Approved March 31, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Sen. Neil H. Arasmith (Chairperson) at 9:00 a.m./p.m. on March 28, 1986 in room 529-S of the Capitol.

All members were present except:

Senators Warren, Karr, and Burke - Excused

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee: NONE

The minutes of March 27 were approved.

The meeting had been called for discussion of bills previously heard. First to be discussed was Substitute for HB 2290 dealing with a notice of premium due of a medicare supplement policy of insurance. The chairman called the committee's attention to an amendment submitted by Richard Harmon. (See Attachment I.) The amendment eliminates some of the stringent requirements ofthe bill. Bold-faced type on the outside of the envelope indicating the premium is due is required rather than using certified mail for notification which he believes is more effective.

The chairman asked if perhaps such a notice on the envelope wouldn't be embarrassing or violate the confidence of what is in the envelope. Mr. Harmon said that he was agreeable to changing the words to perhaps, "Premium Noitce Enclosed."

Sen. Gannon said he does not find the certified letter concept offensive. The chairman recalled that the objection to this was the cost to the insurance companies and also the inconvenience of having to go to the post office if you are not at home to receive the certified letter. It was determined in discussion that someone else could sign for the letter, but it was uncertain if someone else could pick up the letter. Also, the cost to the insurance companies was discussed.

Sen. Werts made a motion to adopt the proposed amendment with a change that notice be given ten days prior to cancellation. Sen. Kerr seconded.

Sen. Reilly said this would weaken what the bill does. Sen. Werts said if certified mail is required on this, soon it will be required on all policies, and the cost will be passed on to the policyholders.

The chairman had a problem with the ten days notice as some premiums are paid monthly. He suggested that the notice should be sent after the due date but before cancellation. Sen. Kerr agreed and added that requiring notice to be put on the envelope will solve the problem. Sen. Harder felt it is important that "Important" be put on the envelope. It was the consensus of the committee for staff to write a new Section I for the committee to consider.

Attention was turned to HB 2251 dealing with continuing care contracts. Sen. Werts made a motion to report HB 2251 adversely, Sen. Harder seconded, and the motion failed.

Sen. Kerr made a conceptual motion to amend HB 2251 to require that all homes of this type that offer continuing care agreements must have an annual certified audit and that audit be made available to signatories and to any new signers prior to their signing. Sen. Reilly seconded.

The chairman suggested that the audit be required to be available on request. Sen. Kerr agreed with this for those who have already signed agreements, but felt it definitely should be required to be shown to everyone new prior to signing.

Sen. Werts said he was not sure that this bill would accomplish what Mr. Yeager of Clearview City had wanted. He felt a program audit should be required rather than a CPA audit. Sen. Kerr said a certified audit would determine what is spent on maintenance about which Mr. Yeager was concerned. The chairman noted that certified audits are expensive, and Sen. Kerr reminded the committee that John Grace had testified that all his members already have certified audits so the bill is asking for only one more audit.

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

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./p.m. on March 28, 1986

Staff had contacted the probate court handling the estate of Mr. Henson who had owned Clearview City. The only information available was that it has been a difficult estate to settle because Mr. Henson left no records. The original administrator was with Mission Bank and had requested that he remain as administrator when he left that bank. The relationship to thecourt of all parties seems to be good, and nothing has been held back from them. The administrator is responsible for making an accounting to the court.

Sen. Werts said he feels uncomfortable passing a bill on an isolated situation that is apparently being solved anyway. Sen. Gannon recalled that Sen. Karr had reported a similar situation so maybe it is not so isolated. Sen. Reilly added that he finds nothing wrong with disclosure and feels Sen. Kerr's motion is a good compromise.

On a call for a vote on the motion to amend, the motion carried. Action on the bill was delayed until the committee sees the amendment to be prepared by staff.

The chairman called on Sen. Reilly for the Insurance Subcommittee report on affordability and availability of insurance. (See Attachment II.) The subcommittee had directed the chairman to present copies to the President of the Senate and the Speaker of the House, and this had been done. Sen. Reilly also shared a letter sent to Governor Carlin by Rep. Robert Wunch regarding Oklahoma legislation addressing this problem. He passed out copies of the Oklahoma act (See Attachment III) which he believes deserves the committee's attention although it was not considered by the subcommittee.

The chairman commended the subcommittee on their work and long hours spent. He is also presenting the report to the Insurance Commissioner.

Sen. Strick made a motion to adopt the report of the subcommittee. Sen. Werts seconded, and the motion carried.

