

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator August "Gus" Bogina at
Chairperson

11:00 a.m. on April 4, 1986 in room 123-S of the Capitol.

All members were present except:

Senators Doyen and Winter

Committee staff present:

Research Department: Robin Hunn, Scott Rothe, Lyn Goering
Revisor's Office: Norman Furse
Committee Office: Doris Fager, Judy Bromich

Conferees appearing before the committee:

Rick von Ende, University of Kansas
Jean Sagan, Board of Regents
Marlin Rein, University of Kansas Medical Center
John H. Gibson, representing Kansas private teaching hospitals
Ron Todd, Assistant Commissioner of Insurance
Derenda Mitchell, Insurance Commissioner's Office
David Monical, Washburn University
Carl Monk, Dean, Washburn University School of Law
Tom Bell, Kansas Hospital Association
SB 719 - Construction of clinical research facility at KUMC

Mr. von Ende explained that SB 719 is the result of the subcommittee report for the Medical Center. He said that, on line 44, the word "bond" has been omitted. He stated that these would be revenue bonds, and it is likely the bonds will have a AAA rating. He added that, on a 20-year issue, the interest rate would be 6.9% at this time, and by June of this year, the rate may be 6.4%. There would be approximately \$375,000 annual debt service.

Senator Gaines asked if the present facility might be remodeled as an alternative to having a new building. Mr. von Ende said that it might be possible to improvise at the old building for a short time, but that there must be a plan for a new facility in the near future.

When asked if the facility needs to be located at the Medical Center, Mr. von Ende said it isn't necessary. He added that the Federal Government's requirements for the care of research animals are more stringent than for care of hospital patients.

Answering questions from Senators Bogina and Werts, Mr. von Ende said the total cost of the proposed facility would be \$5.5 million; and that the bond issue will be \$4.205 million unless private gifts are forthcoming. He added that, in order to obtain the revenue bonds, it is necessary to pledge revenue from the Hospital Research Overhead Fund.

Motion was made by Senator Werts and seconded by Senator Gannon to make the technical amendment in line 44 as suggested by Mr. von Ende. The motion carried by voice vote.

Motion was made by Senator Talkington and seconded by Senator Feleciano to recommend SB 719 as amended favorably for passage. The motion carried by roll call vote.

SB 732 - Authorizing construction of a second multilevel parking facility at University of Kansas Medical Center

Mr. von Ende presented the bill before the committee. He distributed Attachment A, and requested that the bill be amended to provide the change noted on the attachment. This change would make it possible to bypass the selection process for architectural services for the project and negotiate for design-build construction.

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 WAYS AND MEANS

room 123-S, Statehouse, at 11:00 a.m./p/m. on April 4, 1986

SB 732 - Continued

Motion was made by Senator Gaines and seconded by Senator Talkington to amend SB 732 as suggested by Mr. von Ende in Attachment A. The motion carried by voice vote.

Motion was made by Senator Talkington and seconded by Senator Feleciano to report SB 732 as amended favorably for passage. The motion carried by roll call vote.

SB 733 - Authorizing issuance of revenue bonds by educational institutions for rehabilitation or renovation of existing buildings

Mr. von Ende said this was approved in the subcommittee report for the Lawrence campus of the University of Kansas. He said it involves a fairly large-scale renovation of the Kansas Union and will be financed by student fees. He added that it would be about \$12.50 per student and that it has been approved by the student government.

Senator Gaines asked if the student body at the University of Kansas has voted on this project. Mr. von Ende said the student government has advised the administration they will go along with the project. He said there would need to be a campus-wide election in order to have all the students vote. He said that if the Legislature insists upon a campus-wide election before the bonds are purchased, it will be done. Senator Talkington asked why the student government had not called for an election. He further asked why, if they haven't done this, should the Legislature impose it?

Mr. von Ende explained that the process for any fee increase includes hearings on campus, and if the fee increase is systemwide there are two hearings before the Board of Regents. He added that if the committee wants a campus-wide election, it will be done.

Motion was made by Senator Harder and seconded by Senator Feleciano to request the student government at the University of Kansas to have a campus-wide election on the matter of the fee increase for renovation of the Kansas Union; and that Mr. von Ende inform the student government of that decision.

There followed a discussion concerning the motion, with Senator Kerr commenting that most of the people who will pay for the bonds will not be on campus to vote. Mr. von Ende agreed, stating that the upper three classes on campus this year will never pay toward the bond retirement.

Senator Winter commented on the poor lighting in certain areas of the University of Kansas campus. He suggested that, if the bonds are issued, the university get the campus lighting project done.

The above motion carried, with Senator Talkington voting "No."

Motion was made by Senator Talkington and seconded by Senator Feleciano to report SB 733 favorably for passage. The motion carried by roll call vote.

SB 734 - Self-insurance of residents at University of Kansas Medical Center

Mr. von Ende reminded the committee that SB 362, passed during the 1985 session of the Legislature, provided for self-insurance of the Medical Center. The Attorney General issued an opinion that this coverage had to include all medical services acts performed by residents (including "moonlighting"). Mr. von Ende said that, as a result of that opinion, there were meetings held last summer which included the Attorney General, the Insurance Commissioner, the Board of Regents and the University of Kansas Medical Center. At these meetings, attempts were made to develop refinements to last year's legislation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,

room 123-S, Statehouse, at 11:00 a.m./p.m./ on April 4, 1986

SB 734 - Continued

Mr. von Ende noted that the Senate subcommittee indicated that they wanted a proposed set of amendments to last year's bill. At the same time, the language in the subcommittee report indicates that maybe the subcommittee recognized that it might be best to go back to funding from private liability insurance. He added that SB 734 may not be necessary, but that another bill may be needed to repeal present legislation.

Following Mr. von Ende's review of SB 734, there were questions from members of the committee.

Mr. Rein indicated that 1985 SB 362 was passed in an effort to find an alternative to rapidly escalating premiums for hospital staff. He noted that the Medical Center paid for fiscal year 1985 for patient premium and surcharge in the neighborhood of \$1 million. He said premiums have been escalating at nearly 100% per year.

According to Mr. Rein, when SB 362 was passed, there was a recognition of the necessity for KUMC to make a contribution to the Health Care Stabilization Fund. He said it is estimated that SB 362 allowed a reduction in costs to the Medical Center of about \$800,000.

Mr. Rein said the administration at the Medical Center feels there are appropriate moonlighting experiences for residents, and if those experiences are denied, it puts Kansas at a disadvantage in getting good residents.

Mr. Rein continued by stating that SB 734 is an attempt to provide a solution to some of the problems posed by the Insurance Commissioner.

There followed an extended discussion concerning the provisions of SB 734 and the need for its passage.

Mr. Todd presented a letter dated March 25, 1986, and addressed to Senator Bogina. (Attachment B) Following his review of that letter, there were questions from committee members.

Mr. Bell deferred to Mr. Gibson, who presented written testimony (Attachment C). He also distributed a balloon of SB 734 showing suggested amendments (Attachment D). Following his testimony, there was discussion among committee members and questions asked of Mr. Gibson.

Senator Bogina asked about residents moonlighting at the private teaching hospitals. Mr. Gibson said hospitals do not want to do anything that would disallow residents from moonlighting, and he understands SB 734 does not allow coverage of that activity. Senator Bogina said it is his understanding that the KUMC distinguishes between "authorized" and "non-authorized" moonlighting.

Ms. Mitchell said Mr. Todd had asked her to clarify that the table accompanying his letter has nothing to do with the Health Care Stabilization Fund's claims experience. The tabulation deals solely with claims experience of St. Paul Fire and Marine.

No action was taken on SB 734.

SB 728 - Credit hour aid for Washburn Law School

Mr. Monical gave a brief history of changes in credit hour aid to Washburn Law School. He then introduced Professor Monk.

Dean Monk distributed his testimony (Attachment E). Following his presentation, there was discussion concerning the intent of 1985 legislation. Senator Werts indicated that the request for that legislation was connected with the University's attempt, over a period of years, to decrease enrollment.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,
room 123-S, Statehouse, at 11:00 a.m./p.m. on April 4, 1986

SB 728 - Continued

Dean Monk said the university did not ask for increased aid on the grounds of tiding them over, but to keep the level of state support at the level maintained in 1985.

Mr. Monical recalled an amendment made on the Senate floor during the 1985 session of the legislature. He said that, until last year, graduate and undergraduate hours received the same aid. The amendment to which he referred reduced the aid on graduate programs, and it was Mr. Monical's recollection that the reduction was made in order to discourage Washburn University from adding more graduate programs. Senator Harder agreed that was the rationale.

Senator Johnston said he understood the additional credit hour aid for the Washburn Law School was to be appropriated during the period of reducing enrollments. He suggested it would not have passed if its purpose had been to maintain a high level of support for the Law School. Senator Bogina reminded Senator Johnston that they are continuing to reduce enrollment, at least through the next school year.

Dean Monk noted that University of Kansas Law School enrollment has increased during the last four years. According to the American Bar Journal, enrollments have been: 1982, 184; 1983, 185; 1984, 189; and 1985, 201.

There was further discussion concerning SB 728, but no action was taken.

SB 742 - Surety bonds and insurance; authorizing negotiation of certain insurance contracts

Senator Bogina asked Mr. Todd to comment on SB 742. After examining the measure, Mr. Todd said there has been some difficulty in obtaining bidders over the years, and he thought the provisions of SB 742 might improve the ability to obtain insurance contracts.

RE-REFERRALS OF BILLS

Motion was made by Senator Talkington and seconded by Senator Feleciano to re-refer the following bills to the committees from whence they came: HB 2203, HB 2216, HB 2314 and HB 2522. The motion carried by roll call vote.

The meeting was adjourned by the Chairman.

opinion, qualified to serve as associate architect for the project. Such list shall be submitted to the negotiating committee so convened, without any recommendation of preference or other recommendation. The director of architectural services shall meet with each negotiating committee and shall advise the negotiating committee but shall have no vote in the selection process or other matter upon which the committee may vote.

~~(b) Notwithstanding the provisions of subsection (a) to the contrary,~~ For the purposes of constructing the multi-level parking facility at the university of Kansas medical center as authorized by 1977 Senate Bill No. 430, such project ~~shall~~ be prepared for competitive bids pursuant to K.S.A. 1976 Supp. 75-3739 and K.S.A. 75-3740, 75-3741, and 75-3742, without compliance with this act or with the act of which this act is amendatory. The fees paid to a firm employed as an associate architect to provide architectural services on the project specified by this subsection (b) shall not exceed the scale of fees provided for an associate architect by K.S.A. 1976 Supp. 75-5410.

Sec. 2. K.S.A. 1976 Supp. 75-5404 is hereby repealed.

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

Approved May 10, 1977.

S. W. LM
#14186

A 4-4-86



STATE OF KANSAS

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FLETCHER BELL
Commissioner

March 25, 1986

The Honorable August Bogina, Jr.
Senator, 10th District
Statehouse, Room 128-S
Topeka, Kansas 66612

Re: Senate Bill No. 734
(1986 Legislative Session)

Dear Senator Bogina:

It has come to our attention that the Senate is considering Senate Bill No. 734 concerning the Kansas University Medical Center and the state self-insurance program for residents at the Medical Center. Upon reviewing Senate Bill No. 734, I have found several problems with the legislation which I wanted to call to your attention for your consideration of the bill.

