

Approved 3-5-87  
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Rep. Dale M. Sprague at  
Chairperson

3:30 ~~am~~/p.m. on February 26, 1987 in room 531-N of the Capitol.

All members were present except:

Rep. Cribbs  
Rep. Littlejohn, excused

Committee staff present:

Emalene Correll, Chris Courtwright, Research Department  
Bill Edds, Revisor's Office  
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

Onan Burnett, U.S.D. #501  
Jim Sullins, Kansas Motor Car Dealers Association  
Ken Schafermeyer, Kansas Pharmacists Association

The meeting was called to order by the Chairman.

Hearing on: HB 2403 - Automobile liability insurance; driver training vehicles provided to schools by dealers

Mr. Onan Burnett, U.S.D. #501, was the first conferee. He said this bill is a school board bill, a companion to HB 3169, which was passed last session. Dealers can loan cars for driver education using dealer tags. They would still be classified as demonstrators, rather than used cars, when returned to the dealer. The cost to the school district is between \$4 and \$5 per day. The school board will accept responsibility for liability insurance.

Staff was asked if dealer would still have secondary liability. He stated there should be no problem to the limits of the coverage and that the dealer would likely check out coverage before an agreement is in place.

Mr. Jim Sullins, Kansas Motor Car Dealers Association, presented testimony in support of the bill. (Att. 1.) He said that because driver's ed is taught in summer school, the bill should take effect upon publication in the Kansas Register. He asked that the committee make sure that dealers don't have even secondary liability; they are trying to help the schools but aren't willing to accept any liability.

Hearing on: HB 2404 - Establishing nonprofit pharmacy service corporations

Staff said that the bill would create a nonprofit pharmacy corporation act identical to the dental and optometric acts with two exceptions: (1) the bill allows contracts with a preferred provider and (2) it does not require 50% of the providers to participate. On line 44 "registered" should read "licensed."

Mr. Ken Schafermeyer, Kansas Pharmacists Association, presented testimony urging support for the bill. (Att. 2.) He noted that the board of directors would be comprised of 11 rather than 10 members.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,  
room 531-N, Statehouse, at 3:30 XX a.m./p.m. on February 26, 1987

He stated that a service corporation would allow small town pharmacies to be more competitive; chains have a great advantage in that they can accept capitation contracts. "Capitation" describes the health insurance program where provider is paid a monthly fee based on a set number of dollars per subscriber. This would be a type of pooling arrangement, and anyone can participate.

Regarding the liability mentioned in New Section 5, it is the service agreed to be provided subscribers. A prepaid plan could not go broke. There is a provision for directors to advance money. Per Dick Brock, they can prorate payment to the participating providers, who carry the risk, rather than the public.

Per staff, the "licensed and participating" provision was to guarantee statewide services.

Mr. Schafermeyer said that most pharmacies carry liability insurance, though they are not required to do so. Pharmacists are required to carry liability insurance.

A balloon was presented from the revisor's office which would substitute for HB 2109. (Att. 3.)

The meeting was adjourned at 4:35 p.m.

Statement Before The  
HOUSE COMMITTEE ON INSURANCE

by the  
KANSAS MOTOR CAR DEALERS ASSOCIATION

Thursday, February 26, 1987

RE: House Bill 2403

Mr. Chairman and Members of the Committee. I am Jim Sullins, Executive Vice President of the Kansas Motor Car Dealers Association, the state trade association representing the 370 franchised new car and new truck dealers of Kansas.

First of all, I would like to express our sincere thanks to the Committee for introducing House Bill 2403 on our behalf, and for giving us the opportunity to come before you today in support of the measure.

The purpose of the bill is to allow vehicle dealers to take advantage of a statute enacted last session concerning the use of dealer tags on drivers education vehicles. Prior to the enactment of that statute, dealers were required to assign ownership of the drivers ed vehicle to the school, who obtained title, registration, and insurance for the vehicle in the school's name. With the new statute, the dealer is able to retain ownership of the vehicle and allow the school to use one of the dealer's d-tags on the vehicle. While this saves the schools a few dollars, it realizes tremendous savings to the dealer. Due to the cost to the dealers of providing drivers ed vehicles, some dealers were pulling out of the program. That prompted the schools to request the legislation last year, which of course, we supported.

