

Approved April 2, 1986

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

10:00 a.m. ~~pm~~ on March 27, 1986 in room 514-S of the Capitol.

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

Committee staff present: Mary Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Senator James Francisco
David Litwin, Kansas Chamber of Commerce and Industry

House Bill 2661 - Medical malpractice and health care provider regulation.
Re Proposal No. 47.

Senator James Francisco presented three proposals for amendments to the bill that would establish an experience rating scale for participants into the stabilization fund; any individual contributor to the fund should be entitled to this information; and the certified nurse anesthetist be added to the board of governors. Copies of his proposal and a balloon copy of the bill are attached (See Attachments I).

David Litwin, Kansas Chamber of Commerce and Industry, stated he appreciated the opportunity to address the committee very briefly to clarify the KCCI's position. He stated two conferees pointedly identified KCCI as being opposed to the overall cap on damages of \$1 million and he does not believe this is the case. A copy of his explanation is attached (See Attachment II).

The hearings were concluded on House Bill 2661.

Senator Talkington made a motion to amend the bill to provide that the three persons of the review committee be one from the board of governors, a person admitted to practice of law in Kansas, and a lay person. The motion failed for lack of a second. The chairman noted Representative Vernon Williams had an amendment that is a different version. Considerable committee discussion was held concerning paying the medical bills if someone is injured, that the decision be made by the court, and the three person panel members. A committee member inquired, when funds are exhausted, does he go into court every month to show his bills? It was explained an annuity is set up to cover these bills, and when they realize they are going to run out, or determine when they are going to run out, they go back in and ask the board of governors to award another sum to be paid into the annuity to take care of these medical bills. Following considerable committee discussion, Senator Talkington made a conceptual motion to amend the bill to provide claimant can go to court and show the amount awarded has been or will be exhausted, the judge of the court who had originally heard the action will make the decision. Senator Gaines seconded the motion. The chairman explained

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CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 27, 1986

House Bill 2661 continued

Representative Williams recommendations that a panel be composed of three members each of whom is a retired district judge, associate district judge, judge of the court of appeals or supreme court justice. Following committee discussion, the conceptual motion to amend the bill carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment III).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-27-86
10:00 AM

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Steve Jack	Topeka	Gov. Office
Diane Duff	" "	" "
Leri Callahan	Topeka	Am. Ind. Assn.
M. Haava	"	Cap. Journal
Jim Hays	—	Sen. Burko
Ed Jones	Topeka	KCCJ
Mark Hutchins	Topeka	K Medical Society
Joe Strickland	Topeka	" " "
Mark Fisher-Lombardi	"	"
Tom Bell	Topeka	KHA
Ramona Jones	Wichita	Eagle Beacon
Kelli Rouse	Lawrence	KTCA
TERN ROBERTSON	—	—
Ron Smith	Topeka	KDA
Kathleen Seltzer	"	KTCA
Bob Arbutnot	Topeka	KTLA
CHARLES BELT	WICHITA	CHAMBER OF COMMERCE
Lee WRIGHT	MISSION	FARMERS INS GROUP

3-27-86
Sen. Francisco

1. This bill will establish an experience rating scale for participants into the stabilization fund. This experience rating scale will be a basis of determining the surcharge for individuals. Because this will be the primary factor in determining the surcharge premium, this information should be available upon request by the participants.
2. Any individual contributor to the fund should be entitled to this information.
3. The certified nurse anesthetist is the second highest paying individual group into the stabilization fund. Only physicians and osteopaths who are in the same group are the largest contributors to the fund. They contribute 70%. Nurse anesthetists are the second highest paying. They contribute more on an individual basis to the fund than chiropractors. I believe they should be represented on the Board.

JAMES L. FRANCISCO
SENATOR
DISTRICT TWENTY-SIX

S. Jud.
3/27/86
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0786 and regulations an experience rating system to become effective
 0787 on July 1, 1987, for determining rates to be charged for basic
 0788 coverage and surcharges assessed for coverage by the fund. In
 0789 adopting such system, the commissioner shall provide for differ-
 0790 ences between different health care professions, different
 0791 branches of the healing arts and different specialties with those
 0792 professions or branches but shall otherwise determine appro-
 0793 priate means for determining premiums and surcharges based
 0794 upon the actual loss experience of each health care provider with
 0795 respect to professional liability actions.

0796 (b) As used in this section, the terms defined by K.S.A.
 0797 40-3401 and amendments thereto shall have the meanings pro-
 0798 vided by that statute.