First, let me review my understanding of the general intent of Senate Bill No. 734. It is my understanding that Senate Bill No. 734 provides that the state self-insurance program would cover K.U. medical school residents only when the residents are engaged in medical activities which do not include extracurricular or extra-institutional medical services for which the residents receive extra compensation and which are not approved by the dean of the school of medicine and the executive vice chancellor of the medical center. The law also permits a policy of professional liability insurance coverage to be issued on an occurrence form to Kansas University Medical Center residents. The law provides under new subsection (d) of K.S.A. 40-3402 that a resident may ". . . obtain basic coverage under an occurrence form policy if such policy provides professional liability insurance coverage and limits which are substantially the same as the professional liability insurance coverage and limits required by subsection (a) of K.S.A. 40-3402 and amendments thereto. . . ." Senate Bill No. 734 also provides that the Health Care Stabilization Fund shall defend and pay all defense costs and indemnity costs for any resident at the University of Kansas Medical Center. Reasonable and necessary expenses as defined by the law, however, must be approved by the State Finance Council prior to being paid by the Fund. Settlements made on behalf of the person engaged in the K.U. residency program must also receive the State Finance Council's approval prior to being paid. It is my interpretation that Senate Bill No. 734 provides that settlements cannot be approved by a judge until they are first approved by the State Finance Council. Reimbursement to the Health Care Stabilization Fund for the Fund's expenditures in the defense of a resident may be made to the Fund by the State General Fund upon certification of the Commissioner to the Director of Accounts and Reports.

S.W.J.M.
4/4/86
B 4-4-86

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Senate Bill No. 734 would appear to create an adverse impact on the availability of health care services in the State of Kansas, upon the defense of residents covered under the provisions of Senate Bill No. 734, and upon the operation of the Kansas Insurance Department and the Health Care Stabilization Fund. The problems I foresee with the legislation, in more significant detail, are as follows:

1. The bill poses an administrative burden upon the Health Care Stabilization Fund.

The bill limits coverage for persons engaged in residency training only when they are studying at the University of Kansas Medical Center and are not rendering professional services on an extracurricular or extra-institutional basis. Consequently, the coverage will not apply when a resident has been "moonlighting" or when a resident is working outside one of the Kansas University Medical Center institutions and receiving "extra" compensation. It is not altogether certain what "extra" compensation entails. However, it is probably intended to refer to compensation in addition to that which a resident receives for his work as a resident at K.U. A resident, however, will probably argue that "extra" compensation means more than that to which he is entitled, and he will probably attempt to seek approval from the dean of the school of medicine and the executive vice chancellor at the University of Kansas Medical Center when he wishes to moonlight. I would imagine that this will develop into a documentation problem, tension, and uncertainty within the institution about coverage.

The reason for my concern along these lines is that the family practice resident who testified before the Interim Committee on Medical Malpractice this summer stated most emphatically that moonlighting was a complement to her studies and was essential to her post-graduate education. The executive vice-chancellor, Dr. Claussen, appeared with the resident who testified giving the indication that some moonlighting activities were acceptable to the school administration. The Medical Center, therefore, or the Health Care Stabilization Fund on their behalf, will have to employ sophisticated practices in denying coverage or in defending the cases with reservation of rights in order to implement this section. Because the bill requires that we would undertake the defense of these lawsuits, Senate Bill No. 734 would impose an administrative burden on the Fund to investigate and document these matters. The Health Care Stabilization Fund would be put in the position of having to police compliance under this section.

2. Senate Bill No. 734 may result in a restriction of medical services in emergency care facilities and rural areas.

Section 2 of the bill on page 7 provides for the issuance of occurrence policies for residents who wish to undertake extracurricular or extra-institutional services as a health care provider. Because occurrence policies are currently unavailable in Kansas, the enactment of this section will result in several problems. Either the insurance companies writing medical malpractice will respond to this section and issue occurrence-type forms for the coverage, thereby, creating an exception to

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the law for K. U. residents, or it will result in the unavailability of the occurrence-type policy and prohibit K. U. residents from moonlighting or engaging in any extra-institutional type medical care. If the latter occurs, the emergency care facilities and the rural areas which are serviced by part-time, locum tenans support from K. U. residents will be denied needed services. I do not know whether the market will be able to provide the occurrence coverage because the occurrence form is less actuarially precise, and exposes an insurer to a significantly longer period of exposure. Moreover, I do not know if it can be provided at an affordable cost to K.U. residents in view of the existing climate.

One significant problem about which the bill is silent is the relationship between the occurrence policy and the medical center's claims made coverage. Under Senate Bill No. 734, the occurrence form would also cover the resident while he worked at K.U. Without more specificity in the law, the Fund and the occurrence policy carrier would be uncertain as to which entity would cover the risk or how the risk would be shared. The uncertainty, without a legislative solution, most likely, would have to be resolved through costly litigation.

3. Senate Bill No. 734 interferes with the ability of an insurer to provide a defense to a resident covered by the K. U. self-insurance program.

Section 3 of Senate Bill No. 734 on page 9 is a portion which proposes, at present, what appears to be an unworkable means of providing for the defense of K. U. residents. Section 3 of the bill amends K.S.A. 40-3403 and provides that the Fund may expend money to defend K. U. residents. No attorney fees or other costs shall be paid from the Fund except upon approval of the State Finance Council. It is my understanding that the State Finance Council meets only a few times a year, subject to call by the chairman, the Governor. If the Health Care Stabilization Fund were to seek approval before an attorney is hired and before the attorney may undertake to defend a doctor in a medical malpractice action, it is unlikely that we will be able to retain attorneys to work under this section and that we will have substantial mechanical difficulties in defending the residents pursuant to this provision.

For example, no money can be paid out of the Fund pursuant to this section until the State Finance Council has approved the expenditures as reasonable and necessary. If a claim against a resident comes in under this section, the resident's defense will be jeopardized if the Finance Council cannot move quickly enough to authorize payments. Litigation, as I am sure you are aware, is subject to countless procedural deadlines. In addition, medical malpractice litigation requires the retention of expert witnesses. After finding an expert witness, we would have to seek approval of the Finance Council before we could consult with the expert. Then, if we decided to use this particular expert, we would again have to seek approval to take his deposition and obtain his testimony in the litigation. Arguably, this section of Senate Bill No. 734 would require us to seek approval of the State Finance Council prior even to undertaking the expense to look for an expert.

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Not only does this procedure jeopardize the resident's defense in the terms of meeting schedules, but it also jeopardizes his defense in terms of revealing defense strategies. If we are having to obtain the Finance Council's approval at each step in the course of a resident's case, the resident's defense will be impaired. The procedure requiring the approval of the State Finance Council before expenditures can be made by the Health Care Stabilization Fund results in second-guessing on the part of people not familiar with the cases or with medical malpractice litigation in general. This provision puts the State of Kansas and the Health Care Stabilization Fund in the position of failing to defend a resident's case in a timely and good faith fashion. In short, the provision puts control of the case in the hands of the Finance Council, rather than where the general tort and insurance law requires it to be, in the hand of the resident through his attorney. It is my impression that the law is intended to provide the expertise of the Health Care Stabilization Fund in defending medical malpractice actions. The law, however, at present, places the decision-making aspects of a resident's case in the hands of the State Finance Council.

4. Senate Bill No. 734 discourages settlements in cases involving residents and will expose the State to increased costs and large judgments.

Subsection 11 of Senate Bill No. 734 provides that no approval (I assume the legislation refers to approval of the court of an acceptable settlement under K.S.A. 40-3410) shall be made except on approval of the State Finance Council. This limitation, in my opinion, will significantly hamper settlements, and it is my feeling we may be unable to settle cases with this type of restriction as presently drafted. It is my understanding that the State Finance Council often reduces requests for amounts of settlements. Therefore, it is unreasonable to believe that once the Fund is in a position to commence negotiations that the plaintiff would agree to be bound by whatever the Finance Council offers.

Again, this provision poses significant time restraints. If the Finance Council only meets a few times a year, it is unlikely that a plaintiff would agree to waive the trial schedule until approval of the Council. This provision, thereby, would discourage settlements and even negotiations of any sort in disposing of actions under this provision. The law, in essence, will force cases to judgment. Judgments, as I am sure you are aware, pose a greater risk to the Fund and to the state if they occur in cases which need to be settled. Additional expenses are also incurred in having to try the cases. Governmental checks and balances of settlements, furthermore, are already required under K.S.A. 40-3410, mandating the judge to find settlements fair, just, and equitable prior to any expenditure of Fund monies.

5. Senate Bill No. 734 exposes the Fund to unreimbursable expense.

Senate Bill No. 734 does not provide for reimbursement to the Fund for its expenses in administering the residents' cases. Consequently, the Fund

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will have to absorb these expenses, and the surcharge will have to increase to cover the additional costs.

6. The problems created by Senate Bill 362 (1985 Legislative Session) are not addressed.

Senate Bill No. 734 is unclear as to how the legislation from last year is intended to be handled. Residents who were sued for activities for moonlighting will still have to be covered by the K. U. Medical Center if those claims were made during Fiscal Year July 1, 1985 to July 1, 1986. It is, however, unclear how the claims made under last year's legislation will be handled with respect to the defense and approval through the State Finance Council.

The best approach, in my opinion, to the problem of the University of Kansas residents is either to require that the residents pay for the coverage themselves or that the state purchase the insurance. My continued assertion, which was documented in a letter (copy attached) to the Chancellor of Kansas University this October, has been that the State of Kansas purchase the insurance and relieve itself from the administrative, legal, and fiscal responsibilities in providing this coverage. It is my understanding that the Board of Regents acknowledged our recommendation and followed it in their proposal that the K. U. Medical Center budget include an allocation for the insurance protection.

In addition, my concern continues to be that the type of reimbursement system established in Senate Bill No. 734 subjects the State of Kansas and the citizens of this state to great speculation and uncertainty in the amounts of money necessary to cover the risk. The amount of state funds that would have to be expended to defend the residents and pay indemnities would not be clearly identifiable. The cost of insurance premiums, however, is a set figure which can be presented to the legislature with certainty. With an insurance premium, the legislature would be able to review and pass a dependable and exact budget.

The expense to the state in fact, if past history is a guide, may be greater under the system proposed in Senate Bill No. 734. Attached to this letter, please find figures provided to us from the St. Paul Fire and Marine Insurance Company and forwarded to the University of Kansas on December 13, 1984, regarding the residents and interns insurance program. You will note that in policy years 1982 to 1983 and 1983 to 1984 the losses paid out on behalf of K. U. residents covered by the program exceeded the premium taken in by St. Paul in an amount over \$100,000. The losses shown are \$339,386 while the premium was only \$219,159. While we acknowledge that these figures are not complete, because they did not include the most recent policy year and because claims were still pending within the policy years presented, we can safely assume that those figures would only increase on the loss side, while the premium figures would remain static. I have also attached statistics supplied by St. Paul Fire and Marine for policy year 1984-1985. The premium collected for the residents insurance in 1985 was approximately \$262,100.00. The 1984-1985 policy year information is not complete and at your request will be provided to you when available.

