

Approved: 3-21-94
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Marvin Smith at 9:00 a.m. on March 17, 1994 in Room 521-S of the Capitol.

All members were present except: Representative Elaine Wells (E)

Committee staff present: Carolyn Rampey, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Arden Ensley, Revisor of Statutes
Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

Jerry Slaughter, Kansas Medical Society
Paul M. Garvin, Kansas Insurance Department
Norine Kruse, Director of Travel and Tourism Development Division

Others attending: See attached list

Hearing on:

SB 474 - liabilities of health care stabilization fund.

Jerry Slaughter, Kansas Medical Society, provided written testimony in support of SB 474, which would allow the Insurance Commissioner to establish the rate at which defense attorneys will be paid for defending the Fund cases, would provide that the Fund pay the expenses associated with the Oversight Committee, and amends the definition of "health care provider" to add certain limited liability companies to the list of individuals and entities which are subject to the act and must carry professional liability insurance. He stated the Oversight Committee has been extremely important and helpful in setting surcharge levels which all health care providers must pay. This legislation shifts the cost of the Oversight Committee from the state general fund to the Health Care Stabilization Fund. The change in the definition of "health care provider" became necessary because of recent federal legislation, the effect of which resulted in some professional corporations of physicians having to form limited liability companies in order to continue providing laboratory services in a shared ownership clinical situation (Attachment 1).

Paul Garvin, Kansas Insurance Department, testified in support of SB 474 in respect to attorneys fees and selection of independent council. This bill would set a limit of \$95.00 per hour to be paid to attorneys and would permit them to determine which attorney to employ (Attachment 2). Mr. Garvin proposed an amendment to SB 474 that would add the same language "subject to subsection (b) of K.S.A. 40-3411 and amendments thereto" to subsection (11) on the same page 3 on line 36.

SB 470 - membership of film services commission.

Norine Kruse, Director of the Travel and Tourism Development Division, gave testimony in support of SB 470 and provided some background. She stated since the time the Film Commission was formed and there were five tourism regions, a sixth tourism region has been recognized by the state. SB 470 would allow the sixth tourism region to also have a representative on the Film Commission and the entire state would be represented (Attachment 3).

Action on:

SCR 1626 - creates council on competitiveness.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on March 17, 1994, 1994.

Representative Dawson made a motion to pass SCR 1626 favorably. Representative O'Connor seconded.

Representative Dawson made a motion to amend SCR 1626 by reducing membership on the Council on Privatization from 15 to 11, thereby deleting the four legislators from the council (Attachment 4). She also proposed an amendment to transfer the League of Kansas Municipalities appointment from the list of appointees by the Legislative Coordinating Council and making it a separate appointment of its own. Representative Farmer seconded. The motion carried. (Attachment #4)

Representative Dawson made a motion to pass SCR 1626 favorably as amended. Representative O'Connor seconded. The motion carried.

SB 734 - state agency recognition of academic degrees.

Representative Ballard made a motion to pass SB 734 favorably. Representative Gilbert seconded. The motion carried.

SB 533 - fees for debt setoff collection; fees for copies of open records.

Representative Scott made a motion to pass favorably SB 533. Representative Benlon seconded. The motion carried.

SB 509 - state boards and commissions subject to senate confirmation; terms of members; limitation on exercise of powers.

Representative O'Connor made a motion to pass SB 509 favorably. Representative Cox seconded.

Representative Macy made a substitute motion to table SB 509. Representative Mills seconded. The motion carried.

Representative Gilbert made a motion to approve the minutes for the March 16, 1994 meeting as submitted. Representative Farmer seconded. Motion carried.

The meeting was adjourned at 9:55 a.m. The next meeting is scheduled for March 21, 1994.

GUEST LIST

COMMITTEE: House Governmental Organization & Elections DATE: 3-17-94

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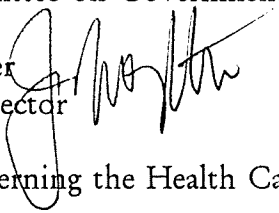


KANSAS MEDICAL SOCIETY

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March 17, 1994

TO: House Committee on Governmental Organization and Elections

FROM: Jerry Slaughter
Executive Director 

SUBJECT: SB 474; Concerning the Health Care Stabilization Fund

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 474; which originated from the Health Care Stabilization Fund Oversight Committee. This bill amends the Health Care Provider Insurance Availability Act, at K.S.A. 40-3401 *et seq.* It does three things: allows the Insurance Commissioner to establish the rate at which defense attorneys will be paid for defending the Fund cases; provides that the Fund pay the expenses associated with the Oversight Committee; and amends the definition of "health care provider" to add certain limited liability companies to the list of individuals and entities which are subject to the act, and must carry professional liability insurance. We are principally concerned with the last two items.

