

Approved \_\_\_\_\_

Date

2/20/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at \_\_\_\_\_  
Chairperson

9:00 a.m./~~p.m.~~ on THURSDAY, FEBRUARY 16, 1989 in room 529-S of the Capitol.

~~All~~ members were present ~~except~~: Senators Bond, Salisbury, Anderson, Karr, Kerr, McClure, Moran, Parrish, Reilly, Strick, and Yost.

Committee staff present:

Bill Wolff, Legislative Research  
Bill Edds, Revisors Office  
Myrta Anderson, Legislative Research  
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Robert Frey, Kansas Trial Lawyers  
Marlin Rein, Associate Director of Business Affairs, UKMC

Chairman Bond called the meeting to order at 9:08 a.m.

The minutes of Tuesday, February 14, 1989, were approved as written with Senator Yost making the motion and Senator Strick seconding the motion. The motion passed.

Robert Frey, Kansas Trial Lawyers, appeared before the committee with a request to have a bill introduced which would address the problem of availability and affordability of insurance in Kansas by looking at the method of rate setting in the state. This bill would amend and repeal certain insurance statues to eliminate provisions therein conflicting with Kansas antitrust provisions and make remedies contained in the antitrust statutes applicable to the insurance industry. Senator Strick made the motion to allow the bill to be introduced with Senator Yost seconding the motion. The motion passed and the bill will be introduced.

SB 18 - Bill Wolff, Legislative Research, explained to the committee the summary of SB 18 which his department developed. Dr. Wolff explained that he used the word "purport" in his Bill Summary in describing the intent of SB 18 because no money will be put aside for future losses but will be paid out of the state general fund. (attachment 1)

Committee discussion followed Dr. Wolff's explanation of the proposal. A committee member was specifically concerned with the effect of SB 18 on health care providers in Wichita. Mr. Rein, Associate Director for Business Affairs, UKMC, responded that there were over 200 resident physicians in Wichita long before the School of Medicine was there and that the only residents in Wichita who were covered were the pediatricians and the psychologists. Another committee member questioned if full-time faculty shouldn't be treated the same as physicians at the Student Health Center. Mr. Rein explained that the physicians at the Student Health Center worked there full time and had no private practice while the faculty at the Medical Center spent one-third of their time in private practice--the conclusion being that they are treated differently because their functions are different. A committee member inquired how the Medical Center felt about the amendments to SB 18 proposed by the Insurance Department. (attachment 2) Mr. Rein replied that they thought it helped to clarify the bill in that it named, in addition to the physicians, the corporation or foundations.

Senator Moran made a motion to accept the amendments presented by the Insurance Department. Senator Reilly seconded the motion and the motion passed.

Senator Moran made a motion to pass SB 18, as amended, out of committee favorably. Senator Reilly seconded the motion.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S, Statehouse, at 9:00 a.m. ~~XXXX~~ on THURSDAY, FEBRUARY 16, 1989.

Senator Karr made a motion to amend SB 18 to broaden the language to include other health care providers at the university. The motion was seconded by Senator Parrish. The motion passed.

Senator David Kerr made a substitute motion to place all full time physician faculty and all other state employees, included in SB 18 as amended, under the Tort Claims Act limiting liability to \$500,000. Senator Yost seconded the motion. The motion was defeated. Division was called for with two members favoring the motion and nine opposed.

Senator Moran renewed his motion to pass out SB 18 favorably as amended. The motion passed.

The meeting was adjourned at 10:00 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

Thurs. Feb. 16

DATE	NAME	ADDRESS	REPRESENTING
2/16	Victoria Thomas	Lawrence	ICUMC
2/16	Martha Reed	Lawrence	KCC
"	B.G. Fry	TOPEKA	KIHA
"	Deland Wilson	"	"
"	Mr. Hoover	"	Cap-Journal
2/16	Mary Ellen Conlee	Wichita	St. Francis Reg. Med. Center
2/16	Chip Wheelen	Topoka	KMS
"	Bert Smoot	Topoka	Bank IV
2/16	Jerry Swanson	TOPEKA	KMS
"	Ray Todd	"	Ins Dept.
"	Tom Bell	"	Ks. Hosp. Assn.
"	Jim Oliver	"	PIA of Ks
"	LARRY MAGILL	"	IIAC

# MEMORANDUM

February 14, 1989

**TO:** Senate Committee on Financial Institutions and Insurance

**FROM:** Kansas Legislative Research Department

**RE:** Senate Bill No. 18

## Bill Summary

S.B. 18 purports to self-insure the full-time physician faculty employed by the University of Kansas Medical Center for basic coverage, \$200,000/\$600,000. The State General Fund (SGF) would be liable for any expenses for attorney fees and costs associated with the defense of a faculty member and any amount due from a judgment or settlement for any injury arising out of the rendering or failure to render services by a faculty member. No premium would be paid for the basic coverage, rather the costs and losses would be paid from the SGF as they occur. Full-time faculty members would pay a surcharge to the Health Care Stabilization Fund (HCSF) in an amount determined by the Insurance Commissioner. Insurance coverage in excess of the basic limits would be provided by the SGF, \$3 million/\$6 million.