The Honorable August Bogina, Jr.

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It is, nevertheless, difficult for me to understand why the state would want to undertake an obligation where the experience has been that the losses exceed the premium paid. As I reported in my letter to Chancellor Budig, the St. Paul Fire and Marine Insurance Company, the insurer for the University of Kansas Medical Center residents prior to Senate Bill No. 362, reports an incurred loss and expense ratio for the past five years in Kansas on individual physicians of approximately 130%. This means that for every dollar of premium received, St. Paul has incurred almost \$1.30 in indemnity and defense costs. I am sure you are aware that the University of Kansas Medical Center and the residents at the medical center pose tremendous risk of medical malpractice experience. Because of the size of the institution and the type of care rendered, which is generally a riskier and more specialized type of care, the residents of the K. U. Medical Center present to this state a greater risk in terms of financial outlay.

I also want to note that the surcharge payments to the Health Care Stabilization Fund have already been reduced with the enactment of Senate Bill No. 362. This is because of the manner in which the surcharge was to be calculated. Instead of calculating the surcharge based upon the calculation ordinarily required of other self-insurers in Kansas, the Medical Center's assumed base premium is artificially deflated at an assumed premium of \$600,000. The Fund, therefore, will never be able to recoup losses in an increasingly more volatile climate where higher awards are being rendered and expenses are escalating. If the state desires to self-insure the Kansas resident, I would suggest that a possibility might be to treat the residents' coverage similarly to other self-insurers covered by the Health Care Stabilization Fund in Kansas.

For your information, I have also attached a copy of the Board of Governors of the Health Care Stabilization Fund's recommendations to the legislature. Number 13 of these recommendations includes the recommendation that K. U. obtain insurance for the residents from the private marketplace in the manner required of them prior to enactment of Senate Bill No. 362.

If you have questions or comments concerning the contents of this letter, please do not hesitate to contact my office. I, or my staff, would be happy to help however we can.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

FB:ks

cc: The Honorable Robert Talkington
President of the Senate

K.U. MEDICAL CENTER EXPERIENCE
\$100,000/\$300,000 Professional Liability Insurance
St. Paul Fire & Marine Insurance Company

<u>Resident & Interns Program</u>	<u>Year</u>	<u>Premium</u>	<u>Losses</u>	<u>Number of Claims</u>	
				<u>Paid</u>	<u>Reserved</u>
Department of Neurology	1983-84	\$ 3,275	0		
	1982-83	2,606	\$ 91	1	0
Department of Medicine	1983-84	\$ 27,247	\$133,750*	0	3*
	1982-83	\$ 19,294	100,000	0	2
*These figures may be lower than actual					
Department of Pediatrics	1983-84	\$ 6,778	0		
	1982-83	5,627	5,636	1	0
not included in totals (1981-82)			64,731	1	0)
Department of Pathology	1983-84	\$ 5,096	0		
	1982-83	5,092	0		
Department of Otorhinolaryngology	1983-84	\$ 11,307	0		
	1982-83	8,055	0		
Department of Ophthalmology	1983-84	\$ 13,279	0		
	1982-83	7,082	0		
Department of Psychiatry	1983-84	\$ 10,879	0		
	1982-83	5,554	0		
Department of Radiology	1983-84	\$ 11,843	0		
	1982-83	10,330	0		
Department of Radiation Oncology	1983-84	\$ 3,437	0		
	1982-83	2,892	0		
Department of OB-GYN	1983-84	\$ 33,174	\$100,000	0	1
	1982-83	26,312	0		
not included in totals (1981-82)		34,267	35,000	0	2)
Totals-Residents & Interns Program		219,159	339,386	2	6

House Staff (Faculty) Programs

Radiology Foundation	1983-84	\$ 35,578	0		
	1982-83	31,314	0		
Pathology Association	1983-84	\$ 19,509	0		
	1982-83	13,863	0		
OB-GYN Association	1983-84	\$ 55,446	0		
	1982-83	52,921	0		
Pediatrics Association	1983-84	\$ 25,948	0		
	1982-83	22,297	0		
Neurology Foundation	1983-84	\$ 7,170	0		
	1982-83	8,329	0		
not included in totals (1981-82)		7,806	\$100,000	1	0)
Total-House Staff (Faculty) Programs 1982-84		272,275	0	1	0

Residents or Fellows
Kansas University Medical Center

	<u>Policy Period</u>	<u>Premium</u>
Dept. of Radiation Oncology	7-1-84/85	\$ 6,548
	7-1-83/84	\$ 3,437
	7-1-82/83	\$ 2,892
	7-1-81/82	---
Dept. of Gyn. & O. B.	7-1-84/85	\$62,895
	7-1-83/84	\$33,174
	7-1-82/83	\$26,312
	7-1-81/82	\$34,267
Dept. of Medicine	7-1-84/85	\$65,881
	7-1-83/84	\$27,246
	7-1-83/84	\$11,665
	7-1-82/83	\$19,294
	7-1-82/83	\$ 9,800
	7-1-81/82	---
Dept. of Neurology	7-1-84/85	\$ 5,320
	7-1-83/84	\$ 3,275
	7-1-82/83	\$ 2,606
	7-1-81/82	---
Dept. of Otorhinolaryngology	7-1-84/85	\$24,032
	7-1-83/84	\$11,307
	7-1-82/83	\$ 8,055
	7-1-81/82	---
Dept. of Pathology	7-1-84/85	\$12,564
	7-1-83/84	\$ 5,696
	7-1-82/83	\$ 5,092
	7-1-81/82	---
Dept. of Family Practice	7-1-84/85	\$21,578
	7-1-83/84	\$10,689
	7-1-82/83	\$ 8,621
	7-1-81/82	\$ 9,312
	7-1-80/81	\$ 9,786
Dept. of Pediatrics	7-1-84/85	---
	7-1-83/84	\$ 6,778
	7-1-82/83	\$ 5,627
	7-1-81/82	---

Dept. of Radiology	7-1-84/85	\$25,235
	7-1-83/84	\$11,843
	7-1-82/83	\$10,330
	7-1-81/82	---
Dept. of Ophthalmology	7-1-84/85	\$14,557
	7-1-83/84	\$13,279
	7-1-82/83	\$ 7,082
	7-1-81/82	---
Dept. of Anesthesiology	7-1-82/83	---
	7-1-81/82	\$29,589
	7-1-80/81	\$19,827
Dept. of Rehabilitation	7-1-84/85	\$ 5,235
	7-1-83/84	---
Dept. of Psychiatry	7-1-84/85	\$18,255
	7-1-83/84	\$10,877
	7-1-82/83	\$ 5,554
	7-1-81/82	---



FLETCHER BELL
COMMISSIONER OF INSURANCE

October 15, 1985

Chancellor Gene A. Budig
University of Kansas
223 Strong
Lawrence, Kansas 66045

Dear Chancellor Budig:

As administrator of the Health Care Stabilization Fund, I want to thank you for the consideration you and representatives of your university have shown my staff and myself in addressing the problems created by Senate Bill No. 362 passed in the 1985 Legislative Session. With this letter, we want to pledge our continued cooperation with you and the Medical Center on matters affecting the Health Care Stabilization Fund.

The two fundamental issues confronting us would appear to be how to rectify the problems caused by Senate Bill No. 362 and what the substitute for Senate Bill No. 362 should be. This letter is intended also to review briefly the sequence of events culminating in Senate Bill No. 362 and our subsequent attempts to redress the issues.

As I am sure you will recall, on November 28, 1984, at your request I, accompanied by two members of my staff, met with you and representatives from the Medical Center to discuss the cost of medical professional liability insurance. We discussed the fact that the high cost of professional liability insurance was not a problem unique to the Medical Center and suggested that one way to reduce the cost somewhat would be to reduce the number of professional corporations within the hospital.

Later, we learned that legislation had been introduced at the behest of the University which proposed complete legal immunity for the University of Kansas Medical Center residents. It is my understanding that the legislation in its original form was opposed by the Kansas Medical Society because, among other reasons, it posed a burden to the Fund in increasing the exposure to the facilities and physicians under whose instruction the residents worked, resulting in a loss of health care services in areas where residents

Chancellor Gene A. Budig

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worked. I understand the Medical Society also opposed the bill because of the loss of revenue to the Fund in surcharge payments made on behalf of the residents, because of the dramatic decrease in the number of health care providers under the Fund across whom the risk is spread, and because of possible constitutional attacks surrounding the immunization issue. Senate Bill No. 362, subsequently, was amended to permit the Medical Center to "self-insure" the residents and pay the Fund surcharge for its excess liability based upon an assumed primary insurance premium.

The University of Kansas Medical Center, thereby, became a self-insurer under the provisions of the Health Care Provider Insurance Availability Act. Having undertaken the responsibilities of an insurer, the Medical Center is faced with the task of defending medical malpractice lawsuits brought against its residents and paying indemnities for which its residents become liable. This, of course, is the direct result of the University's wishes.

I understand that the University of Kansas Medical Center is now displeased with the results of passage of Senate Bill No. 362, both because of the enormous responsibility the Medical Center has undertaken in becoming a self-insurer and because no provision was made for payment of defense and indemnity costs. In an attempt to resolve the problems you face, I directed representatives from my staff to contact representatives from the Attorney General's office, from the Board of Regents, from the Medical Center, and from your legal staff to offer our assistance and expertise in insurance matters and in the Health Care Stabilization Fund, which I have administered since its inception in 1976.

After the first two meetings with these representatives, my staff understood from all participants that the best approach was to develop a mutually agreeable plan and to channel it through the budgetary process of the legislature. We had agreed specifically not to submit our concerns to the Interim Legislative Committee, deeming the issue to be more appropriately a budgetary concern.

As a result, we were surprised to learn the day before the testimony that the University and the Medical Center were scheduled to appear before the Interim Committee. Moreover, we were disappointed in the tenor of the testimony. My staff advised me that Medical Center personnel represented that the Insurance Department was impeding the residents' efforts to procure insurance and that money paid to the Fund was a worthless expenditure. Apparently, those who testified were unaware of the discussions we had with your staff and were unfamiliar with the operation of the Health Care Provider Insurance Availability Act.

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Members of my staff and the other representatives, including those from the Medical Center, met on two additional occasions at my office to discuss matters relating to Senate Bill No. 362. It is the understanding of my staff and myself that the preferable approach to Senate Bill No. 362, agreed upon by all the parties, is for the Medical Center to purchase the liability insurance as it did prior to Senate Bill No. 362. This approach is preferable for several reasons.

First, this method of addressing this issue is preferable because the amount of state funds that would have to be expended is clearly identifiable. The cost of an insurance premium is a set figure which can be submitted to the legislature with certainty. Defense costs and indemnity costs, on the other hand, vary from case to case, court to court, injury to injury, etc. The amounts of defense and indemnity costs are not determinable, and the legislature would be unable to review and pass a dependable and exact budget.

