

Approved: Feb. 10, 1998  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 5, 1998 in Room 529-S of the Capitol.

All members were present except:

Committee staff present: Dr. William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Tom Wilder, Kansas Insurance Department  
Roger Viola, Security Benefit Group  
Dave Hanson, Kansas Insurance Association & NAII  
Kevin Davis, American Family  
Commissioner Kathleen Sebelius  
John Holmgren, AARP

Others attending: See attached list

**Continued Hearing on SB 494--Kansas Insurance Department service regulation fund**

Tom Wilder, Kansas Insurance Department, presented testimony on the funding sources of the Department and their actual expenditures (Attachment 1). Inasmuch as current licensing and other fees have surpassed \$4.8 million per year, the overage will be turned back to the state general fund. If the \$4.8 million cap is repealed, the amount needed from the premium tax receipts would be reduced compared to the amount of the projected fee fund assessment under current laws.

Roger K. Viola, Security Benefit Life Insurance Company, spoke on behalf of the bill which would eliminate the problem of retaliatory taxes paid in other states by Kansas domiciled companies doing business there (Attachment 2). In 1995, SBL paid a \$1,430 fee fund assessment to the state of Kansas but paid a total of \$26,500 in retaliatory taxes. In 1996, the company paid a \$2,500 fee to the state and paid \$59,750 in retaliatory taxes. He jokingly told the committee of some forecasting he had done and if the percentages kept raising at their current rate, in less than twenty years SBL would be better off funding the entire department than paying the retaliatory taxes! A minor 3% increase in the department's budget could increase their retaliatory taxes to \$67,600. Any increase is passed on to the industry and this causes the retaliatory taxes paid by the domestics to ratchet upwards.

David A. Hanson, Kansas Insurance Association, informed the committee that domestic companies in the state paid more than \$90 million in taxes this past year (Attachment 3). This did not include property taxes. Kansas is the 8th highest in dollars assessed for taxes. He explained that while the insurance companies have been funding the Insurance Department, they have also been paying over \$90 million in taxes to Kansas in the form of premium, privilege, retaliatory and Fire Marshal taxes as well as examination fees, firefighters relief tax, workers compensation fund assessments and licensing fees. Such taxation is impeding the growth of the insurance industry in the state.

Kevin Davis, American Family, reviewed the recommendations of the Insurance Task Force which included the passage of SB 494 which will restructure the funding of the Kansas Insurance Department (Attachment 4). Concerns of how to recover the lost assessments were addressed by the expectation that the insurance industry should grow, thus increasing the premium taxes at a faster rate. Economic development will occur due to an increase in jobs, building, and the purchase of goods and services by consumers.

Tom Wilder presented two amendments to the bill which would strike Sub-section "e" and offered technical cleanup of Sub-section "d".

Senator Feleciano moved to adopt the two proposed amendments. Motion was seconded by Senator Praeger.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 5, 1997.

Motion carried. Senator Feleciano moved to report the bill favorably as amended. Motion was seconded by Senator Praeger. Motion carried.

**Hearing on SB 463--Medical Records Privacy**

Insurance Commissioner Sebelius requested passage of the bill which would keep confidential the health related records held by insurance companies (Attachment 5). Colorado is also working on such legislation this year. Medical information on individuals is being sold by testing laboratories, HMO's, clinics, diagnostic personnel, etc., to companies who would benefit from the sale of goods to individuals diagnosed with particular illnesses or conditions such as recently diagnosed diabetics receiving information on the sale of needles, arthritis patients being sent brochures and catalogs on equipment to ease their daily living, etc.

There is no fiscal note available on this bill at this point. The bill does require full plan disclosure by each insurance company which would be reviewed by the Insurance Department. This legislation does provide for the accumulation of raw data which would be available for research.

The Committee requested a study of Article 7 Fair Credit Reporting i.e. 50-705 Disclosure of investigative consumer reports and the proposed Medical Records Privacy legislation.

John Holmgren, spokesperson for AARP, spoke in support of the bill which would protect Medicare patients' who have supplementary policies from having their medical records made available for business reasons (Attachment 6).

The hearing was continued.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for February 10, 1998.

