INSURANCE RATE IN THE COUNTRY TO ONE OF THE HIGHEST. NATURALLY, PHARMACISTS ARE CONCERNED ABOUT THIS TREND. THIS RATE INCREASE HAS OCCURRED DESPITE THE FACT THAT THE HEALTH CARE STABILIZATION FUND HAS NOT YET MADE ANY AWARDS FOR PHARMACISTS' MALPRACTICE.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, WE STRONGLY SUPPORT THE POSITIONS OF THE KANSAS MEDICAL SOCIETY, THE KANSAS ASSOCIATION OF OSTEOPATHIC MEDICINE AND THE KANSAS HOSPITAL ASSOCIATION. THE MEDICAL MALPRACTICE SITUATION IS NOT A MATTER OF CONCERN ONLY TO PHYSICIANS BUT TO ALL HEALTH PROFESSIONALS AND THE PUBLIC IN GENERAL. WE URGE YOUR SUPPORT. THANK YOU.

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2-18-85

Kansas Chiropractic ASSOCIATION

TESTIMONY BEFORE THE SENATE
COMMITTEE ON JUDICIARY
RE: SENATE BILL NO. 110

February 18, 1985

Mr. Chairman, members of the committee, my name is Sherman A. Parks, Jr. I serve as the executive director of the Kansas Chiropractic Association, representing approximately 86% of the doctors of chiropractic in Kansas. I submit testimony before this committee in support of Senate Bill No. 110.

Malpractice insurance in Kansas has been skyrocketing in recent years and is effecting all branches of the healing arts. The Kansas Chiropractic Association (K.C.A.) feels it is time to reexamine our present Kansas malpractice laws. If no action is taken on malpractice insurance increases, then regular health care as we know it today will become something most people can't afford in a few years from now. It is not the intent of the KCA to make it harder to bring or win a legitimate suit or not to get doctors "off the hook" when they are negligent, but to reduce costs while preserving the rights of injured patients to have their day in court.

Public policy, as expressed by many of the Kansas statutes, fully recognizes the doctor of chiropractic as an integral part of the health care delivery system in Kansas. In the Kansas Healing Arts Act, K.S.A.65-2801, the doctor of chiropractic is specifically listed as a member of the healing arts. Since the Kansas Legislature has granted us this status, the Kansas doctor of chiropractic and the KCA have done a lot to reduce the incidence of malpractice in our state.

1334 S. TOPEKA • TOPEKA, KANSAS 66612 • (913) 233-0697

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Attch. V

In 1976, we supported successful legislation requiring doctors of chiropractic to carry malpractice insurance and to participate in the Kansas Health Stablization Fund so that Kansas patients can't be left in the cold. This legislation made the State of Kansas the only state in the United States to have statutory mandated malpractice insurance for doctors of chiropractic. Many doctors of chiropractic in other states do carry malpractice insurance, however, not all doctors do. Kansas citizens have the "peace of mind" that before a Kansas doctor of chiropractic is granted a license to practice in Kansas, they have met the statutory malpractice insurance requirement. Since 1976, there have been less than twenty successful malpractice suits in Kansas, against Kansas D.C.s. There has only been one judgment large enough to have the Kansas Health Stablization Fund assist in the payment of a judgment. Considering the hundreds of thousands of patients the Kansas doctor of chiropractic has seen, this is an excellent "track record" and a tribute to the high standards the Kansas doctor of chiropractic has.

When Kansas became one of the first states to require all doctors of the healing arts to participate in continuing education every year, Kansas became the first state in the United States to mandate continuing education for doctors of chiropractic. Since that legislation was introduced in Kansas, a few other states have required D.C.s to have continuing education. However, Kansas has the highest standards of continuing education for D.C.s in the United States. The Kansas doctor of chiropractic is required, like the other branches of the healing arts in Kansas, to have fifty (50) hours each year. The few other states that require continuing education for D.C.s require only twelve hours or less. I feel this is a factor in the very small number of successful malpractic suits in Kansas against doctors of chiropractic.

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We have supported legislation which has established a process in which a doctor's claims history is reviewed by fellow physicians working for our patient's compensation fund.

We have supported legislation which beefed up the disciplinary system of the State Board of Healing Arts, and increased its legal staff - whose only job is investigating doctors.

The reason why Kansas doctors of chiropractic and the KCA have supported these pieces of legislation is because we feel the Kansas doctors of chiropractic are the best in the United States and the few negligent ones make it tougher - and more expensive - for the rest of us. KCA and the Kansas Legislature have done alot in the past to reduce the chance of malpractice, now is the time to do something more.