## Issues

1. Since no premium will be paid for basic coverage, no reserve will be created for future losses. Consequently, the SGF will be liable for losses as they occur. Based on known incurred losses for the latest five years, the present insurers of the faculty have liabilities totalling \$4,081,996. If future losses increase at a rate of 15 percent per year, the projected losses for 1989 through 1994 would be \$6,330,152.
  - a. The representative of the Medical Center argues that the loss experience of the faculty has been favorable to private insurers and should remain so under the SGF. Further, as compared to projected premiums, losses to the SGF based upon past experience would be significantly less.
  - b. The representative of the Insurance Commissioner notes that the volatility of the medical malpractice environment makes any kind of prediction questionable, but past loss experience is the only information that can be relied upon.
2. If the Legislature were to enact S.B. 18 and "self-insure" the full-time faculty and enact H.B. 2047 or some other bill abolishing the HCSF, 250 health care providers would be without excess coverage since most of the faculty are insured by St. Paul, a company that has said it will not write excess coverage over another company's basic policy or over a self-insurer.

*Attachment of  
Sen. Fin. Inst. & Ins.  
2/16/89*

3. If the Legislature were to enact S.B. 18 and "self-insure" the full-time faculty, what impact might that action have on other full-time physician employees in other state hospitals who currently pay their own basic premium and assessed surcharges? Does the state have a responsibility to treat its employees similarly?

#### Alternatives

1. The Legislature could appropriate sufficient funds to pay to private insurers the premium for basic coverage malpractice insurance. The insurers would be liable for any losses up to the limits of coverage after which the HCSF would pay.
  - a. The cost of exercising this alternative could be greater than any actual loss.
  - b. This option ensures that there would be no SGF liability for any loss, regardless of its size.
2. The Legislature could place the full-time faculty of the Medical Center under the tort claims act thereby limiting each faculty member's liability to \$500,000. Some levy could be made against those providers and paid to the HCSF for tail coverage and for past coverage when no surcharges were collected.
  - a. Since the Kansas Supreme Court has addressed the issue of caps on awards, the question would remain whether the cap under the tort claims act is constitutional.
  - b. What impact might placement of the Medical Center faculty under the tort claims act have on other full-time physician employees in other state hospitals who currently pay their own basic premium and assessed surcharges? Does the state have a responsibility to treat its employees similarly?
3. The Legislature could maintain the present way medical malpractice liability insurance is handled with the full-time faculty of the Medical Center. To relieve some of the financial strain placed on the foundations because of increasing insurance premiums, perhaps the state could offset other costs to those foundations and thereby ensure their financial viability.

Finally, the representative of the Insurance Commissioner has suggested certain "technical" changes to S.B. 18, mostly for the purpose of clarifying that both the private practice corporations or foundations and their full-time physician faculty would be self-insured for basic coverage and for purposes of paying surcharges to the HCSF.



STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

FLETCHER BELL  
Commissioner

February 9, 1989

The Honorable Richard L. Bond  
Kansas Senate, District 8  
State Capitol  
Room 128-S  
Topeka, Kansas 66612

RE: Senate Bill No. 18

Dear Senator Bond:

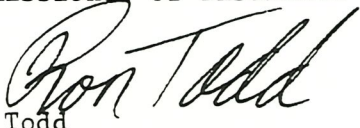
Enclosed are our comments as to technical changes that may be needed in Senate Bill No. 18, when it is further considered by your committee.

If you would like to discuss this matter further, please let me know.

Respectfully submitted,

Fletcher Bell  
Commissioner of Insurance

By

  
Ron Todd  
Assistant Commissioner

RT:vf  
Attachments

cc: Bill Edds

*Attachment 2  
Sen. Fin. Sub. & Res.  
2/16/89*

M E M O R A N D U M

TO: Ron Todd  
Assistant Commissioner

FROM: Robert D. Hayes  
Fire and Casualty Policy Examiner

SUBJECT: Senate Bill No. 18, Corporation & Foundations, UKMC

DATE: February 7, 1989

If it is the intent of Senate Bill No. 18 to include self insurance for the individual full time faculty members and the private practice corporations or foundations the following changes to Senate Bill No. 18 are suggested.

<u>Line No.</u>	<u>Suggested Change</u>
216	The private practice corporations or foundations <u>and their</u> full-time physician
223	quired in sections <u>(a)(1)</u> <u>and</u> <u>(a)(2)</u> .
330, 331, 336 & 337	Revisions need to include the private practice corporations or foundations
441 to 448	Delete these lines. It appears that lines 430 to 435 state the same requirement.
621 to 630	Change subsection (h) to read: Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center shall be deemed a self-insurer for the purposes of the health care provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center."