SENATE FINANCIAL INSTITUTIONS & INSURANCE  
COMMITTEE GUEST LIST

DATE: 2/5/98

NAME	REPRESENTING
Callie Lee Denton	KS Assoc of Health Plans
Jim Schwartz	KS Employer Coal. on Health
DB Walker	Via Christi
Rich Gutzmer	Health Midwest
Susan Anderson	Zlein + Weir
Kevin Davis	Am. Family
Tom Bell	KHA
John Greenup	AARP
Trish Copeland	SBG
Roger Viora	SBG
Patricia Slavater	KMS
Larry W. Pittman	KFMC
Alan M. Sealull	KTLA
Tom Wilder	KID
Kathleen Sebelius	KID
Chip Wheelen	KS Psychiatric Society
Marty Winslow	Principles Health Care
Bob Williams	KS Pharmacists Assoc
Sharon F. Denton	KS Pharmacists



## KID Funding Sources

The attached table presents a recap of funding sources of the Kansas Insurance Department. The amounts reflect FY 1997 actual expenditures. The table is divided between State Operations, which includes salaries, professional services, computers and equipment, utilities, office supplies and other expenditures necessary to administer the agency. Aid and Assistance includes payments to local governmental entities for firefighter relief and payments to individuals who claim benefits under the state's Workers Compensation second injury fund.

### State Operations

**Insurance Regulation Fund - \$5,846,304.** The Insurance Regulation Fund is by far the largest funding source for agency operations. Its sources include agent licensure fees, other fees, domestic premium tax receipts and the fee fund assessment. Programs run from this source include general administration (budgeting and accounting, information technology, and human resources), legal services, Consumer Assistance, and Financial Surveillance of insurance companies. In addition, the Life, Accident and Health, and Fire and Casualty Divisions are funded from the Regulation Fund. These Divisions provide for the regulation of insurance companies through rate and form reviews, annual statement audits, and market conduct surveillance.

**Workers Compensation Fund - \$3,262,241.** The State Operations portion of the Workers Compensation Fund provides for administration and legal payments from on behalf of the Second Injury Fund. Of the total, \$2.8 million (85.8 percent) is for payments to claimants attorneys. The remainder goes for legal and fiscal oversight of the claims payment procedure.

**Examination Fees - \$828,622.** Examination fee funds provide support for in house audits of insurance companies. Examiners travel to the home offices of insurers all over the country to ascertain companies solvency. By statute, companies are billed directly for the services the examiners provide. This source is also used for expenses incurred in the court-ordered supervision of insolvent companies.

**SHICK Federal Fund - \$59,639.** The federal Senior Health Insurance Counseling program for Kansans is administered by KID under a contract through the Kansas Department on Aging. This program provides grants to Area Agencies on Aging for the provision of counseling services to current and prospective Medicare recipients in the state.

**Firefighters Relief Fund - \$64,920.** This fund administers grants to local firefighter benefit funds in support of firefighters injured and killed in the line of duty. The source of these funds is a portion of the premium tax collected on fire policies.

*Senate F.D.D.*

*Attachment 1*

*2/5/98*

**Building P&I Fund - \$89,310.** This fund pays principal and interest payments on the purchase of the Insurance Department Building at 420 SW 9th. It receives transfers from programs housed in the Topeka building.

#### **Aid and Assistance**

**Workers Compensation - \$25,537,364.** These payments provide temporary and permanent disability support for injured workers eligible for benefits under the second injury fund. These payments are declining each year as the fund is phased out.

**SHICK Federal Funds - \$44,657.** This is partial year funding for grants to Area Agencies on Aging for health counseling.

**Firefighters Relief Fund - \$4,986,802.** These amounts provide grants to more than 100 local firefighting districts for relief fund benefits.

**KID Expenditures Structure  
Funding Breakdown, FY 1997**

		<b>% of Total</b>
<b>State Operations</b>		
<b>Insurance Regulation Fund</b>	\$ 5,846,304	57.59%
<b>Workers Compensation Fund</b>	3,262,241	32.14% *
<b>Examination Fees</b>	828,622	8.16%
<b>SHICK Federal Funds</b>	59,639	0.59%
<b>Firefighters Relief Fund</b>	64,920	0.64%
<b>Building P&amp;I Fund</b>	89,310	0.88%
 <b>Total State Operations</b>	 \$ 10,151,036	 100.00%
 <b>Aid and Assistance</b>		
<b>Workers Compensation Fund</b>	25,537,364	83.66%
<b>SHICK Federal Fund</b>	44,657	0.15%
<b>Firefighters Relief Fund</b>	4,986,802	16.34%
 <b>Total Aid and Assistance</b>	 30,524,166	 100.00%

\* Includes \$2.8 million in payments to Workers Compensation claimants' attorneys.