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Att. 1

The one problem which was not addressed adequately deals with insurance liability. It is my understanding that under the Kansas no-fault law, responsibility and liability for insurance falls on the owner of the vehicle, and not the operator.

Under the situation we have before us, that puts the vehicle dealer in a very poor position. Since the dealer may legally loan the school a drivers ed car on dealer tag, the ownership of the vehicle remains with the dealer, and so does the liability. If, for example, a dealer loaned the vehicle to the school and the vehicle was involved in an accident, all of the liability would fall on the dealer's shoulders. This frankly is not a liability that the dealers are willing to assume.

After this possible flaw was discovered, KMCDA contacted the Kansas Insurance Department. The Insurance Department looked into this very carefully and determined that the only way to transfer the liability from the dealership to the school was through legislation. While the schools could possibly do several things in an attempt to protect the dealer, the ultimate liability would fall back on the owner of the vehicle, which in this case is the dealer. So, as you can see, the only solution to this problem is to affect a change legislatively.

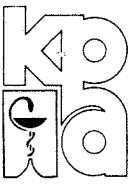
The change we are requesting is found in lines 29-35, and simply exempts the "owner" of a vehicle used in a drivers training program from having to provide liability insurance coverage, and places the burden for the liability insurance on the schools.

Mr. Chairman and Members of the Committee, the dealers of Kansas have for many years participated in the drivers education programs offered by our public and private schools. We have, and will continue, to provide vehicles so that our young people can receive proper training in the operation of the vehicles which they so look forward to driving.

What we and the school districts are asking for here is the opportunity for dealers to provide these vehicles in a more cost efficient manner and without fear of an unfortunate mishap costing the dealer his livelihood.

We would hope that you will give HB 2403 serious consideration and respectfully request that HB 2403 be reported favorable for passage by the full House of Representatives.

Thank you for your time and consideration, and I would be happy to answer any questions.



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

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

STATEMENT TO THE HOUSE COMMITTEE ON INSURANCE

FEBRUARY 26, 1987

SUBJECT: HB 2404, REGARDING NON-PROFIT PHARMACY SERVICE  
CORPORATIONS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE;

MY NAME IS KEN SCHAFERMEYER AND I AM EXECUTIVE DIRECTOR OF THE KANSAS PHARMACISTS ASSOCIATION--AN ORGANIZATION REPRESENTING APPROXIMATELY 1,000 PRACTICING PHARMACISTS IN THE STATE OF KANSAS. I APPRECIATE THE OPPORTUNITY TO ADDRESS YOU ON HOUSE BILL 2404 REGARDING THE ESTABLISHMENT OF NON-PROFIT PHARMACY SERVICE CORPORATIONS.

THIS BILL IS EXACTLY THE SAME AS THE 1986 SESSION HB 3089 WHICH PASSED THE HOUSE LAST YEAR WITHOUT OPPOSITION. UNFORTUNATELY, THE BILL RAN OUT OF TIME IN THE SENATE AND DID NOT HAVE A HEARING. A SUPPLEMENTAL NOTE EXPLAINING 1986 HB 3089 IS ATTACHED FOR YOUR INFORMATION.

THIS BILL IS AN ENABLING ACT WHICH WOULD ALLOW THE ESTABLISHMENT OF A NON-PROFIT PHARMACY SERVICE CORPORATION UNDER THE JURISDICTION OF THE KANSAS INSURANCE DEPARTMENT. THIS "NON-PROFIT PHARMACY SERVICE CORPORATION ACT" IS IDENTICAL TO THE NON-PROFIT DENTAL AND OPTOMETRIC SERVICE CORPORATION ACTS WITH A FEW MINOR EXCEPTIONS:

1. THE BOARD OF DIRECTORS IS COMPRISED OF 11 MEMBERS RATHER THAN 10. IT IS GENERALLY ACCEPTED THAT AN ODD-NUMBERED BOARD OF DIRECTORS IS PREFERABLE TO AN EVEN-NUMBERED

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BOARD. THE MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS WOULD BE PUBLIC MEMBERS APPOINTED BY THE GOVERNOR (2) AND THE INSURANCE COMMISSIONER (4).