The chairman informed the committee that the conference committee on HB 2240 was encouraged to come up with an agreement so the issue can be debated again. He also stated that as near to the end of the session it is, it is uncertain that action suggested in the report can take place this year. Staff noted that some of the things in the Oklahoma legislation are in other Kansas bills this session. Sen. Gannon told the committee that the Insurance Commissioner had informed him that he really needs SB 729, HB 3104, and HB 3101.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
3-28	Dick Brock	Topeka	Ins Dept
3-28	Richard Harmon	Topeka	KS Life Assoc
3-28	Larry Magill	Topeka	IIAK

No individual Medicare supplement policy of insurance, as defined by the Commissioner of Insurance by rules and regulations, shall be terminated for failure to pay premiums when due, unless the insurer sends at least ten (10) days prior to the premium due date to the insured's last address of record with the insurer, a notice indicating the policy will terminate due to failure to pay the required premiums as of the premium due date. The insurer shall place in bold-faced type on the outside envelope containing the notice, sufficient warning, as defined by the Commissioner of Insurance, of imminent policy lapse and that a premium notice is contained within the envelope.

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Attachment I

March 26, 1986

REPORT
OF THE JOINT SUBCOMMITTEE ON INSURANCE
TO THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS
AND THE HOUSE COMMITTEE ON INSURANCE

Chairman Arasmith and Chairman Hoy, the House and Senate Subcommittee on Insurance appointed by you has spent many early hours discussing the problems confronting many of our Kansas citizens with regard to the availability and affordability of insurance.

We have had the benefit of a wealth of testimony from many conferees, each who had their own perception as to how Kansas should address the insurance dilemma.

It is apparent that, in view of the dimension of the problem, some action is warranted by this legislative session in attempting to provide some relief that will allow the industry to recognize that Kansas is concerned about the amount and scope of some of the awards that are being handed down by the courts.

The issue is deeper than just concern for insurance companies or attorneys. The issue is one of a society that has become more litigious in nature and, for whatever reasons, have found it much more difficult to settle their differences without going to court. There also appears to be a great deal of fear and trepidation on the part of companies, consumers, attorneys, and Kansas citizens in general in view of the present course of insurance availability in this state.

To address the issue of insurance companies creating or contributing to the current liability insurance problem, the Subcommittee recommends that the appropriate committees of the Legislature hear and act upon S.B. 729, which concerns recording and reporting loss and expense experiences of insurance companies with the Commissioner of Insurance, and H.B. 3104, which requires the examination of insurance policies by the Commissioner to determine that such policies have been written in conformity with state law and regulations. In the alternative to these measures, H.B. 2987 could be considered. It would create the State Board of Insurance Rate Regulation to work with the Commissioner as the entity having jurisdiction and authority concerning rate regulation.

To address further the role of insurance companies in the problem, the Joint Subcommittee recommends that the House of Representative take action to pass S.B. 512, which would enact new laws creating criteria to be met before property and casualty insurance for business and professional needs could be cancelled, and S.B. 528, which would enact new law regarding notification prior to the charging of increased premiums for property and casualty insurance.

To address the problems of availability and affordability of professional liability insurance for professional persons other than health care providers, the Joint Subcommittee supports the concept of S.B. 540; however,

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Attachment II

it recommends that the Legislature look closely at the list of professionals included in the bill to determine whether each is appropriately included and whether other professionals have been excluded inadvertently. The bill would place certain limits on the liability of the specified professionals for damages arising out of the rendering of or failure to render services.

To address the problem confronting officials of local units of governments in obtaining liability insurance, the Subcommittee recommends that the Legislature review the provisions of H.B. 2912 and H.B. 2939, which would clarify the exemption from liability for local officials in the exercise of any governmental function regardless of whether the exercise of discretion is involved. Additionally, the Legislature could review the contents of S.B. 635, which would establish certain minimum levels of liability insurance and would limit liability to the level of insurance purchased.

To address further the concerns of officials of municipalities, the Subcommittee would call to their attention the existence of K.S.A. 75-6111, a part of the Tort Claims Act which authorizes those officials to enter into interlocal agreements providing for the pooling of the purchase of liability insurance and for the sharing of payments for judgments, settlements, attorney fees, etc.

To address the specific problem of products liability, the Subcommittee recommends that the Legislature enact S.B. 668, which would prohibit the introduction of certain evidence pertaining to advancements or changes in technical knowledge, design theory, testing knowledge, or in labeling, risk warning, or product instruction if these changes were made after the time the product in issue was designed, manufactured, and sold.

