

Approved _____

2/6/90
Date

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 1, 1990 in room 529-S of the Capitol.

All members were present ~~XXXXX~~

Committee staff present:

Bill Edds, Revisors Office
Bill Wolff, Research Department
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Jerry Slaughter, Kansas Medical Society
Jeff Ellis, HMO
Terry Leatherman, KCCI

Chairman Bond called the meeting to order at 9:15 a.m.

SB 396 - subrogation rights under accident, health, or sickness insurance policies.

Chairman Bond declared the hearing on the above-mentioned bill reopened for the purpose of discussion.

Jerry Slaughter, Kansas Medical Society, was recognized and informed the committee that the research on subrogation rights in other states, requested by a committee member, was proving to be exhaustive and was not yet completed. He continued that they hoped to have the research information by the time the bill reaches the House.

Chairman Bond informed the committee that the ballooned version of this bill presented to the committee during the hearing on January 23, is the product of the Interim Judiciary Committee which amended SB 396 but no action on this amended version was taken by that committee.

Jeff Ellis, HMO, presented an amendment before the committee stating that any revenue from subrogation would be applied to a reduction in health insurance premiums. (Attachment 1)

Discussion ensued. One committee member was concerned about how this bill would be reconciled with medical malpractice. Mr. Ellis assured the committee that his organization considered the purpose of this bill would be to create a "level playing field and to reduce health insurance costs." He stated that it was not their intention to pursue the medical provider. Mr. Ellis further informed the committee that, in most cases, subrogation would not even be pursued but would be applicable only in the larger cases. A committee member inquired if a study had been made to determine if those states having legislation similar to SB 396 have been able to identify actual reductions in premiums. Mr. Ellis advised that it was difficult to track down such information because subrogation comes in many different forms and, also, depends on the vigor with which the organization pursues the subrogation right. He further stated that, in Kansas, the competitive situation would dictate pursuing subrogation rights.

Senator Parrish made a motion to accept the amendments proposed by the Interim Judiciary Committee. Senator Kerr seconded the motion. The motion passed.

A motion was made by Senator Kerr to accept the amendment offered by Mr. Ellis. Senator Parrish seconded the motion. The motion passed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S Statehouse, at 9:00 a.m. ~~a.m.~~ on THURSDAY, FEBRUARY 1, 1990.

Terry Leatherman, KCCI, presented an amendment before the committee which would prohibit subrogation against a wrongdoer not covered by liability insurance. A committee member remarked that he saw nothing wrong with having the right to sue an uninsured wrongdoer. No action was taken on the KCCI suggestion. (Attachment 2)

Senator Parrish made a motion to pass SB 396 out of committee favorably as amended. Senator Kerr seconded the motion. The motion passed.

Minutes of Wednesday, January 31, 1990 were approved on a motion by Senator Reilly with Senator Anderson seconding the motion. The motion passed.

Chairman Bond adjourned the meeting at 9:40 a.m.

Ellis

Proposed amendment to Senate Bill 396:

Health insurers and health maintenance organizations shall consider revenue from subrogation in the development of premium rates.

*Attachment 1
FI + I
2/1/90*

Leatherman

Attachment 2
7-7-7
2/1/90

SENATE BILL No. 396

By Committee on Ways and Means

AN ACT concerning insurance; ~~providing for~~ subrogation rights under accident, health or sickness insurance policies. permitting

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

Section 1. (a) As used in this act:

(1) "Insurer" means and includes all corporations, companies, associations, societies, fraternal benefit societies, mutual nonprofit hospital service and nonprofit medical service companies, partnerships and persons engaged as principals in the business of insurance of the kinds enumerated in articles 4, 5, 6, 7, 11, 13, 18, 19, 19a, 19b, 19c, 22, 32 and 38 of chapter 40 of the Kansas Statutes Annotated and any amendments thereto, insofar as the business of insurance of the kinds enumerated in such articles relate to accident, health or sickness; and

(2) "insured" means and includes persons who are the beneficiaries, assignees, payees of, owners of or certificate holders under such policies or contracts of insurance as described in subsection (1) including enrollees of a health maintenance organization as defined in K.S.A. 40-3202 and amendments thereto.

(b) Any policy or contract of accident, health or sickness insurance, and any health maintenance organization subscriber contract, issued in this state shall include a subrogation clause providing for reimbursement of medical, surgical, hospital or funeral expenses. Such clause shall subrogate the insurer to the insured's rights of recovery when the circumstances of the insured's injury create a legal liability against a third party for not more than the amount of benefits that the insurer shall have previously paid or provided in relation to the insured's injury by such third party. Subrogation shall be available only to the extent that the insured is not left with any uncovered, out-of-pocket expenses for medical and related health care services necessitated by the injury in question. The insurer may enforce such rights of subrogation in its own name or in the name of the person ~~to or for whom payment has been made,~~ as their

may

to the date of any judgment, settlement or recovery against or from such third party

, subject to the provisions of the last sentence of this subsection,

(c) In the event an insured, such person's dependents or personal representative fails to commence an action against such third party within 18 months after the date of the act resulting in the injury, such failure shall operate as an assignment to the insurer of any cause of action in tort which the injured person, the dependents of such person or personal representatives of such person may have against such third party for the purpose and to the extent of recovery of damages which are duplicative of benefits paid or provided by the insurer.

injured

or the representative or dependents of the injured person

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1 interest may appear, by proper action in any court of competent
 2 jurisdiction. ~~Attorney fees and costs shall be paid by the insurer~~
 3 ~~from any recovery obtained by the insurer and the attorney shall~~
 4 ~~have a lien therefor against any such recovery and may intervene~~
 5 ~~in any action to protect and enforce such lien.~~

6 Sec. 2. This act shall take effect and be in force from and after
 7 its publication in the statute book.

, except that no action shall be commenced against any third party by any insurer pursuant to this section unless such third party is indemnified for the act or omission causing such injury by a policy of liability insurance

(d) In the event of a recovery pursuant to K.S.A. 60-258a, and amendments thereto, the insurer's right of subrogation shall be reduced by the percentage of negligence attributable to the injured person.

(e) Pursuant to this section, the court shall fix attorney fees which shall be paid proportionately by the insurer and the injured person, such person's dependents or personal representatives in the amounts determined by the court.