Skyrocketing malpractice insurance has had a great impact on rural Kansas. We have few enough rural doctors of chiropractic as it is. Unless something is done soon, the number of rural Kansas doctors of chiropractic can only become worse. When a rural doctor considers early retirement or thinks about leaving the state of Kansas because he or she can't afford the premiuns, surcharges, or the risk of a suit, something has to be done quickly.

K.C.A. feels SB 110 is the place to start. We have worked with the other branches of the healing arts in the development of this bill. We feel SB 110 is the vehicle to slow down the rising malpractice insurance problem. We appreciate the status the Kansas legislature has granted us, - the highest standards for doctors of chiropractic in the United States - however, unless the legislature takes some action now on the rising

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cost of malpractice insurance, thousands of Kansas citizens may be deprived continued chiropractic availability.

K.C.A. supports SB 110 and ask that the committee pass SB 110 as drafted.

Thank you for your consideration.

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Statement To:
SENATE JUDICIARY COMMITTEE

RE: S.B. 110 - Medical Malpractice Procedures and Limitations
February 18, 1985
Topeka, Kansas

Presented By:
Paul E. Fleener, Director
Public Affairs Division
Kansas Farm Bureau

Mr. Chairman and Members of the Committee:

My name is Paul E. Fleener. I am the Director of Public Affairs for Kansas Farm Bureau. We appear here today as proponents of the basic thrust of S.B. 110. Specific ingredients of the legislation are certainly subject to interpretation by this Committee and by the Legislature. The general concern of our members is for procedures which will permit the continuation of the generally high level of health care available through dedicated health care professionals in Kansas. Our members - farmers and ranchers throughout the state, have genuine fear that there will be a reduction in health care services because of the spiralling costs to medical doctors and others of medical malpractice insurance.

In the early to mid-1970's there was a great concern in Kansas for this very topic. An Interim Committee study - probably the most exhaustive study it has been our privilege to hear and participate in - was undertaken and the result was the introduction of 13 bills to, in some way, deal with the cost and availability of malpractice insurance for health care providers. Our members studied this issue and adopted a rather lengthy policy

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position at that time. Because 12 of those 13 bills passed, the last time our policy book contained a statement on health care and professional liability - until now, following another examination last year - was in 1976.

Now, once again the problem of cost and availability of professional liability insurance coverage for health care providers is a concern to our members as they see practitioners limiting their services. In many rural parts of Kansas the General Practitioner or family doctor is turning aside some practices, i.e. obstetric and other specialties that used to be handled by him or her, because of the increasing pressures and mounting costs of malpractice insurance.

In an examination of last summer and fall of the issues contained in S.B. 110, our members adopted the following policy position:

Health Care and Professional Liability

We believe there is a threat to health care in this state because of the cost and availability of professional liability insurance coverage for health care providers.

The increased incidence of medical malpractice claims has caused the cost of insurance coverage to soar, reduced the availability of coverage, and contributed to higher patient fees. We believe health care delivery would be improved and the medical malpractice insurance problem corrected by the enactment of state legislation which would:

1. Prohibit publication of the dollar amount sought in a medical malpractice suit;
2. Limit the amount of money which can be recovered in a medical malpractice suit;
3. Modify and restrict the use of the contingency fee system by the legal profession; and
4. Reduce the statute of limitations and time of discovery for an alleged act of negligence or omission.

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Mr. Chairman and Members of the Committee, we recognize that a number of points of view will come to your attention on this issue. Some feel this is a struggle between the medical and legal professions. It is far more than that. This is a public concern. We are here today representing one portion of that public, the farmers and ranchers who are members of Farm Bureau in 105 counties in Kansas. We ask your thoughtful consideration of our concerns as you shape this legislation and we sincerely request that this legislation be given a favorable report by this Committee and favorable consideration by the Senate and the House of Representatives.

We thank you for this opportunity to appear.

Attch. VI

2-18-85

Testimony on SB 110
Before the Senate Judiciary Committee
By: Larry W. Magill, Jr., Executive Vice President
Independent Insurance Agents of Kansas

We appreciate the opportunity to provide written testimony in support of SB 110, the medical malpractice tort reform proposal, being considered by your committee.