2. WE HAVE REMOVED THE PROVISION REQUIRING 50% OF THE PROVIDERS IN THE STATE TO PARTICIPATE BEFORE THE CORPORATION CAN BECOME OPERATIONAL. IT IS OUR FEELING THAT THIS PROVISION IS UNNECESSARY..
3. WE HAVE ADDED "PREFERRED PROVIDER ORGANIZATIONS" ON LINES 75 AND 102 IN ORDER TO CLEARLY INDICATE THAT PPOs ARE AMONG THE GROUPS WHICH THE SERVICE CORPORATION MAY CONTRACT WITH. THIS MAKES SENSE SINCE HMOs ARE SPECIFICALLY MENTIONED AND THE LEGISLATURE HAS CONSIDERED A BILL TO LICENSE PPOs.

THE PURPOSE OF ESTABLISHING A NON-PROFIT PHARMACY SERVICE CORPORATION IS TO ALLOW A STATE-CONTROLLED ORGANIZATION WITH PHARMACY REPRESENTATION TO ACCEPT CERTAIN CONTRACTS WHICH INVOLVE RISK SHARING AND DISTRIBUTION OF FUNDS BASED UPON EXPERIENCE OF THE GROUP. WITHOUT THIS ACT, SUCH AN ORGANIZATION WOULD HAVE TO BE LICENSED AS AN INSURANCE COMPANY OR A HEALTH MAINTENANCE ORGANIZATION.

THIS BILL ALSO ALLOWS SMALL PHARMACIES AN EQUAL OPPORTUNITY TO COMPETE WITH LARGE CHAINS. (A LARGE CHAIN, AS A SINGLE CORPORATION, IS ABLE TO ACCEPT RISK THROUGH A CAPITATION PROGRAM WITHOUT FALLING UNDER THE INSURANCE LAWS; A GROUP OF PHARMACIES COULD ALSO DO SO UNDER THE PROVISIONS OF THIS BILL.)

THE LEGISLATURE HAS DEEMED THAT THESE ARRANGEMENTS ARE APPROPRIATE FOR HOSPITAL, DENTAL AND OPTOMETRIC SERVICE CORPORATIONS. THE MANY CHANGES SWEEPING THE HEALTH CARE INSURANCE INDUSTRY ALSO AFFECT PHARMACY AND IT IS TIME FOR THE STATUTES TO REFLECT THIS. WE WOULD APPRECIATE YOUR SUPPORT OF THIS BILL.

SESSION OF 1986

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 3089**

**As Amended by House Committee on  
Insurance**

**Brief of Bill\***

H.B. 3089, as amended, would authorize the creation of a nonprofit pharmacy service corporation. The bill is generally similar to existing laws that authorize the creation of nonprofit medical service corporations, nonprofit hospital service corporations, nonprofit dental service corporations, and nonprofit optometric service corporations.

Pursuant to H.B. 3089, a nonprofit pharmacy service corporation could enter into contracts with participating pharmacists to provide or administer professional services for subscribers and to function as an administrative agent for group pharmaceutical care programs.

**Background**

H.B. 3089 was requested by the Kansas Pharmacists Association. The House Insurance Committee amended the bill to clarify that any licensed Kansas pharmacist would be eligible to execute an agreement to participate in the corporation.

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\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.



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

By Committee on Insurance

AN ACT xxxx

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

Section 1. Twenty-five or more unified school districts, community colleges, area vocational-technical schools, educational service centers or educational interlocals, who are members of the same bona fide professional association, which has been in existence for not less than five years may enter into agreements to pool their liabilities for Kansas fire, marines, inland marines and allied lines, as defined in K.S.A. 40-901, and amendments thereto, and casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and amendments thereto, including workers' compensation and employers liability. Such pools shall not include accident, health or life insurance. Such arrangements shall be known as group-funded pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

Sec. 2. Application for a certificate of authority to operate a pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(a) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(b) Designation of the initial board of trustees and administrator. When there is a change in the membership of the

board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(c) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(d) An individual application for each initial member of the pool.

(e) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000, for each line of insurance or a cumulative annual gross premium of not less than \$1,500,000 for all lines of insurance. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance for workers' compensation and rates filed by a licensed rating organization for all other lines of coverage or rates of certain companies filing rates with the commissioner and approved by the commissioner for the pool.