Earlier in the year when you discussed HB 2682, which would have abolished the Oversight Committee, we appeared and requested that it be continued because it provides an essential forum for ongoing discussion of issues which affect the Fund and its operation. The Oversight Committee also provides a mechanism within which an independent actuarial analysis can be conducted on the financial status of the Fund annually. This actuarial analysis, coupled with that done by the Insurance Commissioner's office, has been extremely important and helpful in setting surcharge levels which all health care providers must pay.

When you were considering HB 2682, we noted that there was legislation pending in the Senate which would shift the cost of the Oversight Committee from the state general fund to the Health Care Stabilization Fund. We support this concept, and SB 474 will allow the Oversight Committee to continue its important work, funded entirely by the health care providers who support the Fund through surcharge premiums.

The other issue we are interested in was added at our request by the Senate Committee. It added to the definition of "health care provider" certain limited liability companies which are organized for the purpose of rendering professional health care services. This amendment became necessary because of recent federal legislation, the Omnibus Budget Reconciliation Act of 1993 (OBRA), the effect of which resulted in some professional corporations of physicians having to form a limited liability company in order to continue providing laboratory services in a shared ownership clinical situation. The provisions of OBRA, and the problems it

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created, have very little to do with the Fund, except to the extent that it has made this amendment necessary. Basically, the amendment requires certain limited liability companies organized by physicians (or other health care providers) for the purpose of rendering professional services to be covered by the Health Care Provider Insurance Availability Act, and pay the necessary surcharge to the Fund for excess coverage. While the number of entities which would be affected is probably quite small, this change was necessary for those clinics which have had to alter their corporate structure to meet the requirements of the federal law mentioned above.

To reiterate, we do support SB 474, as amended by the Senate, and we would urge you to support the bill favorably. We appreciate your consideration, and would be happy to respond to any questions.

JS:cb

Testimony on
Senate Bill No. 474

by

Paul M. Garvin and Rita Noll

Kansas Insurance Department

Senate Bill No. 474 primarily represents an amendment to the Health Care Provider Insurance Availability Act, K.S.A. 40-3401 et seq. This bill's various provisions basically 1) set out the function of a tender of primary insurance coverage limits to the Health Care Stabilization Fund, 2) confirm that the Commissioner of Insurance, as administrator of the Health Care Stabilization Fund, may set the hourly rate to be paid to defense counsel defending health care providers after a tender to the Fund, 3) clarify the Commissioner's authority to retain or appoint defense counsel after such a tender, 4) cause the Fund to reimburse the state general fund for certain expenses incurred by the Fund Oversight Committee, and 5) expand the definition of "health care provider" to include a Kansas limited liability company.

The thrust of this bill regarding attorney's fees is in Section 4, which amends K.S.A. 40-3411(b). In recent years, some confusion has arisen regarding the attorney's fee which the Health Care Stabilization Fund would pay after a medical malpractice insurer tenders its policy limits to the Fund. The Commissioner frequently reviews the fee schedule to ensure that the attorney's fees paid by the Fund are competitive with those paid by private

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insurers. As it currently reads, however, K.S.A. 7-121b purports to put the defense attorney's fee at the discretion of the trial judge after consideration of the eight factors set out in that statute. On at least one occasion, this has resulted in the Fund being ordered by the court to pay attorney's fees that were considerably higher than the customary rate approved by the Commissioner of Insurance.

When a primary insurer commits its policy limits to the settlement of the case and tenders to the excess carrier, e.g., the Fund, the excess carrier becomes responsible for the conduct of the defense at that point and assumes the costs of defense. Senate Bill No. 474 further enhances K.S.A. 40-3411(b) by outlining the function and mechanics of a tender to the Fund. Also, K.S.A. 40-3411(b) currently authorizes the Commissioner of Insurance to employ "independent counsel" in actions involving exposure of the Fund's coverage for an insured, but offers no guidance as to the duties and limitations of such counsel. This bill alleviates uncertainty as to the responsibilities of counsel employed by the Commissioner.

Sections 1 and 2 of the bill serve to clean up some related statutes to make them consistent with K.S.A. 40-3411, as amended. Most notably, Section 2 amends K.S.A. 7-121b to ensure that a defense counsel's fee after a tender to the Fund in a medical

negligence case is in line with the provisions and intent of K.S.A. 40-3411(b).

Therefore, the passage of Senate Bill No. 474 will prevent misunderstandings as to the nature and function of a tender by a primary insurer to the Health Care Stabilization Fund, the attorney's fee to be paid after such a tender, and the right of the Commissioner of Insurance to employ defense counsel originally retained by the primary insurer, or replace such counsel when it serves the common interests of the defendant health care provider and the Fund.

HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE

March 17, 1994

Testimony by Norine Kruse, Director of the Travel and Tourism Development Division

Ladies and Gentlemen of the Committee:

Let me provide a little background to help you understand this bill. When the Film Commission was formed several years ago, it called for the Governor to appoint a member to the Commission from each of the five Tourism Regions. Since that time, after careful review by the Travel and Tourism Commission, and after extensive consultation with the then existing Tourism Regions, a sixth Tourism Region was recognized by the state.