We assume other conferees will provide ample testimony on the size and scope of the medical malpractice problem, the need for the remedies sought in SB 110 and the expected effects. As independent insurance agents, we are part of the delivery system for providing medical malpractice insurance coverage and, as such, would like to provide an insurance perspective to your consideration of this bill. We are certain that some groups will feel that the deep pocket of insurance just needs to be a little deeper and the entire problem will disappear. We do not agree that insurance is a solution.

Insurance is essentially a pass-through mechanism applying the law of large numbers to a group of homogeneous risks (i.e., doctors, etc.), predicting the loss experience for the group and spreading the expected losses among all members of the group. In other words, a known expense, the insurance premium, is exchanged for the uncertainty of a catastrophic loss.

Medical malpractice has some particular problems that many other types of more widely bought insurance such as homeowners and automobile coverage do not. Ever since the problems of the mid 70's, medical malpractice has been a specialized area involving a limited number of insurance companies. In the mid 70's the companies came to the realization that they could not write a small number of medical malpractice policies and hope to have predictable loss experience. This is what is known as an adequate spread

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of risk. The total number of providers in Kansas is not large nor is the total premium volume of malpractice insurance large in Kansas in relation to the rest of the country. This also makes it difficult to attract a large number of insurance companies to the state.

One of the other major characteristics of malpractice insurance that makes it difficult to write is the highly volatile claims experience. Malpractice coverage has what is called in the industry a "long tail." By "long tail," the industry means that the actual losses for any policy year will not be known until at least seven or eight years after those policies have expired. Because of changes in the law, changes in the medical profession itself and a host of other factors, it is very difficult to estimate what the ultimate cost will be of a particular claim when it is settled that far in the future. This makes pricing the coverage very difficult.

The cap placed on awards, the standards of care and the allowance of evidence of collateral sources of reimbursement in SB 110 would help by providing more predictable and less severe losses.

In the mid 1970's, Kansas, as well as the rest of the country, was faced with a medical malpractice "crisis." At that time, an insurance solution was sought to the problem and the Health Care Stabilization Fund was established. This was a band-aid approach which treated the symptoms of the problem but not the causes.

What has been the result? Because of the "long tail" of medical malpractice, the HCSF has experienced a dramatic increase in payouts in each of the last four years from $1.8 million in 1981 to $10.7 million in 1984. In addition, the frequency of claims reported to the fund continues

to grow at an alarming pace increasing an average of 22% per year over the last four years. Kansas is no longer sheltered from the huge multi-million dollar awards being experienced in other states where you would expect those kinds of awards such as California, New York and Florida.

Despite a huge increase in the surcharge from 0% to 80% in one year, the fund's liabilities for pending claims continued to rise. The fund has at least $28 million in pending liabilities and only a little over $8 million in assets at the present time.

Thus, despite significant changes in the Health Care Stabilization Fund enacted in 1984 by the legislature which included increasing the primary coverage required to $200/600, capping the fund's liability at $3,000,000/6,000,000, placing the fund on an accrual basis for accounting for claims, allowing the fund to be funded for its accrued liabilities and granting peer review and underwriting authority, the situation is still deteriorating.

We support SB 110 because we feel it seeks to address the causes of the problem, not the symptoms. Analogies can be drawn to workers' compensation, no-fault automobile insurance and products liability tort reform efforts, which all point the way towards the types of solutions suggested in SB 110.

Without the limitations placed on recoveries under the Workers' Compensation Act, we are sure that this legislature would be faced with similar problems in that area. The Workers' Compensation Act replaced the system of tort liability based on negligence and has functioned extremely well. Of course, there are significant differences and we are not suggesting a scheduled benefit approach to malpractice. Nevertheless, workers' compensation does represent a limitation on a person's right to

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sue that is absolute as far as the employer/employee relationship is concerned.

No-fault automobile insurance was initially proposed in the early 70's by consumer advocates who saw it as a way of slowing the dramatic increase in automobile insurance premiums brought on by our increasingly litigious society. A Consumer Reports magazine article of September, 1984 concludes that where effective no-fault legislation has passed, it has provided a better mechanism for compensating injured parties. The important point here is that no-fault also involves some limitations on a person's right to sue.

Finally, in the area of products liability, federal legislation is being sought to restore an equitable balance between the rights of injured consumers and the expectations society can reasonably place on manufacturers. Products liability insurance is very similar to medical malpractice - medical malpractice is a result of the "product" delivered by the health care provider.

Thus, the solutions being sought in SB 110 are neither unique nor untested in other areas. I am sure other conferees will offer comments on what other states have done in the area of medical malpractice reform.