To address the problem of liability incurred in solid waste disposal, the Subcommittee recommends that the Legislature continue its review of S.B. 566, which would create a contingency fund from which claims would be paid for damages arising from the operation of the solid waste facility. The Subcommittee would encourage any interim committee assigned to study the bill or similar concepts contained in the bill to examine carefully the potential problems associated with the creation of such a fund, particularly those that might result from capping the size of the fund while allowing awards paid from the fund to be unlimited.

To address the issue of automobile liability insurance, the Subcommittee encourages the Conference Committee on 1985 H.B. 2422 to reach an agreement on the measure which would maximize the benefits to persons injured in automobile accidents.

To further address the concerns of officials of political subdivisions, the Subcommittee recommends continued study of the feasibility of expanding or reinstating governmental immunity for political subdivisions to avoid the growing trend of litigation to impede the ability of many of these subdivisions from effectively performing their governmental functional. This continuing study should also include further consideration of any of the above cited bills, on this subject, that may not be enacted in the short time remaining in this legislative sessions. We recommend that this continuing review be conducted by an appropriate interim legislative committee and by Commissioner Bell's recently appointed Citizens Committee on Legal Liability.

To address the issue of handling liability issues before the judiciary, the Subcommittee recommends that the Legislature enact S.B. 480, which among other things expands the areas where sanctions can be imposed against a party or the party's attorney for abusing procedural devices.

Finally, to address the issue of the Legislature contributing to the availability and affordability of professional liability insurance problem for professionals by mandating coverage for specific conditions or diseases, the Subcommittee recommends that the House of Representatives review the Senate's concerns with S.B. 671 and, taking those concerns into consideration, hear and act upon H.B. 2860. That bill would require sponsors of bills seeking to mandate certain benefits to submit reports to the Legislature assessing the social and financial impacts of such coverages.

These are just a few of the ways in which this legislature can proceed to at least give evidence to both the insurance companies and to the Kansas Bar that we are earnest, honest, and sincere in our effort to address this issue for our Kansas citizens. All of us must work closely together to insure that what we do is in the best interest of all Kansans but will enhance for them the availability of insurance at a reasonable rate.

Respectfully submitted,

Senator Edward F. Reilly, Co-Chairman

Representative Rex Hoy, Co-Chairman

Senator Francis Gordon

Senator Richard Gannon

Representative Dale Sprague

Representative Larry Turnquist

C86-46/BW

AN ACT RELATING TO DAMAGES; AMENDING 12 O.S. 1981, Sec. 727, AS LAST AMENDED BY SECTION 1, CHAPTER 257, O. S. L. 1985, (12 O. S. SUPP. 1985, Sec. 727); ESTABLISHING LIMITATIONS ON DAMAGE AWARDS IN CERTAIN PERSONAL INJURY AND DEATH ACTIONS; PROVIDING PROCEDURES FOR PERIODIC PAYMENTS OF DAMAGE AWARDS; REDUCING AMOUNT OF DAMAGE AWARD BY AMOUNT OF COLLATERAL SOURCE REIMBURSEMENTS RECEIVED AND MAKING EXCEPTIONS; LIMITING AMOUNTS OF NONECONOMIC AND EXEMPLARY DAMAGE AWARDS; REQUIRING SEPARATE LISTING OF AMOUNT OF AWARD FOR EACH ELEMENT OF DAMAGE; DEFINING SPECIAL TERMS; AUTHORIZING AWARD OF COSTS AND ATTORNEYS FEES IN ACTIONS WITHOUT MERIT IN LAW OR FACT; PROVIDING FOR INTEREST ON JUDGMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be it Enacted by the People of the State of Oklahoma:

Section 1. NEW LAW. A new section of law to be codified in the Oklahoma Statutes as Section 100 of Title 23, unless there is created a duplication in numbering to read as follows:

In the event of an award of damages for personal injury where there are future damages in excess of One Hundred Thousand Dollars ($100,000.00), the damages, in excess of One Hundred Thousand Dollars ($100,000.00), shall be paid on a periodic basis as determined by the court. The amounts and times of payments shall be specified in the judgment entered.

In the event of the death of the person entitled to receive the periodic payments, the payment of the future damages not yet due shall terminate on the date of death. Provided, however, the court which rendered the original judgment, upon proper motion,

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Attachment III

may modify the judgment to provide that the future damages periodic payments shall continue, or be reduced to a sum certain. Said modification may only be obtained for the benefit of a person whom the deceased owed a legal duty to support at the time of death as provided by law.