Second, the Medical center, as self-insurer, puts the State in the position of potentially being at odds with itself. As an excess insurer, the Fund is constantly looking over the shoulder of the primary carriers, second guessing their decisions, and at times even suing them for the manner in which they have handled a case. With the State as self-insurer, the Fund could be no less concerned about the protection of its interest, and, yet, one arm of the State would arguably be battling with the other.

Third, St. Paul Fire and Marine Insurance Company, the insurer for the Kansas University residents prior to Senate Bill No. 362, reports an incurred loss and expense ratio for the past five years in Kansas of approximately 130%. This means that for every dollar of premium received they have incurred almost \$1.30 in indemnity and defense costs. These figures should serve as a warning that the cost to the State of Kansas for the self-funded residents' program may be no bargain for the State and may well result in greater expense than merely purchasing the coverage. For example, if the coverage necessary to cover the residents costs, hypothetically, \$1,000,000, the insurance carrier on the average incurs approximately \$1,300,000 in defense, expense, and indemnity costs. These figures do not include administrative, investigatory, and related expenses which the State will have to pay under Senate Bill No. 362 or under any type of reimbursement system if the Fund is to front the costs of defense and indemnities.

The residents at the University of Kansas Medical Center have tremendous exposure as does the Medical Center itself. I am sure you are aware that because of its size and the type of care, which

Chancellor Gene A. Budig

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is generally a riskier and more specialized type of care, the Medical Center presents a greater risk in terms of financial outlay.

While we understand that some of your faculty desired to construct a system whereby the residents would only be covered for "approved" activities, we have received conflicting reports as to what constitutes an "approved" activity. It is my understanding that the family practice resident who testified before the Legislative Interim Committee argued that moonlighting was an essential component of her education as a resident. We also have heard that the locum tenens-type program serves a valuable contribution to rural Kansas. My office has received a number of complaints from physicians, emergency room administrators, and concerned individuals stating that if residents are prohibited from moonlighting, health care services in Kansas will be unduly restricted.

Deciding what is "approved" after the fact or on an individual basis cannot be facilitated in this instance. The question of coverage under the Health Care Provider Insurance Availability Act should not, in our opinion, be determined on an ad hoc, case-by-case basis. As I am sure you are aware, the Kansas Legislature has mandated health care providers to carry professional liability insurance as a prerequisite to rendering care. Residents, therefore, cannot render care unless they do so with certainty that they are covered.

Representatives from the Medical Center have assured us that they will supply us with a definition of what constitutes "approved" activities. I trust that this information is indeed forthcoming. Until we receive this information, however, we are unable to ascertain how the industry, the Fund, and the Medical Center will be able to fulfill their objectives while at the same time comply with the law mandating medical malpractice insurance.

On the other hand, if the Medical Center decides it prefers undertaking the duties of a self-insurer as we understood was intended under Senate Bill No. 362 and which the Attorney General supports in his reviews of the legislation, we would suggest the Medical Center familiarize itself with the requirements of other self-insurers in Kansas covering health care providers. Other self-insurers can serve as examples for the reserving and reporting functions necessary to self-insurance, not to mention the vast number of other obligations commensurate with the job.

Regardless, operating within the insurance mechanism as originally conceived under the Health Care Provider Insurance Availability Act poses less legislative and administrative revision and would subject the Medical Center, the Health Care Stabilization Fund, and the

Chancellor Gene A. Budig
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State of Kansas to less speculation and uncertainty than would a total reconstruction of the system. A restructuring, in and of itself, takes considerable time and money. Although we were happy to do so, my staff and I have already devoted a significant amount of time and energy to the subject.

Again, I pledge my cooperation and assistance in addressing these issues and in rectifying the problems confronting us by Senate Bill No. 362. Please do not hesitate to contact my office if you have questions concerning this letter.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

FB:ks

cc: Robert Stephan
Attorney General, State of Kansas

Wendell Lady, Chairman
Board of Regents

Mike Hayden
Speaker of the House

Robert Talkington
President of the Senate

Senator Augustus Bogina

Representative Bill Buntin

LE/2224

LEGISLATIVE RECOMMENDATIONS
BY THE
BOARD OF GOVERNORS
OF THE
HEALTH CARE STABILIZATION FUND

The Board of Governors of the Health Care Stabilization Fund supports the efforts of the Kansas Citizens Committee for the Review of the Tort System and the Special Committee of the Legislature on Medical Malpractice to improve the medical malpractice climate in Kansas.

The Board of Governors recommends the following actions:

1. To reduce the cap on the Health Care Stabilization Fund from \$3 million to \$1 million if the caps recommended by House Bill No. 2661, as introduced, are also placed on total awards.
2. To encourage structured settlements and mandate structured awards and judgments. It is the opinion of the Board of Governors that structures provide one of the best methods for reducing Health Care Stabilization Fund costs while maintaining fair and adequate compensation for victims.
3. To reduce post judgment interest rates from the present fifteen percent (15%) rate to the one year treasury bill rate.
4. To enact mandatory screening panels for all medical malpractice cases with the results admissible in a subsequent trial. The Board views screening panels as necessary to reduce frivolous lawsuits and to encourage both plaintiffs and primary insurance carriers to settle cases as soon as possible after an injury.
5. To support the concept of risk management and peer review.
6. To require mandatory settlement conferences. The Board does not support the penalty provisions recommended by the Special Committee of the Legislature on Medical Malpractice for parties who make settlement offers twenty-five percent (25%) more favorable to their side than an eventual jury award. The Board believes these penalties will often be uncollectable against plaintiffs, thus making the penalties primarily directed toward defendants. Penalties will also discourage appeals and will penalize the Health Care Stabilization Fund when other defendants are not covered by the Fund.
7. To promulgate a requirement for health care providers covered by the Health Care Stabilization Fund to provide evidence of current medical malpractice insurance to the Board of Healing Arts as a condition of licensure.

8. To amend the Premium Finance Act to permit providers to finance Health Care Stabilization Fund surcharges with payments on a monthly or quarterly term.
9. To promulgate a procedure to permit the Health Care Stabilization Fund to appeal without a cash appeal bond.
10. To enact legislation to mandate notice to the Health Care Stabilization Fund in sufficient time for the Fund to participate in all material aspects of discovery and preparation for trial. This recommendation is intended to overcome the result of Smith v. Wertzberger (1985). The legislation should also require the primary carrier to cover the provider for those amounts the Fund incurs as a result of the primary carrier's failure to notify the Fund of actions filed in jurisdictions other than Kansas.
11. To enact stricter surcharge collection laws to force primary insurance carriers to forward surcharges to the Health Care Stabilization Fund promptly, with an interest penalty provision for those primary carriers who delay in submitting the surcharge.
12. To require state mental hospitals, which presently receive Fund coverage without paying a surcharge, to participate in the Health Care Stabilization Fund as active health care providers and pay surcharges.
13. To encourage repeal of Senate Bill No. 362, which permitted the residents at the University of Kansas Medical Center to be self-insured by the State of Kansas, and to authorize the State to appropriate full funds to cover the basic primary coverage and the applicable surcharge for residents engaged in post-graduate study at the Medical Center.
14. To amend K.S.A. 40-3403 to permit the Board of Governors to expend money from the Health Care Stabilization Fund to promote risk management and to sponsor continuing medical education programs concerning risk management.
15. To amend K.S.A. 40-2403(g) to permit the Board of Governors to curtail coverage in their sole discretion and to delete the word "future" from the present standard needed by the Board to terminate Fund coverage. Presently, the standard reads: "material risk of significant future liability to the Fund". The Board further recommends that the language in House Bill No. 2661, Section 24(i), as introduced, be amended to substitute the word "or" for the word "and" in the following phrase "due to the number of claims filed against a health care provider or the outcome of those claims. . ."

SENATE WAYS AND MEANS COMMITTEE

April 9, 1986

RE: S. B. 739⁴; Amendments to Allow Kansas Teaching Hospitals to Self-insure Residency Programs

PROPOSERS: St. Francis Regional Medical Center, Wichita, KS
St. Joseph Medical Center, Wichita, Kansas;
Wesley Medical Center, Wichita, Kansas;
Menninger Foundation, Topeka, Kansas
Kansas Hospital Association, Topeka, Kansas

SPOKESMAN: John H. Gibson
Boyer, Donaldson & Stewart
Wichita, Kansas

INTRODUCTION

The teaching hospitals, Menninger Foundation, Wesley Medical Center, St. Joseph Medical Center and St. Francis Regional Medical Center in Wichita, have for several years discussed methods to reduce the cost of insuring their medical residents against medical malpractice risk of monetary loss. The passage of legislation in 1985 to allow the University of Kansas Medical Center to self-insure its residency program was a logical and natural step toward such cost reduction; it now seems logical and natural for the remaining teaching hospitals in Kansas to be given the same option. We present to you today our joint request to amend S.B. 734 to allow Kansas teaching hospitals to self-insure the residency programs. The following are some of the questions we felt the legislature may have, with our answers.

A. KANSAS TEACHING HOSPITALS RESIDENCY PROGRAMS

1. Who are the teaching hospitals? By "teaching hospital" we mean those that have their own residency program. In Kansas there are five: K. U. Medical Center in Kansas City and the University of Kansas School of Medicine-Wichita; Menninger Foundation in Topeka; and St. Francis Regional Medical Center, Wesley Medical Center and St. Joseph Medical Center in Wichita.

2. What is a resident? A resident is a doctor in training; a graduate of an approved medical school, licensed to practice medicine in Kansas, who desires to become specialized in a specific area of medicine by completing an intensive class/clinical training program (i.e., residency program) over a several year period.

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3. What is a residency program? Residency programs are sponsored by the teaching institution. All residency programs offered by Kansas teaching hospitals are accredited by the Accreditation Council for Graduate Medical Education. The teaching institution provides a stipend to the residents plus certain fringe benefits, including payment of malpractice insurance premiums. The teaching institution provides the administrative structure for the residency program. Physicians act as the instructors and clinical directors and coordinators for the programs.

4. Is it necessary for a doctor to serve in a residency program? Under the laws of the State of Kansas one year of a residency (sometimes referred to as an internship) is required to practice medicine in Kansas. Beyond this, there is no legal requirement for a residency program. For a physician to practice in a specialty, however, as a practical matter a residency program is necessary. Further, completion of a residency program is increasingly becoming a requirement for membership to a hospital medical staff. Likewise, completion of an approved residency program is a prerequisite to board certification in a specialty.

5. Do our Kansas residency programs benefit the citizens of Kansas? Yes. Many graduates of the University of Kansas Medical School participate in Kansas residency programs. As a general rule, a significant number of the participants in the Kansas residency programs are graduates of the University of Kansas School of Medicine. Likewise, a significant number of doctors completing a residency from a Kansas teaching institution remain in Kansas to pursue the practice of medicine.

6. Do residents have to be covered with malpractice insurance in Kansas? Yes. Residents are "health care providers" as defined by K.S.A. 40-3401(f). All health care providers must maintain minimum malpractice insurance pursuant to K.S.A. 40-3402(a).