**Insurance Regulation Fund Funding Sources  
FY 1999 Funding Levels**

**Current Law**

<b>Licensing and other Fees</b>	\$	4,800,000
<b>Fee Fund Assessment</b>		1,300,000

**After Passage of SB 494**

<b>Licensing and other Fees</b>		5,250,000 *
<b>Premium Tax Receipts</b>		850,000

\*Currently, licensing and other fees have surpassed \$4.8 million per year. Therefore, under current law part of the receipts collected from fees will be turned back to the SGF. If the \$4.8 million cap is repealed per SB 494, the amount needed from the Premium Tax receipts would be reduced compared to the amount of the projected Fee Fund Assessment under current law.



Date: February 5, 1998

To: Members of the Kansas Senate Financial Institutions and Insurance Committee

From: Roger K. Viola  
Security Benefit Life Insurance Company

Subj: Senate Bill 494

My name is Roger Viola. I am Senior Vice President and General Counsel of Security Benefit Life Insurance Company and its affiliates. I am here today to speak in favor of Senate Bill 494 which eliminates the \$4.8 million cap on fees deposited to the credit of the insurance department service regulation fund. I should also mention that I was a member of the Task Force established last session by Senate Concurrent Resolution 1601 to study the insurance industry in the state and to find ways to make Kansas a more attractive place for companies to do business. One of the recommendations which emanated from this Task Force was the elimination of the \$4.8 million cap. By removing the cap, the state would fund slightly more of the insurance department's budget. This increase, however, pales in comparison to the more than \$90 million in premium taxes which insurance companies already pay to the state general fund.

Security Benefit is a Kansas domiciled corporation and as a result is greatly prejudiced by the current funding arrangement. The fees which we pay to the State of Kansas are inconsequential. However, the real penalty which we incur stems from retaliatory taxes paid to other states as a result of the Kansas assessment. Retaliatory taxes are a type of "mirror tax" in that they provide that if State A taxes companies domiciled in State B an amount greater than State B taxes companies domiciled in State A, then State B will charge an additional amount of tax (called a retaliatory tax) in order to equalize the taxes paid between the two states. There are only 8 states with tax rates less than Kansas and, as a result, Security Benefit must pay retaliatory taxes in each of those states. Consequently, in 1995, the first year of the assessment, SBL paid a \$1,430 fee fund assessment to the State of Kansas but paid a total of \$26,500 in retaliatory taxes. In 1996, our Company paid a \$2,500 fee to the state, but paid \$59,750 in retaliatory taxes.

As a result of collecting more than was needed in 1996, it is my understanding from recent correspondence we received from the Department that there will be no fee assessed in 1997. However, if it had been collected, we would have paid another \$59,750 in retaliatory taxes. If just a 3% increase in the Insurance Department's budget were authorized, then our retaliatory tax bill would be \$67,600. As the Department's budget increases, so do the fees paid by the industry because the industry pays for everything over \$4.8 million. Thus, any increase is passed on to the industry and this causes the retaliatory taxes paid by the domestics to ratchet upwards.

*Senate F.I.D.*  
*Attachment 2*  
*2/5/98*

Kansas is already assessing more in the way of taxes and assessments than most of its counterparts. The money which we pay in the way of retaliatory taxes is money which leaves the state and goes to fund the coffers of other state governments. We feel that the Insurance Department and the state general fund both greatly benefit from the tens of millions of dollars of taxes paid by the insurance industry and that this should be an adequate base from which to fund the Department.

Furthermore, the amounts collected from the insurance industry increase each year far greater than the increases needed to adequately fund the Department. Assessing companies a second time as is currently the case constitutes double taxation and when you add on the aspect of the retaliatory taxes which are paid by your Kansas domestic companies, you end up with a third level of taxation. We feel that this is unfair and something that the legislature did not adequately contemplate when the fee funding proposal was originally adopted at the request of Commissioner Sebelius' predecessor.