0799 Sec. 26. K.S.A. 1985 Supp. 40-3402 is hereby amended to
 0800 read as follows: 40-3402. (a) A policy of professional liability
 0801 insurance approved by the commissioner and issued by an in-
 0802 surer duly authorized to transact business in this state in which
 0803 the limit of the insurer's liability is not less than \$200,000 per
 0804 occurrence, subject to not less than a \$600,000 annual aggregate
 0805 for all claims made during the policy period, shall be maintained
 0806 in effect by each resident health care provider as a condition to
 0807 rendering professional service as a health care provider in this
 0808 state, unless such health care provider is a self-insurer or is a
 0809 person who is engaged under the supervision of the clinical
 0810 faculty member of the university of Kansas school of medicine,
 0811 in a postgraduate training program approved by the state board of
 0812 healing arts and operated by the university of Kansas medical
 0813 center and is insured pursuant to K.S.A. 40-3414, and amend-
 0814 ments thereto. Such policy shall provide as a minimum coverage
 0815 for claims made during the term of the policy which were
 0816 incurred during the term of such policy or during the prior term
 0817 of a similar policy.

0818 (1) Each insurer providing basic coverage shall within 30
 0819 days after the premium for the basic coverage is received by the
 0820 insurer or within 30 days from the effective date of this act,
 0821 whichever is later, notify the commissioner that such coverage is
 0822 or will be in effect. Such notification shall be on a form approved

In addition, the commissioner shall provide that the commissioner, each insurer and each plan approved pursuant to K.S.A. 40-3413 and amendments thereto shall provide, upon written request of any health care provider, a written statement showing the basis for the experience rating of such health care provider.

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097 surer or inactive health care provider subsequent to the
 098 that such health care provider or self-insurer has qualified
 099 for coverage under the provisions of this act, there is hereby
 100 established the health care stabilization fund. The fund shall be
 101 held in trust in a segregated fund in the state treasury. The
 102 commissioner shall administer the fund or contract for the ad-
 103 ministration of the fund with an insurance company authorized
 104 to do business in this state.

105 (b) (1) There is hereby created a board of governors. The
 106 board of governors shall provide:

107 (A) Provide technical assistance with respect to administra-
 108 tion of the fund;

109 (B) provide such expertise as the commissioner may reason-
 110 ably request with respect to evaluation of claims or potential
 111 claims;

112 (C) provide advice, information and testimony to the appro-
 113 priate licensing or disciplinary authority regarding the qualifi-
 114 cations of a health care provider;

115 (D) approve the rating schedule formulated by the commis-
 116 sioner to impose the higher surcharge required by subsection
 117 (a)(2) of K.S.A. 40-3404 and amendments thereto experience
 118 rating system established by the commissioner pursuant to sec-
 119 tion 25 prior to the establishment of such system; and

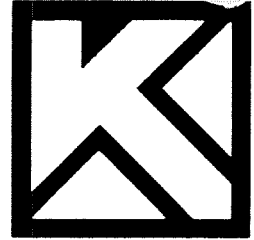
120 (E) review and determine claims for supplemental benefits
 121 under section 28.

122 (2) The board shall consist of 13 persons appointed by the
 123 commissioner of insurance, as follows: (A) The commissioner of
 124 insurance, or the designee of the commissioner, who shall act as
 125 chairperson; (B) one member appointed from the public at large
 126 who is not affiliated with any health care provider; (C) three
 127 members licensed to practice medicine and surgery in Kansas
 128 who are doctors of medicine; (D) three members who are repre-
 129 sentatives of Kansas hospitals; (E) two members licensed to
 130 practice medicine and surgery in Kansas who are doctors of
 131 osteopathic medicine; (F) one member licensed to practice
 132 chiropractic in Kansas; and (G) two members of other categories
 133 of health care providers. Meetings shall be called by the chair-

; and (F) prepare and publish, on or before October 1
 of each year, a summary of the fund's activity during
 the preceding fiscal year, including but not limited to
 the amount collected from surcharges, the highest and
 lowest surcharges assessed, the amount paid from the
 fund, the number of judgments paid from the fund, the
 number of settlements paid from the fund and the amount
 in the fund at the end of the fiscal year

(G) one member licensed by the board of nursing and
 certified as a nurse anesthetist by the American
 association of nurse anesthetists; and (H) one member
 of another category

3-27-86



**Kansas
Chamber of
Commerce
and Industry**

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

March 3, 1986

Dear Senator Frey,

I would be very appreciative if I could address the Judiciary Committee for literally only a minute or two at the outset of its meeting on Thursday.

The reason is, due to time constraints I only had a chance to summarize my testimony, and I don't feel I did a very good job. At the hearing today for the opponents of the bill, at least two conferees pointedly identified KCCI as being opposed to the overall cap on damages of \$1 million.

What I would like to point out to the committee is that the House conceived, discussed and passed the so-called "pinhole" exception to the cap for the most seriously injured plaintiffs after KCCI's board had approved our policy in early February, and the board has not had a chance to determine whether its concern for the most grievously injured victims is satisfied by the exception.

My written testimony says that the "pinhole" in the cap "helps satisfy this concern to a considerable extent", and I think this is accurate. Indeed, it is entirely plausible that the bill in its present form would be approved without reservation by our board. That might or might not transpire, but I am very uncomfortable with the conferees' portrayal of KCCI as firmly opposed to the cap in its present form because I simply do not believe this is the case.

Cordially,

David Litwin

S. Jud.
3/27/86
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