B. THE CONCEPT OF SELF-INSURANCE FOR KANSAS HOSPITALS

1. How does self-insurance work? In 1976 the Kansas Legislature provided that certain health care providers with insurance premiums in excess of \$100,000 per year could self-insure their medical malpractice risks. To date, St. Francis Regional Medical Center in Wichita, St. Joseph Medical Center in Wichita and the Wesley Medical Center in Wichita have self-insured. An application is annually made to the Commissioner of Insurance, which application provides information to the Commissioner regarding the medical malpractice risk of that institution. The decision is made each year by the Commissioner of Insurance as to renewal of the self-insurance for the institution.

2. Is the self-insurance program for hospitals regulated by the Kansas Insurance Department? Yes. The insurance commissioner regulates all aspects of the granting of the self-insurance certificate, and monitors the self-insured insurance programs of each institution.

3. Is a surcharge paid to the Health Care Stabilization Fund by Self-Insurers? Yes. The Insurance Department computes the amount of premium that would be paid by the self-insurer if purchasing insurance on the open market, then the standard surcharge is assessed to, and paid by, the self-insurer the same as if the self-insurer was paying a surcharge based upon an insurance premium.

4. Has there been a cost savings to the self-insured institutions as a result of the self-insurance program? Yes. Each institution that has taken advantage of the self-insurance law has experienced considerable cost savings by maintaining their own self-insurance trust fund, paying all defense costs, administration costs and claims payment from such funds. The cost savings have been dramatic when compared to the amount of premiums that would have been paid to purchase malpractice insurance on the open market.

5. Does the self-insurance program cost the State of Kansas or taxpayers money? No.

C. RESIDENCY PROGRAM INSURANCE COSTS vs. LOSS EXPERIENCE

1. What has happened to the insurance premium costs for the teaching hospitals in the last five years? Generally, the insurance premium costs for the teaching hospitals for the last five years have increased eight times. Increases are anticipated in the future.

2. How many malpractice claims have been filed against residents over the last five years? Claims against residents have been minimal, amounting to fewer than ~~ten~~ ^{two} claims per year against each institution.

3. How much have the damage awards against residents been? Over the last five years the damage awards, when compared to physicians generally, have been minimal. The loss experience, including cost of defense, for the Wichita institutions, have averaged far less than the amount of insurance premium paid.

D. SELF-INSURING THE RESIDENCY PROGRAMS

1. How will residency self-insurance programs work? It is anticipated that the administration, claims handling and litigation defense of the residency self-insurance programs will be patterned after the existing self-insurance programs for the institutions. The Commissioner of Insurance will issue certificates allowing the residency self-insurance programs on an annual basis. All aspects of the operation of the self-insurance programs will be regulated by the Kansas Insurance Department.

2. Will a full surcharge contribution be made to the Health Care Stabilization Fund? It is anticipated that the insurance department will compute the surcharge to be paid by the institution based upon the premium that would have been paid by the institution if insurance was purchased on the open market. Unlike the self-insurance provision for the University of Kansas, there will be no upper limit placed upon the amount of the contribution to the Health Care Stabilization Fund.

3. Will self-insurance really lower costs of the teaching institutions? Based upon the experience the Wichita hospitals have had with their self-insurance programs, and based upon the premium vs. loss ratios for the residency programs, we anticipate that self-insurance for the residency programs will definitely lower the total cost.

4. Will residents and hospitals still be fully accountable to patients? Yes. Providing coverage through a self-insured program in no way diminishes the accountability to patients who have claims for injuries.

Gibson's balloon

Session of 1986

SENATE BILL No. 734

By Committee on Ways and Means

3-11

0017 AN ACT concerning the health care provider insurance availa-
0018 bility act; relating to certain persons engaged in postgraduate
0019 training programs; amending K.S.A. 1985 Supp. 40-3401, 40-
0020 3402, 40-3403, 40-3404 and 40-3414 and repealing the existing
0021 sections.

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

0023 Section 1. K.S.A. 1985 Supp. 40-3401 is hereby amended to
0024 read as follows: 40-3401. As used in this act the following terms
0025 shall have the meanings respectively ascribed to them herein:

0026 (a) "Applicant" means any health care provider;

0027 (b) "basic coverage" means a policy of professional liability
0028 insurance required to be maintained by each health care pro-
0029 vider pursuant to the provisions of subsection (a) or (b) of K.S.A.
0030 40-3402 and amendments thereto;

0031 (c) "commissioner" means the commissioner of insurance;

0032 (d) "fiscal year" means the year commencing on the effective
0033 date of this act and each year, commencing on the first day of that
0034 month, thereafter;

0035 (e) "fund" means the health care stabilization fund estab-
0036 lished pursuant to subsection (a) of K.S.A. 40-3403 and amend-
0037 ments thereto;

0038 (f) "health care provider" means a person licensed to practice
0039 any branch of the healing arts by the state board of healing arts, a
0040 person who holds a temporary permit to practice any branch of
0041 the healing arts issued by the state board of healing arts, a person
0042 engaged in a postgraduate training program approved by the
0043 state board of healing arts, a medical care facility licensed by the
0044 department of health and environment, a health maintenance
0045 organization issued a certificate of authority by the commissioner

1
SENATE BILL 739⁴, with amendments to
allow Kansas teaching hospitals to
self-insure residency programs.

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0046 of insurance, an optometrist licensed by the board of examiners
0047 in optometry, a podiatrist registered by the state board of healing
0048 arts, a pharmacist registered by the state board of pharmacy, a
0049 licensed professional nurse who is licensed by the board of
0050 nursing and certified as a nurse anesthetist by the American
0051 association of nurse anesthetists, a professional corporation or-
0052 ganized pursuant to the professional corporation law of Kansas
0053 by persons who are authorized by such law to form such a
0054 corporation and who are health care providers as defined by this
0055 subsection, a Kansas not-for-profit corporation organized for the
0056 purpose of rendering professional services by persons who are
0057 health care providers as defined by this subsection (f), a dentist
0058 certified by the state board of healing arts to administer anes-
0059 thetics under K.S.A. 65-2899 and amendments thereto, a physical
0060 therapist registered by the state board of healing arts, or a mental
0061 health center or mental health clinic licensed by the secretary of
0062 social and rehabilitation services, except that health care pro-
0063 vider does not include (1) any state institution for the mentally
0064 retarded or (2) any state psychiatric hospital;

0065 (g) "inactive health care provider" means a person or other
0066 entity who purchased basic coverage or qualified as a self-in-
0067 surer on or subsequent to the effective date of this act but who, at
0068 the time a claim is made for personal injury or death arising out
0069 of the rendering of or the failure to render professional services
0070 by such health care provider, does not have basic coverage or
0071 self-insurance in effect solely because such person is no longer
0072 engaged in rendering professional service as a health care pro-
0073 vider;

0074 (h) "insurer" means any corporation, association, reciprocal
0075 exchange, inter-insurer and any other legal entity authorized to
0076 write bodily injury or property damage liability insurance in this
0077 state, including workmen's compensation and automobile liabil-
0078 ity insurance, pursuant to the provisions of the acts contained in
0079 article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated;

0080 (i) "plan" means the operating and administrative rules and
0081 procedures developed by insurers and rating organizations or the
0082 commissioner to make professional liability insurance available

0083 to health care providers;

0084 (j) "professional liability insurance" means insurance pro-
0085 viding coverage for legal liability arising out of the performance
0086 of professional services rendered or which should have been
0087 rendered by a health care provider;

0088 (k) "rating organization" means a corporation, an unincorpo-
0089 rated association, a partnership or an individual licensed pursu-
0090 ant to K.S.A. 40-930 or 40-1114, or both sections, and amend-
0091 ments to those sections, to make rates for professional liability
0092 insurance;

0093 (l) "self-insurer" means a health care provider who has qual-
0094 ified as a self-insurer pursuant to K.S.A. 40-3414 and amend-
0095 ments thereto or ~~the university of Kansas medical center~~ for
0096 ~~persons who are engaged, under the supervision of the clinical~~
0097 ~~faculty member of the university of Kansas school of medicine, in~~
0098 ~~a postgraduate training program approved by the state board of~~
0099 ~~healing arts and operated by the university of Kansas medical~~
0100 ~~center~~ persons engaged in residency training;

0101 (m) "medical care facility" means the same when used in the
0102 health care provider insurance availability act as the meaning
0103 ascribed to that term in K.S.A. 65-425 and amendments thereto,
0104 except that as used in the health care provider insurance availa-
0105 bility act such term, as it relates to insurance coverage under the
0106 health care provider insurance availability act, also includes any
0107 director, trustee, officer or administrator of a medical care facil-
0108 ity;

0109 (n) "mental health center" means a mental health center
0110 licensed by the secretary of social and rehabilitation services
0111 under K.S.A. 75-3307b and amendments thereto, except that as
0112 used in the health care provider insurance availability act such
0113 term, as it relates to insurance coverage under the health care
0114 provider insurance availability act, also includes any director,
0115 trustee, officer or administrator of a mental health center;

0116 (o) "mental health clinic" means a mental health clinic li-
0117 censed by the secretary of social and rehabilitation services
0118 under K.S.A. 75-3307b and amendments thereto, except that as
0119 used in the health care provider insurance availability act such

a medical care facility as defined in
subsection (m) of this section.

0120 term, as it relates to insurance coverage under the health care
0121 provider insurance availability act, also includes any director,
0122 trustee, officer or administrator of a mental health clinic;

0123 (p) "state institution for the mentally retarded" means Nor-
0124 ton state hospital, Winfield state hospital and training center,
0125 Parsons state hospital and training center and the Kansas neuro-
0126 logical institute;

0127 (q) "state psychiatric hospital" means Larned state hospital,
0128 Osawatomie state hospital, Rainbow mental health facility and
0129 Topeka state hospital;

0130 (r) "person engaged in residency training" means a person
0131 engaged in a postgraduate training program approved by the
0132 state board of healing arts ~~who is employed by and is studying~~
0133 ~~at the university of Kansas medical center~~ Only when such
0134 person is engaged in medical activities which do not include
0135 extracurricular, extra-institutional medical service for which
0136 such person receives extra compensation and which have not
0137 been approved by the dean of the school of medicine and the
0138 executive vice-chancellor of the university of Kansas medical
0139 center.

0140 Sec. 2. K.S.A. 1985 Supp. 40-3402 is hereby amended to read
0141 as follows: 40-3402. (a) A policy of professional liability insur-
0142 ance approved by the commissioner and issued by an insurer
0143 duly authorized to transact business in this state in which the
0144 limit of the insurer's liability is not less than \$200,000 per
0145 occurrence, subject to not less than a \$600,000 annual aggregate
0146 for all claims made during the policy period, shall be maintained
0147 in effect by each resident health care provider as a condition to
0148 rendering professional service as a health care provider in this
0149 state, unless such health care provider is a self-insurer or is a
0150 person who is engaged under the supervision of the clinical
0151 faculty member of the university of Kansas school of medicine, in
0152 a postgraduate training program approved by the state board of
0153 healing arts and operated by the university of Kansas medical
0154 center and is insured pursuant to K.S.A. 40-3414; and amend-
0155 ments thereto. Such policy shall provide as a minimum coverage
0156 for claims made during the term of the policy which were

at a medical care facility

in the case of the University of Kansas or
the respective program director and the head
of the medical care facility or his designee
in the case of a medical care facility.