Therefore, I encourage you to vote favorably upon Senate Bill 494 and will be happy to answer any questions you might have.

**David A. Hanson**  
**Kansas Insurance Associations**  
**Topeka, Kansas**  
**(785) 232-0545**

**TESTIMONY ON SB 494**

TO: Senate Financial Institutions and Insurance Committee  
State Capitol  
Topeka, Kansas

RE: Senate Bill No. 494

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas, and also on behalf of the National Association of Independent Insurers, a national trade association representing over 560 property and casualty insurance companies across the country.

We strongly support the provisions of Senate Bill 494 and commend the Insurance Task Force, including members of this Committee, Commissioner Sebelius and industry representatives for all of their hard work and for recommending this legislation. As we supported this proposal before the Task Force, we would also like to support the bill before this Committee. We agree with the testimony in support of this bill previously provided by the Commissioner and her staff.

The service regulation fee fund assessment on insurance companies is a form of double taxation that does not encourage or enhance insurance growth in this State, but instead discourages companies from coming to Kansas by adding an additional financial burden on companies doing business in this State. This especially hurts the Kansas domestic companies when they write policies in other states, due to the retaliatory tax treatment by other states imposing higher taxes on Kansas companies in retaliation for this extra assessment Kansas imposes on companies from those states. The minimum assessment on a small company may only be \$500 per year, which may not seem like much, but for those Kansas companies that have grown and write policies in other states that amount is multiplied. A company like Farmers Alliance Mutual in McPherson writes insurance in 20 other states and expects retaliatory assessments in 10 of those states. Thus, whatever they pay in Kansas assessments, about 10 times that amount will have to be paid to other states. A company like Security Benefit Life here in Topeka writes in even more states and the assessment is further compounded. When they paid an assessment of about \$2,500 to Kansas in 1996, they had to pay nearly \$60,000 in retaliatory fee assessments to other states. Clearly, this is an unfair burden on our companies and their policyholders.

While these assessments have been generating almost one million dollars towards

*Senate Ad D*  
*Attachment 3*  
*2/5/98*

the funding of the Insurance Department regulatory operations, please keep in mind that the insurance companies have also been paying over \$90 million in taxes to Kansas in the form of premium, privilege, retaliatory and Fire Marshal taxes. Additionally, the insurance industry pays a number of other taxes, fees and assessments for doing business in Kansas, such as licensing and examination fees, a firefighters relief tax over \$4 million, workers compensation fund assessments over \$33 million and others bringing the Insurance Department net deposits for fiscal year 1996 to \$141,244,651.65.

It should also be noted that as the insurance industry has tried to grow in this state in the last 20 years, the amount of taxes paid to the State has also grown and significantly, notwithstanding five years of catastrophic storm losses we suffered as we entered the 1990's. Looking back to 1980, premium taxes alone were just over \$31 million. By 1990, premium taxes were just over \$62 million. By 1995, premium taxes had grown to over \$83 million and we believe they are now closer to \$90 million.

We therefore believe that this bill will not only benefit our companies and our policyholders, but also the State generally as we encourage the growth of insurance in Kansas. We would urge your favorable consideration of the bill. Thank you.

Respectfully,



DAVID A. HANSON

**Farm Bureau Insurance**

FARM BUREAU MUTUAL INSURANCE COMPANY • KFB INSURANCE COMPANY  
KANSAS FARM BUREAU LIFE INSURANCE COMPANY • FB SERVICES INSURANCE AGENCY

2627 KFB Plaza, Manhattan, Kansas 66502-8155 / (913) 587-6000

February 4, 1998

Senator Don Steffes, Chairman  
Senate Financial Institutions & Insurance Committee  
State Capitol Bldg 128-S  
Topeka, KS 666

Dear Senator Steffes:

S.B. 494 is under consideration by the Senate Financial Institutions & Insurance Committee. As you know, the provisions of this bill were unanimously supported by the insurance industry representatives who served on the Legislature's Insurance Industry Task Force.

We appreciate the leadership you provided to that Task Force. Please be assured that the Kansas Farm Bureau Insurance Companies identified on this letterhead support the Task Force recommendations in general and specifically urge passage of S.B. 494.