This bill is simply going to allow the sixth Tourism Region to also have a representative on the Film Commission. This will provide for the entire state to be represented on this Commission.

*Norine Kruse, Dir. of Travel & Tourism
March 18, 1994
Attachment 3*

Senate Concurrent Resolution No. 1626

By Committee on Commerce

2-22

9 A CONCURRENT RESOLUTION creating the Council on Privatization; designating its membership, authority and responsibilities; and requiring a report to the 1995 Kansas Legislature on its findings and recommendations.

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14 WHEREAS, The private sector should be encouraged to provide goods and services, traditionally provided by state government, when they can do so at a comparable quality and lower cost; and

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17 WHEREAS, The use of private contracts can potentially save tax dollars and improve the efficiency and effectiveness of services to the public; and

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20 WHEREAS, The State of Kansas and many other states, as well as the federal government, have undertaken initiatives with the goal of "reinventing government" and increasing the privatization of public services; and

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24 WHEREAS, The Governor and the Legislature are in need of specific recommendations that will increase the efficiency and effectiveness of state government, strengthen the role of the private sector, and lead to cost savings and reduce the tax burden of Kansas citizens: Now, therefore,

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29 *Be it resolved by the Senate of the State of Kansas, the House of Representatives concurring therein:* That there hereby is appointed the Kansas Council on Privatization; and

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32 *Be it further resolved:* That the council shall consist of ~~15~~ members chosen in the following manner:

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34 ~~(a) The President of the Senate, the Minority Leader of the Senate, the Speaker of the House and the Minority Leader of the House shall each appoint one member of the Kansas Legislature;~~

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37 ~~(b) the Governor shall appoint two members: A member of the Governor's cabinet and a classified employee of Kansas state government;~~

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40 ~~(c) the President of the Senate and Speaker of the House legislative coordinating council shall appoint jointly seven members as follows:~~

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43 (1) A member of the Kansas Chamber of Commerce and Industry;

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(2) a person who has been distinguished as a leader of the business community in Kansas and represents small business;

(3) a representative of a Kansas taxpayers' association or organization;

(4) ~~an elected official of local government in Kansas; the League of Kansas Municipalities shall appoint a local government official;~~

(5) a certified public accountant with experience in governmental auditing, accounting and budgeting;

(6) an attorney who is a member of the Kansas Bar Association; and

(7) a member of a state public employees' union;

~~(d) the Board of Directors of Kansas, Inc. shall appoint a private sector member of the board;~~ (c)

~~(e) the Kansas Board of Regents shall appoint a faculty member of a Kansas regents university with experience in state government and a record of research in public administration; and~~ (d).

~~(f) the chairperson of the council shall be selected by the President of the Senate and the Speaker of the House from among the private sector members of the council; and~~ (e) elected

Be it further resolved: That the council shall have the following responsibilities:

(a) Identify and study state governmental activities that may be in competition with the private sector;

(b) study the desirability and feasibility of contracting for private sector performance of governmental services;

(c) identify methods by which members of the public and private sectors can work together to accomplish desirable public policy objectives;

(d) identify barriers to making public sector operations more competitive;

(e) recommend administrative changes and prepare legislation that will eliminate barriers to privatization and modify state statutes and regulations that impede the private contracting of public services;

(f) study the possible impact of privatization on state employees;

(g) prepare legislation to establish an on-going process and entity that will ensure maximum use of privatization and private contracting by Kansas state government, including, but not limited to, a private enterprise review board that can receive petitions of interest from private business desiring to provide a public service, and petitions from the private sector alleging competition from the public sector; and

(h) provide the citizens of Kansas and members of the private

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1 sector an opportunity to give comments on these subjects through
2 the conduct of public hearings; and

3 *Be it further resolved:* That the Council on Privatization shall be
4 made a part of Kansas, Inc. Subject to appropriations acts relating
5 thereto, Kansas, Inc. shall provide staff support to the council. Mem-
6 bers of the council shall receive per diem and travel reimbursement
7 for their attendance at meetings of the council or its committees.
8 In addition, Kansas, Inc. shall provide private sector funds to support
9 the council; and

10 *Be it further resolved:* That agencies of state government shall
11 cooperate fully with the council and its staff in the provision of
12 information and data as may be requested and required to accomplish
13 its responsibilities. The council may call upon the Secretary of Ad-
14 ministration and the Director of Legislative Research to provide staff
15 support and assistance; and

16 *Be it further resolved:* That the council shall issue a final, written
17 report to the Governor, President of the Senate and the Speaker of
18 the House by January 20, ~~1955~~ 1995. The chairperson and members
19 of the council shall testify before the Kansas Legislature on their
20 findings and recommendations during the 1995 Legislature. The
21 council shall be abolished on June 30, 1995.