(f) An agreement binding the group and each member thereof to comply with the provisions of the workmen's compensation act. For all lines of coverage, all members of the pool shall be jointly liable for the payment of claims to the extent of the assets of the pool.

(g) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(h) A copy of the procedures adopted by the pool to provide claims adjusting and accumulation of income and expense and loss data.

(i) A confirmation of specific and aggregate excess insurance, or adequate surplus funds in the pool.

(j) Any other relevant factors the commissioner may deem necessary.

Sec. 3. Every group-funded pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department

a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

Sec. 4. (a) All certificates granted hereunder shall be perpetual unless sooner suspended or revoked by the commissioner.

(b) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the financial condition of any pool, except that once every five years the commissioner shall conduct an examination of the compliance with statutory provisions and the financial condition of each pool. Each pool shall submit a certified independent audited financial statement on or before August 31 of each year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file reports as to income, expenses and loss data at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the ability to pay current and future claims of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid claims in the amount, manner and time due, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its ability to pay current and future claims shall

have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions thereof shall apply to group-funded pools.

Sec. 5. (a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 25% of manual premium. The pool must use rules, classifications and rates as promulgated by the national council on compensation insurance for workers' compensation. Premium contributions to the pool for all other lines of insurance shall be based on rates filed by a licensed rating organization or on rates of certain companies filing rates with the commissioner and approved by the commissioner.

(b) An amount equal to at least 70% of the annual premium shall be maintained in the designated depository for the purpose of paying claims in a claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs in an administrative fund account.

(c) Any surplus moneys for a fund year in excess of the amount necessary to fulfill all obligations of the pool for that fund year may be declared to be refundable by the trustees not less than 12 months after the end of the fund year. The trustees shall determine that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including

incurred but not reported claims prior to authorizing any refunds. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

Sec. 6. The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to the pool. Moneys not needed for current obligations may be invested by the trustees. Such investments shall be limited to bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof; in certificates of deposit in a federally insured bank located in Kansas; or in shares or savings deposits in a federally insured savings and loan association located in Kansas.

Sec. 7. The expense of the administration of the group-funded pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded pools fee fund. All amounts which are required to be paid from the group-funded pools fee fund for the operating expenditures incident to the administration of the group-funded pools shall be paid from the group-funded pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded pools of the amount of each assessment imposed under this subsection on such group-funded pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such remittance to the state treasurer. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the group-funded pools fee fund.

Sec. 8. In addition to the fees required to be paid in section 7, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded pools shall pay a tax annually on or before August 31 upon the annual Kansas gross premium based upon the manual rates in effect at the date of renewal pursuant to subsection (c) of section 5 at the rate of 1% per annum applied to the collective premium of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (i) of section 2.

Sec. 9. (a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and K.S.A. 44-588.

(b) If automobile insurance is provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2102, and amendments thereto. If workmen's compensation or employer's liability insurance, or both, are provided by the pool, the pool shall be subject to the provisions of K.S.A. 40-2109, and amendments thereto.

(c) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

(d) Each licensed pool shall be subject to the provisions of 40-246b to 40-246e, inclusive, and amendments thereto.

Sec. 10. (a) After the inception date of the group-funded pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for

membership pursuant to the bylaws of the pool. The application of membership and approval shall then be filed with the commissioner. Membership shall take effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a workers' compensation member, the pool shall notify the commissioner within 10 days and shall maintain coverage of each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.

Sec. 11. To ensure the financial stability of the operations of each group-funded pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons whom a pool appoints for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees shall be residents of this state and a member on the board of education of a school district, board of control of any area vocational-technical school or board of trustees of any community college that is a member of the pool. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The administrator shall file evidence of the bond with the commissioner. The bond shall be one of the conditions required

for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregated loss fund as defined in the aggregate excess policy. All administrative costs and other disbursements shall be made from the administrative fund account. The administrator of the pool may establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The trustees shall prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the ability of the pool to pay current and future claims.

(d) The trustees shall not extend credit to individual members for payment of a premium.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority shall not be effective without a formal resolution passed by the trustees.



Sec. 12. Any person soliciting the business of insurance for a group-funded pool shall be a regularly paid employee of the pool and shall hold a current license authorizing such person to sell each line of insurance offered for sale.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.