

Approved February 29, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at  
Chairperson

9:00 a.m./~~p.m.~~ on February 26, 1988 in room 529-S of the Capitol.

All members were present except:

Senators Gannon, Burke, Harder, and Reilly -- Excused

Committee staff present:

Bill Wolff, Legislative Research  
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Jerry Slaughter, Kansas Medical Society  
Don Wilson, Kansas Hospital Association

The meeting began with the hearing on SB 677 which would authorize certain associations of health care providers to establish mutual insurance companies. Jerry Slaughter, Kansas Medical Society, testified in support of the bill. He said the purpose of the bill is to provide a mechanism for his organization to provide liability insurance. They have been forced into this because the market is so restricted for medical malpractice insurance. The large insurance companies are not writing in Kansas or soon will not be and so it has become necessary for them to provide this mechanism for their members. The company they establish will be subject to the same laws that govern other mutual insurance companies.

The Chairman asked what the capitalization requirement is, and Mr. Slaughter said \$1,000,000. Sen. Werts asked if it is known what is happening with Rep. Patrick's bill that would repeal so that malpractice would not be required for practice. Mr. Slaughter answered that no action has been taken on this, and his group has encouraged the committee to move slowly on it because the dollars required to do this won't be there to do it overnight, and most physicians want to carry malpractice insurance. Sen. Kerr said that to his knowledge doctor mutuals in other states have not worked. Mr. Slaughter responded that half of the physicians are insured by mutuals. Otherwise, the largest is St. Paul, and they have only 16% of the market. He continued that most of these mutuals in other states went in business in the '70s, and the rates were too low. They have improved, however, and now there are 35 of them. The mutual company he proposes will work because they will collect an adequate premium and plan to have a rigorous management program.

Don Wilson of the Kansas Hospital Association testified next in support of the bill. (See Attachment I.) He also addressed Sen. Kerr's question by informing the committee that his group had visited some of the companies now involved in this and found that they have a good track record. He also added that the assessability option had been included so that they may be able to assess members on an annual basis if this becomes necessary.

Staff began a discussion of new Section 1 saying that "health care facilities" may include some that are not hospitals. Possibly "medical care facilities" should be used instead so it wouldn't make everybody eligible. Also, there are other health care providers involved with the health care stabilization fund than those in the bill. Mr. Slaughter responded that the bill doesn't prohibit any other group from setting up an insurance company. He explained that there is not any problem with other health care providers, and many of those would like to be out of the health care stabilization fund. Staff still felt that identifying the ones they want to put in would be better. The Chairman felt the interested parties should work with staff to clarify this. Mr. Slaughter suggested that the committee conceptually amend the bill to reflect this clarification.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S Statehouse, at 9:00 a.m./~~p.m.~~ on February 26, 1988.

Staff said there is another question as to new Section 6 as to "cede to any insurer or accept from any insurer reinsurance". This is an issue on captive insurance which is being discussed as to if the company can cede it but not accept it. Sen. Kerr said a, b, and c limits it to liability insurance arising out of the performance of professional services. This is limiting language that was not in the captive bill. Mr. Slaughter informed the committee that the Insurance Department recommended that language with that potential problem in mind.

Sen. Kerr made a conceptual motion to clarify new Section 1 by changing "health care facility" to a more specific list or to references to statutes that define it, Sen. Werts seconded, and the motion carried.

Sen. Kerr made a motion to recommend SB 677 favorable for passage as conceptually amended, Sen. Strick seconded, and the motion carried.

The minutes of February 25 were approved.

The Chairman began a discussion of bills previously heard. First to be considered was SB 623 concerning the liability of the health care stabilization fund for occurrences arising during residency training. He reviewed what the bill does regarding tail coverage of residents in state and out-of-state.

Sen. Strick made a motion to recommend SB 623 favorable for passage, Sen. Karr seconded, and the motion carried.

Next to be considered was SB 624 concerning liability of the health care stabilization fund. The Chairman recalled that a clarifying amendment is needed to indicate this would apply hence forward and not apply to those who left the state in the past. Mr. Slaughter said this is a big policy decision. If it applies to anybody in the system now, it will be causing a real problem in doctors getting tail insurance. He urged the committee to move cautiously on this because it will have a serious impact on physicians. Sen. Kerr said there is an uncovered problem in the bill relating to a doctor who becomes disabled or dies and is not covered by tail coverage because he had not practiced long enough. The Chairman said this should be considered and also there are technical amendments. A short discussion followed, and the Chairman asked staff to work on language to take care of someone who has lost their license or who is unable to practice. Mr. Slaughter said that in view of the fact that they are trying to get out of the health care stabilization fund in five years, there is no need to do this unless it is done for all or none. Sen. Gordon said he preferred to allow the bill as effective on July 1. Mr. Slaughter said no company sells excess insurance in Kansas now so there would be no tail coverage available to doctors. They won't be able to insure themselves against future loss. Further discussion followed dealing with tail insurance, and it was determined that it must coincide with the sunset of the fund. The Chairman noted that it is not known if the fund will be phased out although there is a hope that it will be. Staff reminded the committee that those that are in the system have tail coverage unless they are not in for 10 years, and then they would have to pick up the coverage. The Chairman asked Sen. Karr to work with staff to clarify the bill.

Last to be considered was SB 630 dealing with subrogation rights. The Chairman said this is a policy issue regarding the collateral source rule and subrogation.

After a brief explanation of why he supports SB 630, Sen. Kerr made a motion to report it favorable for passage, Sen. Werts seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE                      NAME                      ADDRESS                      REPRESENTING

2/26/88

Jerry Gutwiler	Topex	KIA
Don Wilson	Topex	KIA
Mutual Ottawa	Topex	Goodrich Station
Tom Bell	Topex	KIA



**Donald A. Wilson**  
President

TESTIMONY OF THE KANSAS HOSPITAL ASSOCIATION  
ON SENATE BILL 677

Senate Committee on Financial Institutions and Insurance  
February 26, 1988

The Kansas Hospital Association appreciates the opportunity to comment on Senate Bill 677, regarding captive insurance companies for associations of health care providers. We support this bill and feel that although it is not a total solution to the medical malpractice insurance crisis, it is an important measure to help bring some stability to the current market.

This bill would allow associations of health care providers to form liability insurance companies to provide insurance for members of the relevant association. It is important to note, however, that such companies must basically meet the requirements under existing mutual insurance company statutes. In addition, the bill explicitly requires that any health care provider association wishing to form such a company must be domiciled in Kansas, and must have been in existence for at least ten years. These requirements help to insure that any such company will not be formed on the spur of the moment, but will only be established after careful consideration of all relevant factors.

The current hospital liability insurance climate in Kansas has many facilities unsure about the future. Presently, there are basically three companies that insure Kansas hospitals. Only one of those companies, however, is writing any new business. In addition, one of those three companies is pulling out of the state. Therefore, unless something changes, there will soon be only two companies in the state -- one of which may or may not write new business.

The medical malpractice liability insurance situation has reached the point where all reasonable efforts to provide relief must be pursued. The Kansas Hospital Association believes Senate Bill 677 creates an opportunity for health care provider associations to form liability insurance companies that may help to add some stability to the market. This will be a major undertaking of many difficulties, but we feel we can help make a difference. We urge your support for this legislation.

Thank you for your consideration.

TLB:mkc

*Attachment I*