Thank you for your consideration.

Sincerely,

John R. Graham  
Executive Vice President

JRG/dp

copy: Commissioner Kathleen Sebelius

**Kansas Insurance Department**

*ONE HUNDRED TWENTY-SEVENTH*



**ANNUAL REPORT**

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*FOR YEAR  
ENDING  
DECEMBER 31,  
1996*

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**KATHLEEN SEBELIUS  
INSURANCE COMMISSIONER**

# Kansas Insurance Department

## Fiscal year 1996 Deposits

July 1, 1995 to June 30, 1996

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### TO STATE GENERAL FUND:

#### TAXES:

Privilege Tax	1,024,946.75
Premium Tax—Foreign	75,103,574.79
Fire Marshal Tax	200,000.00
Premium Tax—Domestic	8,181,486.71
Retaliatory Tax	5,462,045.32
Fines and Penalties	<u>274,050.64</u>

Total Taxes	<u>90,246,104.21</u>
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TOTAL TAXES TO THE STATE GENERAL FUND	90,246,104.21
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### TO SPECIAL FUNDS:

#### INSURANCE COMPANIES EXAMINATION FUND:

Salary Reimbursement	344,407.97
Expense Reimbursement	182,051.66
Annual Leave Assessment	20,290.60
Data Processing Assessment	7,569.50
Sick Leave Assessment	17,127.43
Refunds	<u>-477.16</u>

Total Insurance Company Examination Fund	570,970.00
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#### INSURANCE COMPANY ANNUAL STATEMENT EXAM:

Premium Tax - Foreign	<u>78,377.59</u>
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Total Insurance Company Annual Statement Fund	78,377.59
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#### INSURANCE COMPANY EXAMINER'S TRAINING FUND:

Premium Tax—Foreign	<u>75,857.25</u>
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Total Insurance Company Examiner's Training Fund	75,857.25
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HEALTH CARE TASK FORCE GRANT FUND	15,000.00
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INSURANCE DEPARTMENT SERVICE REGULATION FUND:

Premium Tax—Domestic	918,705.25
MGA Notification Fee	3,300.00
Risk Purchasing Group—Notification Fee	6,000.00
Risk Retention Group—Notification Fee	1,750.00
Annual Statement Fee	137,645.96
Certificate of Authority	23,161.00
Charter Fees	16,000.00
Retaliatory Fees	6,727.00
Cert. Fees/Util. Review Orgs.	2,650.00
Permit to Sell Stock	250.00
Form "A" Filing Fee	3,000.00
Registration Fees—Prepaid Services	900.00
Filing Fees—Nonadmitted Cos.	27,000.00
Certified Copies	85,394.80
Court Fees	11,400.00
Other Service Charges	42,600.00
Prepaid Service Plan- Membership Fees	7,162.00
Agent License Fees	3,449,645.23
Other Publications	307.00
Fee Fund Assessment	1,003,095.32
Recovery of Expenditures	45,955.10
Photocopies	13,806.48
Prior Fiscal Year—Recovery of Expenditures	531.18
Operating Transfers Out	-5,000.00
Other Miscellaneous Revenue	<u>159.00</u>

Total Insurance Department Service  
Regulation Fund 5,802,145.32

UNINSURABLE HEALTH INSURANCE PLAN: TOTAL 500,000.00

SALE OF COMMODITIES AND USABLE EQUIPMENT: TOTAL 1,164.33

WORKERS COMPENSATION FUND:

