

Approved

3/13/90

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./~~xxx~~ on MONDAY, MARCH 5, 1990 in room 529-S of the Capitol.

~~xx~~ All members ~~were~~ present ~~except~~

Senators Anderson, Karr, Kerr, McClure, Moran, Parrish, Salisbury, Strick and Yost.

Committee staff present:

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

Conferees appearing before the committee:

Lori Callahan, Kansas Medical Mutual Insurance Company
Dick Brock, Insurance Department
Curt Scott, Kansas Medical Mutual Insurance Company
Bill Curtis, Kansas Association of School Boards
Larry Magill, Kansas Independent Insurors

Chairman Bond called the meeting to order at 9:10 a.m.

SB 757 - authorizing certain insurance companies to issue policies under plans for apportionment of risk.

Lori Callahan, Kansas Medical Mutual Insurance Company, addressed the committee in support of this proposed legislation. She explained that when the enabling legislation which allowed KaMMCO to form was enacted, it was intended that KaMMCO would be the servicing carrier for Joint Underwriting Association (JUA). Since it was later determined that KaMMCO was not eligible to bid to be the servicing carrier for JUA, SB 757 was introduced to amend the enabling legislation to allow KaMMCO to join the bidding process on April 2, 1990. Because of the time element, Ms. Callahan requested that passage of this bill be expedited. (Attachment 1)

Dick Brock, Kansas Insurance Department, and Curt Scott, KaMMCO, assured the committee that they were in support of this proposal.

Senator Strick made a motion to pass SB 757 out of committee favorably. Senator Salisbury seconded the motion. The motion carried.

SB 587 - Amending municipal group-funded pool act.

Bill Curtis, Kansas Association of School Boards, presented before the committee the amended version of SB 587 as prepared and approved by KASB and the Insurance Department. He explained that this amendment would allow for greater control by the Insurance Commissioner over these group-funded pools and would also raise the cap on health insurance only to \$1 million. (Attachment 2)

During the discussion which followed, Mr. Brock was asked by a committee member if the Insurance Department felt comfortable with this bill. He replied that he did not want anyone to think that these group funded pools were regulated the same as other insurance companies; however, he said that these minimum requirements should be sufficient regulations for a well-managed pool.

Senator Karr made a motion to approve the amendments as written by the School Board and the Insurance Department. Senator Kerr seconded the motion. The motion passed.

Senator Kerr made a motion to pass SB 587 out favorably as amended. Senator Salisbury seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m. ~~p.m.~~ on MONDAY, MARCH 5, 1990.

HB 2652 - Penalty for failure to provide information on affiliated agents.

Dick Brock, Kansas Insurance Department, explained this bill which was requested by the Insurance Department. Mr. Brock stated that when HB 3055 was enacted, the penalty amounts inserted for the late reporting of certain information were simply estimates and now, after having actual experience with the requirements, it has been determined that the penalty is unnecessarily severe. This bill would reduce the maximum penalty applicable to agents from \$300 to \$50. (Attachment 3)

Larry Magill, Kansas Independent Insurors, spoke briefly in support of this proposal.

Senator Salisbury made a motion to pass out favorably HB 2652, as amended by the House, and to place it on the Consent Calendar. Senator McClure seconded the motion. The motion carried.

SB 747 - Coverage of liability insurance for certain acts.

An amended version of SB 747 was passed out to the committee members with the changes as requested by the committee in order to clarify the language relating to when and under what circumstances the Fund must defend and/or pay. During the brief discussion, Mr. Brock stated that this bill would simply codify the existing practice. He also informed the committee that if the damage were less than \$200,000 the Fund would not have to defend at all. Senator Parrish was concerned because psycharists would be excluded from coverage by the Fund coverage. She was also concerned that an injured patient would not be able to collect damages from a doctor if he decided to take bankruptcy. (Attachment 4)

Senator Kerr made a motion to adopt the ballooned version of SB 747. Senator Salisbury seconded the motion. The motion carried.

Senator Salisbury made a motion to pass the bill out favorably as amended. Senator Kerr seconded the motion. The motion carried.

Division was called by Senator Parrish. On a show of hands, the committee voted to pass SB 747 out of committee. Senator Parrish wished to be recorded as being opposed to passing this bill out of committee favorably.

Minutes of Wednesday, February 28, and Thursday, March 1, were approved on a motion by Senator McClure with Senator Karr seconding the motion. The motion carried.

The meeting adjourned at 10:02 a.m.

KaMMCO

KANSAS MEDICAL MUTUAL INSURANCE COMPANY
AND
KANSAS MEDICAL INSURANCE SERVICES CORPORATION

March 5, 1990

TO: Senate Financial Institutions and Insurance Committee

FROM: Lori M. Callahan
Legislative Counsel

SUBJECT: S.B. 757

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas, physician-owned, non-profit professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures 400 Kansas doctors and has capitalized and anticipates insuring in the next few months 400 more.