Although there was some vigorous competition for individual provider's medical malpractice insurance this past summer, that situation has dramatically changed in the past few months. Pennsylvania Casualty Company entered Kansas with very competitive rates and began attracting a great deal of business. However, effective November 1, 1984, they modified their underwriting rules to eliminate all doctors who are not part of a clinic with at least five doctors or associated with a hospital that Penn Casualty also insures. Basically their reasoning was that clinics and hospitals

provided a greater opportunity for loss control and risk management than an individual doctor's office. Penn Casualty also took a 63.7% increase in their rates effective January 1, 1985, on doctors.

The picture is somewhat better for hospitals with St. Paul, Pennsylvania Casualty, Providers Insurance Company and probably others competing for that business. Reproduced below, however, is a table of rate increases taken on both individual providers and hospitals this past year reprinted from a Kansas Insurance Department bulletin. This demonstrates the very substantial increases in rates being sought by virtually all the professional liability carriers in Kansas.

Company	Rate Increase		Effective
St. Paul Fire & Marine Ins. Co.	Hospital	24.9%	3-1-85
	Physicians & Surgeons	30%	7-1-84
Medical Protective Co.	Physicians & Surgeons	24%	7-1-84
Medical Defense Insurance Company	Physicians & Surgeons	25%	7-1-84
Providers Insurance Co.	Hospital	80%	1-1-85
	Physicians & Surgeons	80%	1-1-85
Pennsylvania Casualty Co.	Hospital	25.8%	1-1-85
	Physicians & Surgeons	63.7%	1-1-85

We support the Kansas Medical Society's proposals in SB 110. We urge the legislature to pass corrective legislation this session before the situation deteriorates even further. We would be happy to provide any additional information desired by the committee.

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AN ACT concerning the purchase and sale of motor vehicles with incorrect mileage or use indicators; providing civil relief to purchasers of such motor vehicles and limiting defenses available to sellers thereof; providing certain exemptions.

Section 1. (a) In addition to the penalties provided in K.S.A. 8-611 and any amendments thereto, any person who has purchased a motor vehicle and who proves that any of the acts declared to be a violation of said statute have taken place and that the mileage or use of said motor vehicle is materially different from that indicated on any odometer, tachometer or any other device on said motor vehicle registering the mileage or use thereof shall be entitled to a declaration from the court that the purchase of said motor vehicle is null and void and to a refund of the total purchase price paid for the motor vehicle, including the the amount of any trade-in allowance.

(b) It shall not be a defense that the seller in any such transaction had no knowledge the mileage or use differed materially from that which was indicated on any such gauge or device.

(c) The provisions of subsection (a) shall not apply to any of the following:

(1) The disconnecting of the odometer, tachometer or any other device used for registering the mileage or use of new motor vehicles being tested by the manufacturer prior to the delivery to a dealer.

(2) Replacement of a damaged or broken odometer, tachometer or other device used for registering the mileage or use of motor vehicle with a new one when such new gauge or device registers "0" miles or use.

(3) The odometer, tachometer or any other device used for registering mileage or use of a motor vehicle has broken or has otherwise lawfully become inoperable and has remained inoperable for any period of time during which the vehicle continued to be operated, when the purchaser is given notice of the existence of such condition or circumstances in writing at the time of such purchase.

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Section 2. This Act shall take effect and be in force from and after its publication in the statute book.

2-18-85

AN ACT supplementing the Kansas Consumer Protection Act, concerning the sale and offer of sale of business opportunities; requiring that sellers thereof file a bond and furnish to prospective purchasers certain information and documents; providing for a right of cancellation; declaring certain acts to be violations of the Kansas Consumer Protection Act; and declaring certain acts to be crimes.

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

Section 1. The legislature hereby finds and declares that the widespread sale of business opportunities has created numerous risks for the small investor and the aspiring small business person in the state of Kansas and that Kansas purchasers have suffered substantial losses when sellers of business opportunities have failed to disclose full and accurate information regarding the business opportunity and have failed to fulfill their promises in connection with the business opportunity.

It is the purpose of this act to protect purchasers and prospective purchasers of business opportunities by requiring sellers to file a bond, to disclose to prospective purchasers full and accurate information about the business opportunity, to disclose to prospective purchasers full and accurate information about the sellers' business experience and background as a seller of business opportunities, and to provide to purchasers a period of time in which to cancel the transaction.

Section 2. As used in this act unless the context otherwise requires:

(a) "Advertising" means any circular, prospectus, advertisement or other material or any communication by radio, television, pictures or similar means used in connection with an offer or sale of any business opportunity.