Assessments	33,213,578.80
Reimbursements	<u>170,378.94</u>

Total Workers Compensation Fund 33,383,957.74

MUNICIPAL GROUP-FUNDED POOLS: TOTAL 99,971.12



GROUP-FUNDED WORKERS COMPENSATION FUND: TOTAL		97,556.40
FIREFIGHTERS RELIEF TAX: TOTAL		4,630,250.72
INSURANCE BUILDING PRINCIPAL AND INTEREST FUND:		
	Fund Operating Transfers	173,174.43
	Principal and Interest	<u>786.42</u>
	Total Insurance Building Principal and Interest Fund	173,960.85
INSURANCE BUILDING RESERVE FUND:		
	Interest on State Agency Investment	9,115.02
	Bond Reserves	<u>-12,195.69</u>
	Total Insurance Building Reserve Fund	-3,080.67
INSURANCE DEPARTMENT REHAB AND REPAIR FUND		43,252.89
SUSPENSE (NET RECEIPTS): TOTAL		-73,838.83
TAX AND FEE REVOLVING FUND (GROSS RECEIPTS) TOTAL		7,967,120.71
COMMISSIONER'S TRAVEL REIMBURSEMENT		<u>197.44</u>
	TOTAL TAXES TO SPECIAL FUNDS	53,362,862.86
TAXES REMITTED TO OTHER AGENCIES:		
	* FIRE MARSHAL: TOTAL	2,364,315.42
	INSURANCE DEPARTMENT NET DEPOSITS FISCAL YEAR 1996	<u>141,244,651.65</u>

\*Collected for State Fire Marshall in accordance with 1992 H.B. 2611.

February 5, 1998

**To:** Senator Steffes and the Senate Insurance Committee

**From:** Kevin R. Davis, AMERICAN FAMILY INSURANCE GROUP

**RE: Senate Bill 494**

American Family is happy to be here today in support of SB 494. As a member of the Task Force on the Kansas Insurance Industry we were challenged "to identify programs and actions that can be undertaken to promote the growth of the existing industry, enhance its financial viability, and attract out-of-state insurance companies to Kansas." It is this aspect I would like to address

The Task Force heard from a number of witnesses, including industry representatives and economic development experts, who recommended that the simplification and streamlining of the tax system would be of significant impact as insurers examine the regulatory attitude and desirability of doing business in the state. States must reduce multiple tax burdens or burdensome tax compliance responsibilities and create a fair tax structure. Removal of the privilege tax and equalization of the premium tax last year were significant improvements for Kansas, and these changes were noticed around the country. The Task Force recognized this and felt that it should continue to address the issue of tax equity, fairness, and simplification. The obvious next step in this process, as pointed out by many of the conferees, was this fee assessment tax.

It was felt that the funding of the Insurance Department could and should be funded wholly by the general fund, via the premium tax already paid by carriers, and that a special assessment to support the Department was unnecessary. The legislature must review and approve the Departments funding request each year anyway, just as it does any other state agency. The Legislature can just as easily fund the full budget and eliminate this repetitive and cumbersome fee assessment. This accomplishes the goal of simplifying the tax system for carriers and the Department, and making Kansas a more attractive environment to do business. This also accomplishes the goal of assisting domestic companies by reducing possible retaliatory taxes from other states.

The concern, of course, is how will the lost assessment be recovered. The current premium tax is now in excess of \$90 million and has consistently grown over the years, and I think you have or will get testimony on this growth. This proposal, along with last year's tax changes and other deregulation enhancements (such as file and use in commercial lines), should help improve the insurance market, bring in more companies, competition and ultimately more premium and premium tax, perhaps at a faster rate.

*Senate FD & D*  
*Attachment 4*  
*2/5/98*

I think it should be pointed out that the premium tax and this fee assessment are not the only taxes or fees paid by the insurance industry. There is still the guaranty fund, Firefighters Relief Fund, filing fees, agents' license fees (nearly \$4 million in 1995), and numerous other special funds that carriers are supporting. Indirectly the economic benefit of the purchase of goods and services and of the personal income tax of the over 20,000 employees and 18,000 agents deriving their incomes from the insurance industry should also be considered.

In closing I would emphasize that the Task Force, industry, and economic development experts all agreed that this proposal was in the best interests of the State. We should continue the progressive path of recent years of simplification and streamlining regulation. The Task Force concluded its recommendation by stating "...that a change in funding will impact the State General Fund; however, this impact should not be used as an excuse to perpetuate the current funding formula."



Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

**MEMORANDUM**

To: Senate Financial Institutions  
and Insurance Committee

From: Kathleen Sebelius, Commissioner  
of Insurance

Re: Senate Bill 463 (Medical Records Privacy)

Date: February 5, 1998

I am appearing today to ask for your support for S.B. 463 which will provide important protection for the privacy rights of Kansans. The legislation is intended to keep confidential the health related records held by insurance companies. This is often information of a highly sensitive and private nature which consumers have every expectation will kept in confidence by their insurance companies.