On April 2, 1990, the Kansas Insurance Department will accept bids on the servicing carrier for the Kansas Medical Malpractice Joint Underwriting Association (JUA). When the enabling legislation which allowed KaMMCO to form was enacted, it was intended that under that legislation KaMMCO would be the servicing carrier for the JUA. It has now been determined that KaMMCO's enabling legislation, which allows it to issue policies of insurance only to its association members, would preclude it from being the servicing carrier for the JUA, since the JUA is comprised of individuals who may not necessarily be members of the Kansas Medical Society.

Accordingly, the Kansas Insurance Department and KaMMCO have determined that S.B. 757 would amend the enabling legislation so that on April 2, 1990, KaMMCO could join other medical malpractice carriers in bidding to be the servicing carrier for the Kansas Joint Underwriting Association.

KaMMCO, therefore, respectfully requests your consideration of this legislation and requests that its passage be expedited so that the legislation will be in force and effect in time for the bidding process.

*Attachment 1
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SENATE BILL No. 587

By Committee on Financial Institutions and Insurance

2-5

9 AN ACT amending the Kansas municipal group-funded pool act;
10 concerning purposes for which municipalities may pool their li-
11 abilities; amending K.S.A. 1989 Supp. 12-2617 and 12-2618 and
12 repealing the existing sections.

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

14 Section 1. K.S.A. 1989 Supp. 12-2617 is hereby amended to read
15 as follows: 12-2617. Five or more municipalities as defined in K.S.A.
16 75-6102, and amendments thereto, may enter into agreements to
17 pool their liabilities for Kansas fire, marine, inland marine and allied
18 lines, as defined in K.S.A. 40-901, and amendments thereto, and
19 casualty, surety and fidelity lines as defined in K.S.A. 40-1102, and
20 amendments thereto, including workers' compensation and employ-
21 ers' liability, *group sickness and accidents, as defined in K.S.A. 40-*
22 *2209, and amendments thereto, and life insurance, as regulated in*
23 *K.S.A. 40-433, and amendments thereto.* ~~Such pools shall not include~~
24 ~~accident, health or life insurance.~~ Such arrangements shall be known
25 as group-funded pools, which shall not be deemed to be insurance
26 or insurance companies and shall not be subject to the provisions
27 of chapter 40 of the Kansas Statutes Annotated, except as otherwise
28 provided herein.

Delete.

29 Sec. 2. K.S.A. 1989 Supp. 12-2618 is hereby amended to read
30 as follows: 12-2618. Application for a certificate of authority to operate
31 a pool shall be made to the commissioner of insurance not less than
32 30 days prior to the proposed inception date of the pool. The ap-
33 plication shall include the following:

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

39 (b) Designation of the initial board of trustees and administrator.
40 When there is a change in the membership of the board of trustees
41 or change of administrator, the pool shall notify the commissioner
42 within 30 days after such change.
43

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(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) Evidence that the annual Kansas gross premium of the pool will be not less than \$250,000 for each of the following categories: described in subparagraphs (1) through (4) of this subsection.

(1) All property insurance under article 9 of chapter 40 of the Kansas Statutes Annotated except motor vehicle physical damage; (2) motor vehicle liability and physical damage insurance; (3) workers' compensation and employers' liability insurance; and (4) all casualty insurance under article 11 of chapter 40 of the Kansas Statutes Annotated except insurance under categories (2) and (3) above; (5) group sickness and accident insurance; and (6) group life insurance. The pool shall notify the commissioner within 30 days if the Kansas gross premium is less than \$250,000 for any of the above categories of insurance.

if at the date of issue the annual gross premium for such coverage will be not less than \$1 million
if at the date of issue the coverage will insure at least 60% of the eligible participants or the total number of persons covered will exceed 600

(e) An agreement binding the group and each member thereof to comply with the provisions of the workers' 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.

Delete
minimum premium qualification or participation requirement than that specified in this subsection
if such coverage is to be provided by the pool

(f) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering, with respect to the categories identified in subsections (d)(1) through (4),

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

(h) A confirmation of specific and aggregate excess insurance, as selected by the board of trustees of the pool, or adequate surplus funds as approved by the commissioner, in the pool. The pool shall notify the commissioner within 30 days of any change in the specific or aggregate excess insurance carried by the pool.

that provided by an insurance company holding a Kansas certificate of authority is or will be in effect concurrent with the assumption of risk by the pool

(i) After evaluating the application the commissioner shall notify the applicant if the plan submitted is inadequate, fully explaining to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 10 days to make an application for hearing by the commissioner after the denial notice is received. A record shall be made of such hearing, and the cost thereof shall be assessed against the applicant requesting the hearing.