0157 incurred during the term of such policy or during the prior term
0158 of a similar policy.

0159 (1) Each insurer providing basic coverage shall within 30
0160 days after the premium for the basic coverage is received by the
0161 insurer or within 30 days from the effective date of this act,
0162 whichever is later, notify the commissioner that such coverage is
0163 or will be in effect. Such notification shall be on a form approved
0164 by the commissioner and shall include information identifying
0165 the professional liability policy issued or to be issued, the name
0166 and address of all health care providers covered by the policy,
0167 the amount of the annual premium, the inception and expiration
0168 dates of the coverage and such other information as the commis-
0169 sioner shall require. A copy of the notice required by this
0170 subsection shall be furnished the named insured.

0171 (2) In the event of termination of basic coverage by cancella-
0172 tion, nonrenewal, expiration or otherwise by either the insurer or
0173 named insured, notice of such termination shall be furnished by
0174 the insurer to the commissioner, the state agency which licenses,
0175 registers or certifies the named insured and the named insured.
0176 Such notice shall be provided no less than 30 days prior to the
0177 effective date of any termination initiated by the insurer or
0178 within 10 days after the date coverage is terminated at the
0179 request of the named insured and shall include the name and
0180 address of the health care provider or providers for whom basic
0181 coverage is terminated and the date basic coverage will cease to
0182 be in effect. No basic coverage shall be terminated by cancella-
0183 tion or failure to renew by the insurer unless such insurer
0184 provides a notice of termination as required by this subsection.

0185 (3) Any professional liability insurance policy issued, deliv-
0186 ered or in effect in this state on and after the effective date of this
0187 act shall contain or be endorsed to provide basic coverage as
0188 required by subsection (a) of this section. Notwithstanding any
0189 omitted or inconsistent language, any contract of professional
0190 liability insurance shall be construed to obligate the insurer to
0191 meet all the mandatory requirements and obligations of this act.
0192 The liability of an insurer for claims made prior to July 1, 1984,
0193 shall not exceed those limits of insurance provided by such

0194 policy prior to July 1, 1984.

0195 (b) Unless a nonresident health care provider is a self-in-
0196 surer, such provider shall not render professional service as a
0197 health care provider in this state unless such provider maintains
0198 coverage in effect as prescribed by subsection (a) of this section,
0199 except such coverage may be provided by a nonadmitted insurer
0200 who has filed the form required in paragraph (1) of *this* subsec-
0201 tion (b) of ~~this section~~.

0202 (1) Every insurance company authorized to transact business
0203 in this state, that is authorized to issue professional liability
0204 insurance in any jurisdiction, shall file with the commissioner, as
0205 a condition of its continued transaction of business within this
0206 state, a form prescribed by the commissioner declaring that its
0207 professional liability insurance policies, wherever issued, shall
0208 be deemed to provide at least the insurance required by this
0209 subsection when the insured is rendering professional services
0210 as a nonresident health care provider in this state. Any nonad-
0211 mitted insurer may file such a form.

0212 (2) Every nonresident health care provider who is required
0213 to maintain basic coverage pursuant to this subsection shall pay
0214 the surcharge levied by the commissioner pursuant to subsection
0215 (a) of K.S.A. 40-3404 and amendments thereto directly to the
0216 commissioner and shall furnish to the commissioner the infor-
0217 mation required in paragraph (1) of subsection (a) of this section.

0218 (c) Every health care provider that is a self-insurer or the
0219 ~~university of Kansas medical center~~ for persons who are engaged
0220 ~~under the supervision of the clinical faculty member of the~~
0221 ~~university of Kansas school of medicine in a postgraduate train-~~
0222 ~~ing center approved by the state board of healing arts and~~
0223 ~~operated by the university of Kansas medical center engaged in~~
0224 ~~residency training~~ shall pay the surcharge levied by the com-
0225 missioner pursuant to subsection (a) of K.S.A. 40-3404 and
0226 amendments thereto directly to the commissioner and shall
0227 furnish to the commissioner the information required in para-
0228 graph (1) of subsection (a) of this section.

0229 (d) *In lieu of a claims made policy otherwise required under*
0230 *this section, a person engaged in a postgraduate training pro-*

a medical care facility

0231 ~~gram operated by the university of Kansas medical center who is~~
0232 ~~providing services as a health care provider but while providing~~
0233 ~~such services is not covered by the self-insurance provisions of~~
0234 ~~subsection (d) of K.S.A. 40-3414 and amendments thereto may~~
0235 ~~obtain basic coverage under an occurrence form policy if such~~
0236 ~~policy provides professional liability insurance coverage and~~
0237 ~~limits which are substantially the same as the professional~~
0238 ~~liability insurance coverage and limits required by subsection~~
0239 ~~(a) of K.S.A. 40-3402 and amendments thereto. Where such~~
0240 ~~occurrence form policy is in effect, the provisions of the health~~
0241 ~~care provider insurance availability act referring to claims~~
0242 ~~made policies shall be construed to mean occurrence form~~
0243 ~~policies.~~

0244 Sec. 3. K.S.A. 1985 Supp. 40-3403 is hereby amended to read
0245 as follows: 40-3403. (a) For the purpose of paying damages for
0246 personal injury or death arising out of the rendering of or the
0247 failure to render professional services by a health care provider,
0248 self-insurer or inactive health care provider subsequent to the
0249 time that such health care provider or self-insurer has qualified
0250 for coverage under the provisions of this act, there is hereby
0251 established the health care stabilization fund. The fund shall be
0252 held in trust in a segregated fund in the state treasury. The
0253 commissioner shall administer the fund or contract for the ad-
0254 ministration of the fund with an insurance company authorized
0255 to do business in this state.

0256 (b) (1) There is hereby created a board of governors. The
0257 board of governors shall provide:

0258 (A) Technical assistance with respect to administration of the
0259 fund;

0260 (B) such expertise as the commissioner may reasonably re-
0261 quest with respect to evaluation of claims or potential claims;

0262 (C) advice, information and testimony to the appropriate li-
0263 censing or disciplinary authority regarding the qualifications of a
0264 health care provider.

0265 (2) The board shall consist of 13 persons appointed by the
0266 commissioner of insurance, as follows: (A) The commissioner of
0267 insurance, or the designee of the commissioner, who shall act as

a medical care facility

0268 chairperson; (B) one member appointed from the public at large
0269 who is not affiliated with any health care provider; (C) three
0270 members licensed to practice medicine and surgery in Kansas
0271 who are doctors of medicine; (D) three members who are repre-
0272 sentatives of Kansas hospitals; (E) two members licensed to
0273 practice medicine and surgery in Kansas who are doctors of
0274 osteopathic medicine; (F) one member licensed to practice
0275 chiropractic in Kansas; and (G) two members of other categories
0276 of health care providers. Meetings shall be called by the chair-
0277 person or by a written notice signed by three members of the
0278 board. The board, in addition to other duties imposed by this act,
0279 shall study and evaluate the operation of the fund and make such
0280 recommendations to the legislature as may be appropriate to
0281 ensure the viability of the fund.

0282 (3) The board shall be attached to the insurance department
0283 and shall be within the insurance department as a part thereof.
0284 All budgeting, purchasing and related management functions of
0285 the board shall be administered under the direction and super-
0286 vision of the commissioner of insurance. All vouchers for ex-
0287 penditures of the board shall be approved by the commissioner
0288 of insurance or a person designated by the commissioner.

0289 (c) Subject to subsections (d), (e) and (g), the fund shall be
0290 liable to pay: (1) Any amount due from a judgment or settlement
0291 which is in excess of the basic coverage liability of all liable
0292 resident health care providers or resident self-insurers for any
0293 such injury or death arising out of the rendering of or the failure
0294 to render professional services within or without this state; (2)
0295 any amount due from a judgment or settlement which is in excess
0296 of the basic coverage liability of all liable nonresident health
0297 care providers or nonresident self-insurers for any such injury or
0298 death arising out of the rendering or the failure to render pro-
0299 fessional services within this state. In no event shall the fund be
0300 obligated for claims against nonresident health care providers or
0301 nonresident self-insurers who have not complied with this act or
0302 for claims against nonresident health care providers or nonresi-
0303 dent self-insurers that arose outside of this state; (3) any amount
0304 due from a judgment or settlement against a resident inactive

0305 health care provider for any such injury or death; (4) any amount
 0306 due from a judgment or settlement against a nonresident inactive
 0307 health care provider for any injury or death arising out of the
 0308 rendering or failure to render professional services within this
 0309 state. In no event shall the fund be obligated for claims against:
 0310 (A) Nonresident inactive health care providers who have not
 0311 complied with this act; or (B) nonresident inactive health care
 0312 providers for claims that arose outside of this state, unless such
 0313 health care provider was a resident health care provider or
 0314 resident self-insurer at the time such act occurred; (5) reasonable
 0315 and necessary expenses for attorney fees incurred in defending
 0316 the fund against claims; (6) any amounts expended for reinsur-
 0317 ance obtained to protect the best interests of the fund purchased
 0318 by the commissioner, which purchase shall be subject to the
 0319 provisions of K.S.A. 75-3738 to 75-3744, inclusive, and amend-
 0320 ments thereto but shall not be subject to the provisions of K.S.A.
 0321 75-4101 and amendments thereto; (7) reasonable and necessary
 0322 actuarial expenses incurred in administering the act, which ex-
 0323 penditures shall not be subject to the provisions of K.S.A. 75-
 0324 3738 to 75-3744, inclusive, and amendments thereto; (8) an-
 0325 nually to the plan or plans, any amount due pursuant to
 0326 subsection (a)(3) of K.S.A. 40-3413, and amendments thereto; and
 0327 (9) reasonable and necessary expenses incurred by the insurance
 0328 department and the board of governors in the administration of
 0329 the fund; (10) *reasonable and necessary expenses for attorney*
 0330 *fees and other costs incurred in defending a person engaged in*
 0331 *residency training from claims for personal injury or death*
 0332 *arising out of the rendering of or the failure to render profes-*
 0333 *sional services by such health care provider, except that no such*
 0334 *attorney fees and other costs shall be paid except upon approval*
 0335 *of the state finance council acting on this matter which is*
 0336 *hereby characterized as a matter of legislative delegation and*
 0337 *subject to the guidelines prescribed in subsection (c) of K.S.A.*
 0338 *75-3711c and amendments thereto; and (11) any amount due*
 0339 *from a judgment or settlement for an injury or death arising out*
 0340 *of the rendering of or failure to render professional services by a*
 41 *person engaged in residency training, except that no such set-*

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0342 tlement shall be approved except upon approval of the state
0343 finance council acting on this matter which is hereby charac-
0344 terized as a matter of legislative delegation and subject to the
0345 guidelines prescribed in subsection (c) of K.S.A. 75-3711c and
0346 amendments thereto.