Nationally, there has been a great deal of interest in privacy issues, especially those dealing with health data. Examples of the misuse of such information include:

- A public health worker in Florida who used a confidential list of people with HIV and AIDS to check out his dates and potential dates for his friends. (USA Today, 10/10/96).
- Concerns about a national medical records data base maintained by insurers (the Medical Information Bureau) which maintains records on about 15 million people. Even the MIB president admits that 3 to 4 percent of their database (up to half a million reports) is erroneous. (Consumer Reports, 10/94).
- A recent case where a Boston based Health Maintenance Organization allowed non-medical personnel, including office secretaries, clerks and assistants, access to

420 SW 9th Street  
Topeka, Kansas 66612-1678

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*Senate F.D.S.D.*  
*Attachment 5*  
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*2/5/98*

confidential psychiatric information about its insureds. (New York Times Magazine, 6/16/96).

- Complaints that pharmacy companies are purchasing patient lists from doctors and other providers in order to market drugs to those individuals. (Consumer Reports, 10/94).

The problems with protecting health information are increasing given the computerization of medical records and the close links between providers, health insurers and medical suppliers in today's managed care market. Senate Bill 463 will address these concerns by establishing standards for keeping such data confidential.

Some of the insurance industry representatives which you will hear from today argue that this legislation is not necessary because the federal government is developing privacy legislation. It is true that the 1996 Kassebaum-Kennedy Act requires the Secretary of Health and Human Services to enact regulations on the confidentiality of medical records if the Congress does not enact a privacy law by August, 1999. However, even HHS Secretary Donna Shalala recognized, in her recent report on health information confidentiality, that federal legislation should not preempt state laws which provide greater protection to individual privacy. Kansas should act now to safeguard the rights of its consumers and we can move, this year, to protect Kansans, rather than waiting for Congress to deal with this issue in a few years.

This legislation is based on a model privacy law being developed by the National Association of Insurance Commissioners. The provisions of Senate Bill 463 establish the following guidelines for insurance companies and health maintenance organizations as well as third party contractors who do business with these carriers:

Section 1. (Title): The law is known as the Health Information Privacy Act.

Section 2. (Definitions): The act applies to all insurance companies and HMOs and to any policyholder, subscriber or enrollee of an insurer. "Health information" includes any personal facts or information about an individual which deals with their health condition or medical care provided to them.

Section 3 (Privacy Procedures): Companies are required to develop procedures to protect the confidentiality, security and accuracy of health information. These policies

include training for employees who have access to sensitive health information and the monitoring of use of such data by company personnel and outside vendors who do business with the company.

Section 4 (Confidentiality Notice): Companies must file a copy of their confidentiality procedures with the Commissioner and provide an outline of their privacy policy to any covered person upon request.

Section 5 (Examination of Records): Insurers must provide individuals of a copy of their health records within 20 days of a written request for such information. Carriers are permitted to charge a reasonable fee for providing the health care information but can not charge consumers if the data is being used to support a claim for benefits or coverage.

Section 6 (Correction of Inaccurate Data): An individual can request their insurance company to correct any inaccurate data and carriers have 30 days to amend the records or notify the consumer that their request is denied and the reason for the denial.

Section 7 (Use of Confidential Information): Insurers are not permitted to use protected health information except for lawful business purposes. Carriers are required to keep a record of all disclosures made to anyone who is not employed by the insurer.

Section 8 (Authorization for the Release of Information): Companies are not permitted to disclose health information without a valid authorization by the consumer except as specifically provided by the act. Carriers must keep a record of the person's authorization. Such authorizations are only valid for one year unless it is used as part of an application for insurance or to support a claim for benefits or compensation. Individuals are permitted to revoke their authorizations at any time.

Carriers may not disclose health information for the marketing of services or for other commercial gain unless there is a separate authorization by the insured and the purpose of the disclosure is stated in clear terms to the individual.

Section 9 (General Rules): Authorizations for the use or release of records are not required in the following instances: (a) for scientific research if such records do not reveal the names or identities of any individual; (b) for the adjustment or settlement of claims between insurers; (c) for the investigation or settlement of third party claims, or (d) in response to a request from a federal, state or local governmental authority if the disclosure

is required by law. Information can also be disclosed in certain cases for utilization review purposes or in connection with a workers compensation claim.