For the purposes of this section, future damages shall mean and include damages for future medical treatment, future care or custody, loss of future earnings, or future pain and suffering of the injured person.

Section 2. NEW LAW. A new section of law to be codified in the Oklahoma Statutes as Section 101 of Title 23, unless there is created a duplication in numbering, to read as follows:

In any action for damages for personal injury or death where the liability of the defendant is admitted or adjudicated, a separate hearing shall be held by the court, at which hearing evidence shall be admitted for determination of the question of whether any or all of the pecuniary damages sustained and/or incurred by plaintiff, or his estate, as a result of the injury have been paid or are indemnified from any one or more of the following collateral sources:

1. A federal or state disability or illness program.
2. A federal, state, or private health insurance program.
3. An employee wage continuation program or plan.
4. Any other source of payment intended to compensate the injured party for the injury suffered, excluding personal assets of the injured person or his immediate family.

If the court finds that any item of damages incurred as a result of the injury have been paid by, or will be paid by a collateral source as specified in this section, the court shall order the award reduced by an amount equal to the difference between the total of the collateral source payments received, or to be received, and the amount of the award.

Section 3. NEW LAW. A new section of law to be codified in the Oklahoma Statutes as Section 102 of Title 23, unless there is created a duplication in numbering to read as follows:

In any action for damages for personal injury or death, where the plaintiff is entitled to recover noneconomic damages, such damages shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00). For purposes of this section noneconomic damages shall mean and include damages for pain, suffering, inconvenience, physical impairment, disfigurement, loss of consortium, or other nonpecuniary loss suffered by the plaintiff.

An award for exemplary or punitive damages in an action for damages for personal injury or death shall be limited to Ten percent (10%) of the actual damages awarded, but not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00).

An award of damages for personal injury or death shall separately state each element of the damages upon which the award is based and the amount awarded for each element.

If either noneconomic, exemplary or punitive damages, or all, are awarded in an action for personal injury or death, the interest on such awards shall commence as of the date the judgment is entered by the trial court.

Section 4. NEW LAW. A new section of law to be codified in the Oklahoma Statutes as Section 104 of Title 23, unless there is created a duplication in numbering, to read as follows:

In any action for damages for personal injury or death where there is an adjudication of no liability of the defendant, the court may also determine whether the action brought was without merit, either in law or in fact, or both. Upon finding that the action was without merit, either in law or in fact, or both, the court may enter a judgment ordering the plaintiff to reimburse the defendant for reasonable costs, including attorneys fees, incurred in the defense of the action.

Section 5. AMENDATORY. 12 O. S. 1981, Section 727, as last amended by Section 1, Chapter 257, O. S. L. 1985 (12 O. S. Supp. 1985, Section 727), is amended to read as follows:

All judgments of courts of record shall bear interest ~~at the rate of fifteen percent (15%)~~ at a rate which shall not exceed the average United States Treasury Bill rate of the preceding twelve (12) months as certified to the Court Administrator by the State Treasurer on January 1 of each year, plus one percent (1%) per year, except judgments against this state and its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, which shall bear interest during the term of judgment at an annual rate of ten percent (10%) per year, from the date of rendition, provided that:

1. when a rate of interest is specified in a contract, the rate therein shall apply to the judgment debt and be specified in the journal entry of judgment. Said rate shall not exceed the lawful rate for such obligation; or

2. when a verdict for damages by reason of personal injuries is accepted by the trial court, the court in rendering judgment shall add interest on said verdict at ~~the rate of fifteen percent (15%)~~ a rate which shall not exceed the average United States Treasury Bill rate of the preceding twelve (12) months as certified to the Court Administrator by the State Treasurer on January 1 of each year, plus one percent (1%) per year from the date the suit was commenced to the date of verdict, except such verdict against this state and its political subdivisions, including counties, municipalities, school districts, and public trusts of which this state or a political subdivision of this state is a beneficiary, shall bear interest at the rate of ten percent (10%) per year from the date the suit was commenced to date of verdict; or

3. when a judgment is rendered establishing the existence of a lien against property and no rate of interest exists, the court shall allow prejudgment interest of fifteen percent (15%) per year from the date the lien is filed to the date of verdict.

Section 6. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. The provisions of this act shall become effective November 1, 1986.