0347 (d) All amounts for which the fund is liable pursuant to
0348 paragraphs (1), (2), (3) or (4) of subsection (c) of this section shall
0349 be paid promptly and in full if less than \$300,000, or if \$300,000
0350 or more, by installment payments of \$300,000 or 10% of the
0351 amount of the judgment including interest thereon, whichever is
0352 greater, per fiscal year, the first installment to be paid within 60
0353 days after the fund becomes liable and each subsequent install-
0354 ment to be paid annually on the same date of the year the first
0355 installment was paid, until the claim has been paid in full. Any
0356 attorney's attorney fees payable from such installment shall be
0357 similarly prorated.

0358 (e) In no event shall the fund be liable to pay in excess of
0359 \$3,000,000 pursuant to any one judgment or settlement against
0360 any one health care provider relating to any injury or death
0361 arising out of the rendering of or the failure to render profes-
0362 sional services from and after July 1, 1984, subject to an ag-
0363 gregate limitation for all judgments or settlements arising from
0364 all claims made in any one fiscal year in the amount of \$6,000,000
0365 for each provider.

0366 (f) A health care provider shall be deemed to have qualified
0367 for coverage under the fund: (1) On and after the effective date of
0368 this act if basic coverage is then in effect; (2) subsequent to the
0369 effective date of this act, at such time as basic coverage becomes
0370 effective; or (3) upon qualifying as a self-insurer pursuant to
0371 K.S.A. 40-3414 and amendments thereto.

0372 (g) Notwithstanding the provisions of K.S.A. 40-3402 and
0373 amendments thereto, if the board of governors determines that
0374 an individual health care provider presents a material risk of
0375 significant future liability to the fund, the board of governors is
0376 authorized by a vote of a majority of the members thereof, after
0377 notice and an opportunity for hearing, to terminate the liability of
0378 the fund for all claims against the health care provider for

0379 damages for death or personal injury arising out of the rendering
 0380 of or the failure to render professional services after the date of
 0381 termination. The date of termination shall be 30 days after the
 0382 date of the determination by the board of governors. The board of
 0383 governors, upon termination of the liability of the fund under
 0384 this subsection (g), shall notify the licensing or other disciplinary
 0385 board having jurisdiction over the health care provider involved
 0386 of the name of the health care provider and the reasons for the
 0387 termination.

0388 (h) (1) *Upon the payment of moneys from the health care*
 0389 *stabilization fund pursuant to item (10) of subsection (c) of this*
 0390 *section, the commissioner shall certify to the director of ac-*
 0391 *counts and reports the amount of such payment, and the direc-*
 0392 *tor of accounts and reports shall transfer an amount equal to the*
 0393 *amount certified from the state general fund to the health care*
 0394 *stabilization fund.*

0395 (2) *Upon the payment of moneys from the health care stabi-*
 0396 *lization fund pursuant to item (11) of subsection (c) of this*
 0397 *section, the commissioner shall certify to the director of ac-*
 0398 *counts and reports the amount of such payment which is equal*
 0399 *to the basic coverage liability of self-insurers, and the director*
 0400 *of accounts and reports shall transfer an amount equal to the*
 0401 *amount certified from the state general fund to the health care*
 0402 *stabilization fund.*

0403 Sec. 4. K.S.A. 1985 Supp. 40-3404 is hereby amended to read
 0404 as follows: 40-3404. (a) Except for any health care provider
 0405 whose participation in the fund has been terminated pursuant to
 0406 subsection (g) of K.S.A. 40-3403 and amendments thereto, the
 0407 commissioner shall levy an annual premium surcharge on each
 0408 health care provider who has obtained basic coverage and upon
 0409 each self-insurer for each fiscal year. Such premium surcharge
 0410 shall be an amount equal to a percentage of the annual premium
 0411 paid by the health care provider for the basic coverage required
 0412 to be maintained as a condition to coverage by the fund by
 0413 subsection (a) of K.S.A. 40-3402 and amendments thereto. The
 0414 annual premium surcharge upon each self-insurer, except for the
 0415 university of Kansas medical center *for persons engaged in*

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0416 *residency training*, shall be an amount equal to a percentage of
0417 the amount such self-insurer would pay for basic coverage as
0418 calculated in accordance with rating procedures approved by the
0419 commissioner pursuant to K.S.A. 40-3413 and amendments
0420 thereto. The annual premium surcharge upon the university of
0421 Kansas medical center for persons who are engaged, under the
0422 supervision of the clinical faculty member of the university of
0423 Kansas school of medicine, in a postgraduate training program
0424 approved by the state board of healing arts and operated by the
0425 university of Kansas medical center engaged in residency train-
0426 ing shall be an amount equal to a percentage of an assumed
0427 aggregate premium of \$600,000.

0428 (b) In the case of a resident health care provider who is not a
0429 self-insurer, the premium surcharge shall be collected in addi-
0430 tion to the annual premium for the basic coverage by the insurer
0431 and shall not be subject to the provisions of K.S.A. 40-252,
0432 40-1113 and 40-2801 *et seq.*, and amendments to these sections.
0433 The amount of the premium surcharge shall be shown separately
0434 on the policy or an endorsement thereto and shall be specifically
0435 identified as such. Such premium surcharge shall be due and
0436 payable by the insurer to the commissioner within 30 days after
0437 the annual premium for the basic coverage is received by the
0438 insurer, but in the event basic coverage is in effect at the time
0439 this act becomes effective, such surcharge shall be based upon
0440 the unearned premium until policy expiration and annually
0441 thereafter. Within 15 days immediately following the effective
0442 date of this act, the commissioner shall send to each insurer
0443 information necessary for their compliance with this subsection.
0444 The certificate of authority of any insurer who fails to comply
0445 with the provisions of this subsection shall be suspended pursu-
0446 ant to K.S.A. 40-222 and amendments thereto until such insurer
0447 shall pay the annual premium surcharge due and payable to the
0448 commissioner. In the case of a nonresident health care provider
0449 or a self-insurer, the premium surcharge shall be collected in the
0450 manner prescribed in K.S.A. 40-3402 and amendments thereto.
0451 (c) The premium surcharge shall be an amount deemed suf-
0452 ficient by the commissioner to fund anticipated claims based

0453 upon reasonably prudent actuarial principles. In setting the
0454 amount of such surcharge, the commissioner: (1) May require
0455 any health care provider who has paid a surcharge for less than
0456 24 months to pay a higher surcharge than other health care
0457 providers; and (2) shall amortize any anticipated deficiencies in
0458 the fund over a reasonable period of time.

0459 Sec. 5. K.S.A. 1985 Supp. 40-3414 is hereby amended to read
0460 as follows: 40-3414. (a) Any health care provider whose annual
0461 insurance premium is or would be \$100,000 or more for basic
0462 coverage calculated in accordance with rating procedures ap-
0463 proved by the commissioner pursuant to K.S.A. 40-3413 and
0464 amendments thereto, may qualify as a self-insurer by obtaining a
0465 certificate of self-insurance from the commissioner. Upon appli-
0466 cation of any such health care provider, on a form prescribed by
0467 the commissioner, the commissioner may issue a certificate of
0468 self-insurance if the commissioner is satisfied that the applicant
0469 is possessed and will continue to be possessed of ability to pay
0470 any judgment for which liability exists equal to the amount of
0471 basic coverage required of a health care provider obtained
0472 against such applicant arising from the applicant's rendering of
0473 professional services as a health care provider. In making such
0474 determination the commissioner shall consider (1) the financial
0475 condition of the applicant, (2) the procedures adopted and fol-
0476 lowed by the applicant to process and handle claims and poten-
0477 tial claims, (3) the amount and liquidity of assets reserved for the
0478 settlement of claims or potential claims and (4) any other rele-
0479 vant factors. The certificate of self-insurance may contain rea-
0480 sonable conditions prescribed by the commissioner. Upon not
0481 less than five days' notice and a hearing pursuant to such notice,
0482 the commissioner may cancel a certificate of self-insurance upon
0483 reasonable grounds therefor. Failure to pay any judgment for
0484 which the self-insurer is liable arising from the self-insurer's
0485 rendering of professional services as a health care provider, the
0486 failure to comply with any provision of this act or the failure to
0487 comply with any conditions contained in the certificate of self-
0488 insurance shall be reasonable grounds for the cancellation of
0489 such certificate of self-insurance. The provisions of this subsec-

0490 tion shall not apply to the Kansas soldiers' home or to the
 0491 ~~university of Kansas medical center~~ for persons who are en-
 0492 gaged, under the supervision of a clinical faculty member of the
 0493 university of Kansas school of medicine, in a postgraduate train-
 0494 ing program approved by the state board of healing arts and
 0495 operated by the university of Kansas medical center engaged in
 0496 residency training.

0497 (b) Any health care provider who holds a certificate of self-
 0498 insurance shall pay the applicable surcharge set forth in subsec-
 0499 tion (c) of K.S.A. 40-3402 and amendments thereto.

0500 (c) The Kansas soldiers' home shall be a self-insurer and shall
 0501 pay the applicable surcharge set forth in subsection (c) of K.S.A.
 0502 40-3402 and amendments thereto.

0503 (d) ~~The university of Kansas medical center~~ for persons who
 0504 are engaged, under the supervision of a clinical faculty member
 0505 of the university of Kansas school of medicine, in a postgraduate
 0506 training program approved by the state board of healing arts and
 0507 operated by the university of Kansas medical center engaged in
 0508 residency training ~~shall~~ be a self-insurer and the university of

0509 Kansas medical center shall pay the applicable surcharge set
 0510 forth in subsection (c) of K.S.A. 40-3402 and amendments
 0511 thereto. *Such self-insurance shall be applicable to a person*
 0512 *engaged in residency training only when such person is engaged*
 0513 *in medical activities which do not include extracurricular,*
 0514 *extra-institutional medical service for which such person re-*
 0515 *ceives extra compensation and which have not been approved*
 0516 *by the dean of the school of medicine and the executive vice-*
 0517 *chancellor of the university of Kansas medical center.* ←

0518 Sec. 6. K.S.A. 1985 Supp. 40-3401, 40-3402, 40-3403, 40-3404
 0519 and 40-3414 are hereby repealed.

0520 Sec. 7. This act shall take effect and be in force from and
 0521 after its publication in the Kansas register.

a medical care facility

A medical care facility

may

in the case of the University of Kansas,
 or the respective program director and
 head of the medical care facility or his
 designee in the case of a medical care
 facility.

TESTIMONY

CARL C. MONK

DEAN

WASHBURN UNIVERSITY SCHOOL OF LAW

SENATE WAYS AND MEANS COMMITTEE

April 4, 1986

S. WJM 4/4/86
E 4-4-86

I appreciate the opportunity to testify on behalf of Washburn Law School in opposition to Senate Bill 728 which would eliminate the 50% differential currently provided for law credit hours taken by Kansas residents at the Washburn University School of Law.

This differential was adopted in 1985 because of Washburn's commitment to significantly reduce the size of its student body. As the attached chart indicates, our student body size this year is 528; last year it was 571. In 1988-89 it will be 423. We have also reduced the size of our faculty from 27 in 1981 to 25 this year, and will reduce it to 24 by 1988-89. We have thus lived up to our commitment.