(b)(1) "Business Opportunity" means a contract or agreement, between a seller and purchaser, express or implied, orally or in writing, wherein it is agreed that the seller or a person recommended by the seller shall provide to the purchaser any products, equipment, supplies or services enabling the purchaser to start a

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a business and the seller represents directly or indirectly, orally or in writing, that:

(A) The seller or a person recommended by the seller will provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller;

(B) The seller or a person recommended by the seller will provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services;

(C) The seller or a person specified by the seller will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser;

(D) The seller guarantees that the purchaser will derive income from the business which exceeds the price paid to the seller;

(E) The seller will refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or

(F) The seller will provide a marketing plan.

(2) "Business Opportunity" does not include:

(A) Any offer or sale of an on-going business operated by the seller and to be sold in its entirety;

(B) Any offer or sale of a business opportunity to an on-going business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser's on-going business;

(C) Any offer or sale of a business opportunity which is registered pursuant to the Kansas Securities Acts, K.S.A. 17-1252, et seq.

(D) Any offer or sale of a business opportunity which involves a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark provided that the seller has a minimum net worth of one

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million dollars ($1,000,000) as determined on the basis of the seller's most recent audited financial statement prepared within thirteen (13) months of the first offer in this State. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be excluded under this subparagraph.

(E) Any offer or sale of a business opportunity by an executor, administrator, sheriff, marshall, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer of sale of a business opportunity.

(c) "Franchise" means a contract or agreement between a seller and a purchaser, express or implied, orally or in writing, where (i) is agreed that:

(1) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed in substantial part by a franchisor; and

(2) The operation of the franchisee's business pursuant to such a plan is substantially associated with the franchisor's business and trademark, service mark, tradename, logotype, advertising or other commercial symbol designating the franchisor or its affiliate.

For the purposes of this subsection, "franchisee" shall mean a person to whom a franchise is granted and "franchisor" shall mean a person who grants a franchise.

(d) "Marketing plan" means advice or training, provided to the purchaser by the seller or a person recommended by the seller, pertaining to the sale of any products, equipment, supplies or services and the advice or training includes, but is not limited to, preparing or providing:

(1) Promotional literature, brochures, pamphlets, or advertising materials;

(2) Training regarding the promotion, operation or management of the business opportunity; or

(3) Operational, managerial, technical or financial guidelines or assistance.

(e)(1) "Offer" or "Offer to Sell" includes every attempt to dispose of a business opportunity for value or solicitation of an offer to purchase a business opportunity. The terms defined in this section do not include the renewal or extension of an existing business opportunity where there is no interruption in the operation or conduct of the business opportunity by the purchaser.

(2) An offer to sell or sale of a business opportunity is made in this state when an offer to sell is made or accepted in this state, or, if the purchaser is domiciled in this state, the business opportunity is or will be conducted or operated in this state.

(3) An offer to sell is made in this state when the offer either originates from this state or is directed to, and received by, the offeree in this state. An offer to sell is accepted in this state when acceptance is directed to, and received by, the seller in this state.

(4) An offer to sell is not made in this state merely because an advertisement or promotion is (i) circulated in a magazine, newspaper, or other publication which has two-thirds of its total circulation outside this state, or (ii) is broadcast on radio or television if the broadcast originates outside this state.

(f) An "on-going business" is an existing business that, for at least six (6) months prior to the offer, has been operated from a specific location, has been open for business to the general public and has substantially all of the equipment and supplies necessary for operating the business.

(g) "Person" means an individual, corporation, business trust, estate, trust, partnership, assocation, cooperative or other legal entity, but does not include a government subdivision or agency.

(h) "Purchaser" means a person who enters into a contract or agreement for the acquisition of a business opportunity or a person to whom an offer to sell a business opportunity is directed.

(i) "Sale" or "Sell" includes every contract or agreement of sale, contract to sell, or disposition of a business opportunity or interest in a business opportunity for value.

(j) "Seller" means a person who sells or offers to sell

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a business opportunity or any agent or person who directly or indirectly acts on behalf of such person.

Section 3. The following business opportunities are exempt from Section 4.

(a) Any offer or sale of a business opportunity for which the immediate cash payment made by the purchaser for any business opportunity is at least twenty-five thousand dollars ($25,000) if the immediate cash payment does not exceed twenty percent (20%) of the purchaser's net worth as determined exclusive of principal residence, furnishings therein, and automobiles.