Section 10 (Notification of Court Orders): Carriers are required to make a good faith effort to notify individuals of a request for their records pursuant to legal process unless otherwise ordered by a court.

Section 11 (Penalties): The unauthorized collection, use or disclosure of protected health information is prohibited and carriers who violate the law will be subject to the fines and penalties provided for in the Insurance Code (K.S.A. 1997 Supp. 40-2,125). Carriers may be assessed a penalty of up to \$1,000 for each violation and up to \$2,000 for a knowing violation of the law.

Section 12 (Rights of Minors): Minors who may lawfully consent to health care may exercise their rights under the act.

Section 13 (Executors): Executors or administrators of a deceased individual may access health records.

Section 14 (Rules and Regulations): The Commissioner is authorized to adopt rules and regulations to carry out the purposes of the act.

Section 15 (Effective Date): The new law is made effective January 1, 1999.

I believe the passage of Senate Bill 463 will protect the privacy rights of consumers. In addition, those covered by insurance in Kansas will have the ability to access their health records and to correct any inaccurate information. Insurers will be limited in using health information for only lawful business purposes and will not be allowed to sell such data unless specifically authorized. I feel that Kansans have a legitimate expectation that their health records maintained by insurance companies will be protected and this legislation will provide those safeguards. I ask for your support for this bill.



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## KANSAS STATE LEGISLATIVE COMMITTEE

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(316) 275-5191

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Vassar, KS 66543  
(785) 828-4875

**CCTF COORDINATOR**

Mr. John H. Holmgren  
2912 SW Arrowhead Road  
Topeka, KS 66614  
(785) 272-2208

### TESTIMONY

IN SUPPORT OF SB 463. An Act...Regarding the Privacy of Medical Records; the Health Information Act, Before the Senate Committee of Financial Institutions and Insurance.

Senator Don Steffes, Chair

My name is John Holmgren and I am the Coordinator for the Topeka based State Legislative Committee of the AARP. In Kansas, we have a total of over 346,000 members, and because of this we are interested in safeguarding the confidentiality of medical records, due to the vulnerability of older people, their medical experiences, and a general need to protect their welfare and interests. We have 8 Districts, and 40 Chapters, organized and meeting to discuss issues of the day and for congeniality pursuits as well. Our legislative activities also include an interest in other generational problems, such as medically uninsured children.

We are here today to support SB 463, a bill relating to the need for confidentiality of all medical records. The reasons for this support is outlined in the bill, which is excellent, and a credit to your committee. These concepts of confidentiality will be disputed by those who are interested in having open records, with less or no confidentiality, for personal and business reasons.

The principles in the bill is supported by Title 18 of the federal Medicare law. It is also supported, in principle, by a recently appointed Presidential Commission. But the Medicare law does not, repeat, does not cover or provide protection for the confidentiality of records in private insurance supplementary policies sold Medicare patients. These policies are sold by private insurance companies to make it possible for the Medicare patient to cover the cost of the 20% differential not reimbursed for doctors' costs related to Part B of the Medicare law. We feel that Senate Bill 463 will help greatly in this situation.

We support this bill because of the right of patients in hospitals and other health care facilities to communicate with health care providers in confidence and to have the confidentiality of their individually identifiable health care information protected.

*Senate F.D.D*

American Association of Retired Persons 601 E Street, NW Washington, DC 20049 (202) 434-2277

Margaret A. Dixon, Ed.D. *President*

Horace B. Deets *Executive Director*

*Attachment 6*

*2/5/98*



We support the release of health information from medical records only with the patient's consent, and for health purposes only, for insurance claims, peer or utilization review, health promotion (within approved programs), and disease management.

**Where there is a release of health care information without written consent, this should only be where there is a legal basis such as for medical research (personal identification omitted), or investigation of health care fraud, or for public health reporting, for contagious diseases.**

The release of information can be damaging to a patient, in case of AIDS, a psychiatric evaluation, or other like damaging cause. It could be a leak from a hospital record, affecting a lawsuit, housing, employment, and insurance.

This law will help prevent these problems.

In summary, SB 463 should be passed in order to safeguard patients, maintain the confidentiality of medical records, and require compliance with the carrier's confidentiality procedures. Thank you for your courtesy.

Thursday, Feb. 5th, 1998