For the state now to retreat from its commitment would unfairly impact on Kansas residents attending Washburn Law School whose tuition would inevitably have to be increased to make up for loss of the differential. (Washburn law students already pay more than twice what their counterparts at the University of Kansas pay. This year a Washburn law student carrying 15 credit hours per semester pays \$1,395.00, while a University of Kansas law student pays only \$675.00 per semester.)

The level of state aid provided by the current formula still provides less than 20% of the total Washburn Law School budget, yet Washburn's law graduates significantly benefit the state through their choice of public service careers. As of fall 1985, over 60% of the county and district attorneys, and four of seven Kansas Supreme Court Justices, (two are from KU and one from Harvard) were Washburn graduates.

Perhaps even more importantly, in 1984 55%, and in 1985 45% of the graduating class accepting positions in Kansas chose public service careers. Washburn is proud of its public service focus. Our location in the state capitol, providing significant exposure for students to the courts and other public agencies undoubtedly influences students in selecting public service careers at a rate we believe to be significantly above their counterparts at other law schools.

Finally, state aid for law credit hours in 1983-84, before the differential was adopted, was \$424,700. In 1988-89, with the differential, state aid is projected at only \$424,437, a drop from 1983-84 attributable to our enrollment reduction. This clearly demonstrates that the purpose of the differential is not to increase state support, but merely to maintain it at its 1983-84 level.

Further information about our academic program, admissions standards, and the record of our graduates is reflected in the attached testimony provided to the Legislative Budget Committee in the summer of 1984. This committee might want to note that the result of the deliberations of the Budget Committee in 1984 was to commend both law schools for their programs, and to conclude that there was not a detrimental duplication in the state's two law programs. I therefore urge you both to continue the current differential, and be responsive to the future fiscal needs of Washburn Law School. Our service to the state of Kansas deserves at least that level of recognition and support.

I would be happy to answer any questions.

**WASHBURN UNIVERSITY SCHOOL OF LAW
ENROLLMENT REDUCTION AND STATE AID STATISTICS**

	<u>1ST YEAR STUDENTS</u>	<u>2ND YEAR STUDENTS</u>	<u>3RD YEAR STUDENTS</u>	<u>TOTAL STUDENTS</u>	<u>TOTAL RESIDENT CREDIT HOURS</u>	<u>TOTAL STATE AID</u>
1981-82	225	187	186	598	--	353,115
1982-83	210	199	184	593	--	421,461
1983-84	210	187	206	603	16,008	424,700
1984-85	191	197	183	571	15,041	386,802
1985-86	162	182	184	528	13,460*	530,054*
1986-87*	150	147	180	477	12,159*	478,821*
1987-88*	150	140	142	432	11,011*	433,613*
1988-89*	150	140	133	423	10,778*	424,437*

*Projected statistics

NOTE: (1) Faculty has been reduced from 27 in 1981 to 25 in 1985-86 and will be reduced to 24 by 1988-89.

(2) In 1983-84 the state support for Washburn Law School credit hours was \$424,700. In 1988-89, if the 50% differential is maintained at its current dollar amount, state support would be \$424,437 -- less than the 1983-84 level of support.

TESTIMONY

CARL C. MONK

DEAN

WASHBURN UNIVERSITY SCHOOL OF LAW

LEGISLATIVE BUDGET COMMITTEE

August 24, 1984

I appreciate this opportunity to speak on behalf of Washburn Law School.

Let me first unequivocally state my belief that Kansans have been well served by their two law schools for the past 81 years. The most eloquent and compelling testimony to that comes not from anything Mike or I could say, but rather from the accomplishments of the graduates of both the University of Kansas and Washburn, which I will not attempt to recite today.

My comments will naturally emphasize the strengths and contributions of Washburn Law School, just as Dean Davis discussed the strengths and contributions of the University of Kansas Law School, but I do want to emphasize at the outset the strong feeling of cooperation and respect that exists between the two schools. There are a number of similarities between our two law schools, but there are important differences in emphasis which offer a healthy diversity for legal education in Kansas. Without both schools that healthy diversity and competition would disappear and Kansans would suffer from its disappearance.

Washburn Law School was founded in 1903. Washburn's outstanding quality as a law school was first recognized in 1905 when, only two years after its founding, it was invited to membership in the Association of American Law Schools, one of two law school accrediting agencies. Later Washburn became one of less than 40 law schools to appear on the first list of approved law schools published by the American Bar Association. Today Washburn is not only accredited by both the AALS and ABA; Washburn faculty serve in leadership positions in both

organizations.

Throughout its 81-year existence Washburn has educated many leading members of the Kansas legislature, the Kansas and federal judiciary, distinguished members of professions other than law, including executives of major corporations and quality lawyers serving clients throughout Kansas and the nation.

I'm sure your greatest interest is where Washburn Law School stands today. . What does its academic program offer? What services does Washburn provide to the community and the state? What are its admission policies? What are its placement results? What is the cost of educating a Washburn law student and how much of that cost is, and should be, borne by the State of Kansas?

First, Washburn's academic program is taught by a full-time faculty of 28 and 30 practicing lawyers in Topeka who assist the full-time faculty by teaching one course each year. Our full-time faculty hold J.D. degrees from 20 different schools. Fourteen of the twenty-eight hold advanced law degrees, one of the highest percentages of advanced degrees in the midwest. Our faculty has taught at 20 different law schools in addition to Washburn.

The curriculum taught by our faculty includes over 100 courses, ranging from traditional basic courses like contracts and property to highly specialized courses in such areas as tax, estate planning, and agricultural law. To cite only two specialized academic programs for which Washburn has received national recognition, let me briefly mention our Rural Law Center and our clinical program.

The Washburn Rural Law Center offers a wider range of agriculture law courses than any law school in the nation. Those courses are primarily taught by a nationally-recognized faculty member who is the author of a 3-volume treatise on agriculture law. Eventually the Rural Law Center will publish materials to assist attorneys representing clients with rural and agricultural law problems, much like Kansas State University and the U.S. Department of Agriculture provide to farmers through their extension service publications.

The Washburn Legal Clinic, founded in 1970, was one of the first live client legal clinics in the country. Four full-time faculty supervise students who represent indigent clients. This live client experience under the supervision of experienced lawyer/faculty members results in far better service to the people who will eventually become the clients of these students. This program has frequently received national recognition, including citation as early as the early 70's by CLEPR as one of the leading clinical programs in the nation.

One of the newest additions to that program is a mediation specialist who will offer specialized training to law students in the arts of mediation and counseling. Too often today's clients come to the lawyer expecting and even seeking a lawsuit to achieve their goals. Most lawyers have for years sought to avoid immediate resort to litigation as the only means of resolving disputes, but as society's laws have become more numerous and more complex, and its people more litigious, litigation has grown dramatically. Specialized training from a professional trained in resolving disputes by less costly and

less confrontational means than litigation should help lawyers more effectively work with clients to achieve their goal short of litigation, which is expensive to clients and the taxpayer alike.

Second, what services does Washburn offer the community? In addition to the many students who serve as interns in all branches of state government, Washburn faculty are regularly asked by both the legislative and executive branch to draft proposed legislation or testify as expert witnesses about proposed legislation. Faculty serve on such governmental bodies as advisory committees to the Topeka-Shawnee County Metropolitan Planning Commission, Topeka Board of Zoning Appeals, Topeka Metropolitan Transit Authority, Kansas Judicial Council, Kansas Natural Resources Council, Kansas Jailer Training Advisory Committee and The Governor's Advisory Committee on Mental Health & Retardation Services. This list is limited to governmental bodies; it does not include volunteer service as directors of various community groups, on which over half of our faculty regularly serve. State agencies such as the State Civil Service Commission and Kansas Commission on Civil Rights regularly use law school facilities for hearings.

Through its clinical program, Washburn Law School students represent indigent clients in many cases where either the state or county would be constitutionally required to provide and pay counsel at significant cost to the state or county. Depending on the type of case load in the clinic each year, the annual dollar amount saved by the county and state would be from

\$25,000-\$80,000.

Third, what are Washburn's admission policies? During the peak demand for legal education in the early to mid-70's, entering class enrollment reached a peak of about 230 students. Seven years ago the entering class goal was reduced to about 215 students. This year that goal was further reduced to a fall entering class of 180-185, and 181 students began their legal study at Washburn last Monday. We also accept a small group of 15-20 entering students each January. Over the last 7 years, Washburn has thus reduced its entering class size by about 15% and our entering class this fall is 8% smaller than the class that entered only a year ago. That reduction has had significant budgetary implications, but our commitment is to a top quality legal education and when reduction in class size enables us to improve the quality of legal education for our students while maintaining high academic standards, and when such a reduction is feasible we will do it despite the budgetary implications.

Washburn, like all law schools, places primary reliance upon a combination of UGPA and LSAT score, in deciding who will be admitted. There are however other important factors. To evaluate those factors, every applicant's file, regardless of UGPA and LSAT is read by at least one member of the faculty admissions committee and at least 4 members of the committee read over 200 files each year. We believe this heavy commitment of faculty time is necessary to avoid overreliance on quantitative factors like the LSAT and

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UGPA. Our belief that factors other than LSAT and GPA are important in the admissions process is shared by the Law School Admissions Council which, in 1982, changed the LSAT scoring from a 200-800 range to a 10-48 range. LSAC's stated purpose for that change was to discourage schools from attaching too much weight to what, on the old scale, might have appeared to be but was not a significant difference in score.

Our admissions policies in the future, both in numbers and method of selection, will continue to reflect our commitment to providing the highest quality legal education.

Fourth what are Washburn's placement results? Washburn's percentage of students placed within six months of graduation is consistently higher than the national average. Based upon statistics published by the National Association for Law Placement, the Washburn average since 1980 ranged from 92.1 to 98.5 and exceeds the national average for those years which ranged from 87.9 to 90.2.

It is important to note that a significant percentage of those employed are not employed in traditional law practice and some do not practice law at all. For example, in 1983, 12.7% of our graduates entered the business world rather than law practice. A significant number of applicants to law school seek the law degree because it is regarded as an excellent credential for professions other than law. Because the number of law students who don't intend to practice law appears to have grown in recent years, the number of law graduates per year is not an accurate reflection of growth in total number of lawyers.

Finally at what cost is a Washburn legal education provided and how much of that cost is and should be borne by the state. Last year the direct costs, which do not include plant expenses or University administrative overhead, of educating a Washburn University law student were approximately \$4,100. The state pays none of that cost for out-of-state students. For a state resident, the state pays only \$780. Statistics gathered and disseminated by the American Bar Association, show that this cost per student makes Washburn the eighth most cost-effective law school in the nation. On Washburn University's full-costing formula, which does include plant expenses and University over-head, the state pays only 13.1% of the cost of operating the law school.

Because of our record of cost-effective service to the community, and to further our goal of providing an even better legal education, we have asked the state to significantly increase the credit hour aid which is provided to Washburn for Kansas residents who attend the Law School. Washburn has demonstrated its commitment, through its academic program, and particularly its admissions policy, of providing a top quality legal education even when such decisions have adverse budgetary implications. We trust the state will understand that commitment and continue in its future funding decisions to recognize the benefits it receives from Washburn Law School.

I appreciate this opportunity; I would be happy to answer questions.