(b) Any offer or sale of a business opportunity for which the purchaser is required to make a payment to the seller or a person recommended by the seller not to exceed two hundred fifty dollars ($250) during the period from any time before commencing operation to within six (6) months after commencing operation of the business opportunity.

(c) Any offer or sale of a business opportunity where the seller has a net worth of not less than one million dollars ($1,000,000) as determined on the basis of the seller's most recent audited financial statement, prepared within thirteen (13) months of the first offer in this State. Net worth may be determined on a consolidated basis where the seller is at least eighty percent (80%) owned by one person and that person expressly guarantees the obligations of the seller with regard to the offer or sale of any business opportunity claimed to be exempt under this subsection.

(d) Any offer or sale of a business opportunity where the purchaser has a net worth of not less than two hundred fifty thousand dollars ($250,000). Net worth shall be determined exclusive of principal residence, furnishings therein, and automobiles.

(e) Any offer or sale of a business opportunity where the purchaser is a bank, savings and loan association, trust company, insurance company, credit union, or investment company as defined by the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or

a dealer registered pursuant to the Kansas Securities Acts, K.S.A. 17-1252 et seq., where the purchaser is acting for itself or in a fiduciary capacity.

(f) Any offer of sale of a business opportunity which is defined as a franchise in subsection 2(c) provided that the seller delivers to each purchaser at the earlier of the first personal meeting, or ten (10) business days prior to the earlier of the execution by a purchaser of any contract or agreement imposing a binding legal obligation on the purchaser or the payment by a purchaser of any consideration in connection with the offer or sale of the business opportunity, one of the following disclosure documents:

(1) A Uniform Franchise Offering Circular prepared in accordance with the guidelines adopted by the North American Securities Administrators Association, Inc., as amended;

(2) A disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 C.F.R. § 436 (1979)

For the purposes of this subsection, a personal meeting shall mean a face-to-face meeting between the purchaser and the seller or their representatives, which is held for the purpose of discussing the offer or sale of a business opportunity.

(g) Any offer or sale of a business opportunity for which the cash payment made by a purchaser for any business opportunity does not exceed five hundred dollars ($500) and the payment is made for the not-for-profit sale of sales demonstration equipment, material, or samples or the payment is made for product inventory sold to the purchaser at a bona-fide wholesale price.

Section 4. (a) It shall be unlawful and a deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto, for any person to offer to sell or sell any business opportunity in this state unless the business opportunity is exempt under section 3 of this act, or the seller has, prior to such offer or sale, filed with the Consumer Protection Division of the Kansas Attorney General's Office, and kept currently accurate as required by subsection (b) of this section, a statement containing the following information and accompanied by the following documents:

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(1) The seller's name and principal business address, the name under which the seller is doing or intends to do business in Kansas, the address of the seller's principal business office in Kansas, if any, and the name and address of the seller's resident or other agent authorized to receive service of process;

(2) The business form of the seller, whether corporate, association, partnership, or otherwise;

(3) The names, addresses and titles of the seller's officers, directors, trustees, general managers, principal executives, agents, and any other persons charged with responsibility for the seller's business activities relating to the sale of the business opportunity;

(4) Prior business experience of the seller relating to business opportunities including:

(a) The name, address, and a description of any business opportunity previously offered by the seller;

(b) The length of time the seller has offered each such business opportunity; and

(c) The length of time the seller has conducted the business opportunity currently being offered to the purchaser.

(5) With respect to each person identified in subparagraph (3) of subsection 4(a).

(a) A description of the persons' business experience for the ten-year period preceding the filing date of this disclosure document. The description of business experience shall list principal occupations and employers; and

(b) A listing of the persons' educational and professional backgrounds including, the names of schools attended and degrees received, and any other information that will demonstrate sufficient knowledge and experience to perform the services proposed.

(6) A financial statement as of the close of the most recent fiscal year of the seller, describing the seller's assets, liabilities and net worth;

(7) A statement indicating that the seller or any of its directors or officers:

(A) Have, during the preceding seven-year period, been convicted of any felony or pleaded nolo-contendere to a felony charge, or has been the subject of any criminal, civil or admin-

istrative proceedings alleging the violation of any business opportunity law, securities law, commodities law, franchise law, fraud or deceit, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations;

(B) Is subject to any currently effective state or federal court or regulatory agency injunctive or restrictive order, decree or ruling relating to business activities, including, without limitation, the sale of securities, land, insurance, or business opportunities;

(C) Has been within the preceding seven-year period, a defendant or subject of a counterclaim in a legal action involving the sale of a business opportunity, which action resulted in a settlement or adverse judgment;

(D) Is currently a defendant, a respondent or subject to a counterclaim in a pending state or federal court or regulatory agency action or formal proceeding relating to the sale of a business opportunity.