Sec. 3. K.S.A. 1989 Supp. 12-2621 is hereby amended to read as follows:
(See attached sheet)

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

Sec. 3. K.S.A. 1989 Supp. 12-2617 and 12-2618 are hereby repealed. 4

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book. 5

-2621. (a) With respect to the categories of coverage described in subparagraphs (1) through (4) of K.S.A. 1989 Supp. 12-2618(d), 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 shall 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 for the pool. In lieu of the foregoing, the board of trustees may determine such classification, rates and discounts as approved by the commissioner.

Premium contributions to any pool providing life insurance or any pool providing group sickness and accident insurance as described in Section 1(d) of this act shall be based on sound actuarial principles.

(b) An amount equal to at least 70% of the annual premium shall be maintained in a 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 and other operational 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. Any such refund shall be paid only to those members 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.

Kansas Insurance Department
Testimony Before the
Senate Financial Institutions and Insurance Committee
on House Bill No. 2652
Presented by Dick Brock

When the procedures for obtaining an insurance agent's license and the insurance company certification were changed by 1988 House Bill No. 3055, the penalty amounts inserted for the late reporting of certain information to the Commissioner were simply estimates of the penalty that would encourage timely submission of required information. Current familiarity with the requirements and actual experience of agents and companies now indicates that the maximum penalty which applies to the reporting of new agent employees of insurance agencies is unnecessarily severe. Accordingly, enactment of House Bill No. 2652 would reduce the maximum penalty applicable to agents from \$300 to \$50.

In this case, the change proposed by House Bill No. 2652 is referring to the obligation a licensed insurance agency has to notify the Commissioner of new agents added to or departing from the agency's staff since initial licensing. New additions are to be reported to the Commissioner within ~~15~~ ³⁰ working days and departures are to be reported within 30 days. In either case, there is a \$10 per day penalty for late reporting subject to a maximum amount per person per year. Currently, this maximum amount is \$300 and we are suggesting that this maximum be reduced to \$50.

Don't mean to imply a lack of violations -- assessed fines totaling \$4,100 since May 1, 1989 (8 1/2 months) but the penalties apply on a per person basis so it can add up rather quickly and many of the violations have been a result of unfamiliarity with the new law.

Attachment 3

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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

March 2, 1990

Senator Richard "Dick" Bond
Statehouse
Room #128-S
Topeka, Kansas, 66612

Re: Senate Bill No. 747

Dear Senator Bond:

Pursuant to your request, please find enclosed the recommended changes to Senate Bill No. 747. These changes have the agreement of Lori Callahan and Wayne Stratton.

If you have any questions, please contact me.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

Ted F. Fay, Jr.
Chief Attorney

TFF:jc
Enclosure
LE/2852

Attachment 4
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1 approved by the state board of healing arts shall not be included in
2 computation of time spent in compliance with the provisions of
3 K.S.A. 40-3402, and amendments thereto.

4 (n) *Notwithstanding anything in article 34 of chapter 40 of the*
5 *Kansas Statutes Annotated to the contrary, the fund shall in no*
6 *event be liable for any claims against any health care provider based*
7 *upon or relating to the health care provider's sexual acts or activity.*

8 Sec. 2. K.S.A. 40-3408 is hereby amended to read as follows:
9 40-3408. The insurer of a health care provider covered by the fund
10 or self-insurer shall be liable only for the first \$200,000 of a claim
11 for personal injury or death arising out of the rendering of or the
12 failure to render professional services by such health care provider,
13 subject to an annual aggregate of \$600,000 for all such claims against
14 the health care provider. However, if any liability insurance in excess
15 of such amounts is applicable to any claim or would be applicable
16 in the absence of this act, any payments from the fund shall be
17 excess over such amounts paid, payable or that would have been
18 payable in the absence of this act. The liability of an insurer for
19 claims made prior to July 1, 1984, shall not exceed those limits of
20 insurance provided by such policy prior to July 1, 1984.

21 If any inactive health care provider has liability insurance in effect
22 which is applicable to any claim or would be applicable in the absence
23 of this act, any payments from the fund shall be excess over such
24 amounts paid, payable or that would have been payable in the ab-
25 sence of this act.

26 Notwithstanding anything herein in article 34 of chapter 40 of
27 the Kansas Statutes Annotated to the contrary, an insurer that pro-
28 vides coverage to a health care provider may exclude from coverage
29 any liability incurred by such provider:

30 (a) From the rendering of or the failure to render professional
31 services by any other health care provider who is required by K.S.A.
32 40-3402 and amendments thereto to maintain professional liability
33 insurance in effect as a condition to rendering professional services
34 as a health care provider in this state; or

35 (b) *based upon or relating to the health care provider's sexual*
36 *acts or activity.*

37 Sec. 3. K.S.A. 40-3408 and K.S.A. 1989 Supp. 40-3403 are
38 hereby repealed.

39 Sec. 4. This act shall take effect and be in force from and after
40 its publication in the statute book.

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but in such cases the fund may pay reasonable and
necessary expenses for attorney fees incurred in
defending the fund against such claim.

but in such cases the insurer may provide reasonable
and necessary expenses for attorney fees incurred in
defending against such claim.

any company