Such statement shall set forth the court or agency, the name and address of the adverse or prosecuting party, and the date of commencement and nature of the action or proceeding, or, if concluded, the date, nature and terms of the conviction, judgment, order, decree or settlement.

(8) The names, addresses and telephone numbers of all persons to whom the seller has sold business opportunities to be operated or conducted within this state within the preceding two years, with an indication of those who have ceased operating or conducting the business opportunity; except that if such persons number less than five or none of such persons have operated or conducted the business opportunity continuously for more than eighteen (18) months, such information shall also be provided for five other buyers who have conducted or operated the business opportunity without this state continuously for more than eighteen (18) months or who were the earliest buyers of the business opportunity.

(9) Copies of any contracts, agreements, brochures, promotional materals or other written documents or materials to be used in connection with the offer or sale of the business opportunity.

(10) A factual description of the business opportunity to be offered or sold, including, but not limited to:

(A) A statement of the amount required to purchase the business opportunity and, if not the same in all cases, the formula by which such amount is determined.

(B) A statement of the services, training and assistance to be provided to the buyer without additional cost or fees;

(C) If the business opportunity is a distributorship plan or system, a statement of (i) the methods to be used and factors to be considered in establishing or finding locations for the operation or conduct of the business opportunity, (ii) the experience of the person who is to assist in establishing or finding, or establish or find such locations, and (iii) the contractual arrangements to be made with the owner, lessee or controlling party of such locations;

(D) A statement of any recurring fees or royalties to be paid by the purchaser subsequent to purchase, either to the seller or to any third parties;

(E) A statement of any goods, supplies, materials, equipment or services required to be purchased or leased either from the seller or from a third party;

(F) A statement of whether the purchaser is limited in the goods or services he or she may offer in connection with the business opportunity;

(G) A statement of whether the purchaser receives an exclusive area or territory;

(H) A statement of the conditions and terms under which the purchaser may sell, lease, assign or otherwise transfer the business opportunity or any interest therein;

(I) A statement of whether the seller will guarantee the earnings or profits from the operation or conduct of the business opportunity, will refund any portion of the business opportunities fee, will rescind or repurchase the business opportunity, or will purchase any of the goods, supplies materials, or equipment purchased by the purchaser for use in conducting or operating the business opportunity; and, if so, the conditions for the terms of such guarantee, refund, rescission, repurchase or purchase.

(J) If the seller intends to use estimates, opinions or projections of earnings or profits in the offering of the business opportunity, a statement of such estimates, opinions or projections with an explanation of the bases, assumptions and supporting data upon which they are made, including specifically whether such estimates, opinions or projections are based on actual earnings or profits, and, if so, a full and complete summary of such actual earnings or profits.

(K) A detailed description of any license(s) or permit(s) that will be necessary in order for the purchaser to engage in or operate the business opportunity.

(L) A statement of: (i) The total number of business opportunities that are the same or similar in nature to those that have been sold or organized by the seller; (ii) The names and addresses of purchasers who have requested a refund or rescission from the seller within the last twelve (12) months and the number of those who have received the refund or rescission; and (iii) The total number of business opportunities the seller intends to sell in this State within the next twelve (12) months.

(M) A list of the states in which this business opportunity is registered.

(N) A list of the states which have denied, suspended or revoked the registration of this business opportunity.

(O) A section entitled "Risk Factors" containing a series of short concise statements summarizing the principal factors which make this business opportunity a high risk or one of a speculative nature. Each statement shall include a cross-reference to the page on which further information regarding that risk factor can be found in the disclosure document.

(b) A seller shall immediately notify the Consumer Protection Division of the Attorney General's Office of any material change in the information and documents required to be filed by subsection (a) and shall make appropriate amendments or additions to the statement and documents.

(c) At the time of filing of the statement and documents required by subsection (a), the seller shall also file a corporate surety bond executed by a company authorized to do business in

this state, in the sum of twenty-five thousand dollars ($25,000). Such bond shall be taken in the name of the people of this state and maintained in full force and effect until five years after the seller has ceased to sell or offer to sell business opportunities in this state. Any person damaged by a violation of the act or a breach of contract by the seller or its employees or agents may bring an action on the bond to recover actual damages suffered. It shall be unlawful and a deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto, for a seller to fail to file and maintain the bond required by this subsection.

(d) Any person who knowingly violates the provision of this section or who knowingly files materially false information or documents pursuant to this section shall be guilty of a class E felony.

Section 5. (a) In connection with any offer for sale or sale of a business opportunity made within this state, it shall be unlawful and a deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto, for a seller to fail to provide to any prospective purchaser the currently accurate information and documents required to be filed by Section 4 of this act at least three (3) days prior to the day the purchaser signs a contract or offer to purchase or pays any portion of the business opportunity fee or other consideration, whichever occurs first.

(b) It shall be unlawful and a deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto, for any seller to make in any advertisement, promotional material, sales presentation or solicitation a claim or representation which is inconsistent with the information required to be provided by subsection (a), or which states or implies that the business opportunity or the seller is or has been approved, recommended, endorsed or sponsored by the State of Kansas or any agency or officer thereof.

(c) If the seller fails to comply with subsection (a) of this section, the purchaser, in addition to any other rights provided by law, has the right to cancel a transaction made in this state until midnight of the tenth business day following the day on which the purchaser is provided with the required information and documents.

Section 6. (a) In addition to any other rights provided by law, the purchaser of a business opportunity has the right to cancel a transaction made in this state until midnight of the tenth business day after the day on which the purchaser either signs a contract or offer to purchase which contains the disclosures required by subsection (b) or, if a contract or offer to purchase is not used, pays any portion of the business opportunity fee or other consideration and receives a receipt containing the disclosures required by subsection (b).

(b) In connection with any offer to sell or sale of a business opportunity made within this state, it constitutes a deceptive act or practice within the meaning of K.S.A. 50-626, and amendments thereto, for any seller to:

(1) fail to furnish the purchaser at the time of execution or payment a fully completed copy of any contract or offer to purchase, or, if a contract or offer to purchase is not used, a fully completed receipt for payment of any portion of the business opportunity fee or other consideration, which contract, offer, or receipt is in the same language as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and, in immediate proximity to the space reserved in the contract or offer to purchase for the signature of the seller or on the front page of the receipt, a statement in bold face type of a minimum size of ten points in substantially the following form:

RIGHT TO CANCEL

(date of transaction)

YOU MAY CANCEL THIS TRANSACTION FOR ANY OR NO REASON WITHOUT PENALTY OR OBLIGATION AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH DAY AFTER THE ABOVE DATE. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED WRITTEN NOTICE OR TELEGRAM OF YOUR INTENT TO CANCEL TO (name of seller), (address of seller), BEFORE MIDNIGHT OF (date).

IN ADDITION, IF YOU HAVE NOT RECEIVED CERTAIN INFORMATION REGARDING THE BUSINESS OPPORTUNITY AND THE SELLER AT LEAST THREE (3)

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DAYS PRIOR TO THE DATE OF THIS TRANSACTION, YOU HAVE THE RIGHT TO CANCEL UNTIL TEN (10) DAYS AFTER SUCH INFORMATION IS PROVIDED.

(2) Fail, before furnishing the writing containing the "right to cancel" statement to the buyer, to complete the statement by entering the name and business address of the seller, the date of the transaction and the date by which the purchaser may give notice of cancellation.

(3) Include in any business opportunity contract, offer to purchase, receipt, or other writing, any confession of judgment or any waiver of any of the rights to which the purchaser is entitled under this act including specifically the right to cancel in accordance with the provisions of this section.

(4) Fail to inform each purchaser orally, at the time of signing of the contract or offer to purchase, or payment of the business opportunity fee or other consideration, of the right to cancel.

(5) Misrepresent in any manner the purchaser's right to cancel or right to receipt of information and documents.

(6) Fail or refuse to honor any valid notice of cancellation by a purchaser and within ten (10) business days after receipt of such notice, to (i) refund all payments made under the contract or sale, (ii) return any property traded in, in substantially as good a condition as when received by the seller, and (iii) cancel and return any negotiable instrument executed by the purchaser in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(7) Negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or third party until the third day after the day until which the purchaser has a right to cancel the transaction.

(8) Fail, within ten (10) business days of receipt of the purchaser's notice of cancellation, to notify the purchaser whether the seller intends to repossess or to abandon any shipped or delivered property.

Section 7. A person alleged to have violated this act has the burden of proving an exemption, an exception from a definition

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or an exclusion from this act.

Section 8. This act may be cited as the Kansas Business Opportunity Act.

Section 9. If any provisions of the act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the porivisons of this act are severable.