

Approved: 3/7/94
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Jerry Moran at 3:00 p.m. on February 17, 1994 in Room 531-N of the Capitol.

All members were present except: Senator Parkinson (excused)
Senator Vancrum (excused)

Committee staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Darlene Thomas, Committee Secretary

Conferees appearing before the committee:

Larry Welch, Director Kansas Law Enforcement Training Center
Ed Pavey, Kansas Law Enforcement Training Center
Jim Daily, Kansas Peace Officers Association
Lynn Fields, Sheriff's Association
Ronald Jackson, Kansas Association Chief's of Police
Bob Davenport, Kansas Law Enforcement Commission
Delbert Fowler, Chief, Derby
Gerald Beavers, Chief, Topeka
Jerry Slaughter, Kansas Medical Society
Lori Callahan, Kansas Medical Mutual Insurance Company
Bob Corkins, Kansas Chamber of Commerce and Industry
Jerry Palmer, Kansas Trial Lawyers
Ron Smith, Kansas Bar Association

Others attending: See attached list

SB 629--docket fees

Ed Pavey introduced Larry Welch, Director of the Kansas Law Enforcement Training Center who apologized for presenting testimony by video which was necessary due to being hospitalized. Mr. Pavey answered questions from the Committee and provided written testimony from Larry Welch in support of SB 629 (Attachment No. 1). Mr. Pavey said Larry Welch requested SB 629 become effective upon publication of the Kansas Register. When asked why the large decrease in funds in 1993, he said the shift in philosophy of the Kansas Highway Patrol caused a decrease in the number of citations issued.

Jim Daily, Kansas Peace Office Association, and Sheriff in Barton County testified in support of SB 629, provided written testimony (Attachment No. 2) and answered questions from the Committee.

Lynn Fields, Sheriff's Association, Crawford County Sheriff, testified in support of SB 629, provided written testimony (Attachment No. 3) and answered questions from the Committee.

Robert Davenport, Director of Kansas Bureau of Investigation testified for the Kansas Law Enforcement Training Commission in support of SB 629 and provided written testimony (Attachment No. 4).

Ronald Jackson, Kansas Association Chief's of Police, and Newton Police Chief testified in support of SB 629 and provided written testimony (Attachment No. 5).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 531-N Statehouse, at 3:00 p.m.
on February 17, 1994.

Delbert Fowler, Derby Police Chief testified in support of SB 629 and provided written testimony. He stated there was an desperate need for an increase in funding for the Kansas Law Enforcement Training Center (Attachment No. 6).

Gerald Beavers, Topeka Police Chief testified in support of SB 629 and answered questions from the Committee. He said there is a change in law enforcement philosophy and that change requires training, however, the training budget is usually the first item cut.

James Clark, Kansas County and District Attorneys Association testified in support of SB 629 and provided written testimony (Attachment No. 7).

Chairman Moran closed the hearings on SB 629. It will be addressed by the Committee at a later date.

SB 761--concerning the collateral source rule

Jerry Slaughter, Kansas Medical Society testified in support of SB 761 and provided written testimony (Attachment No. 8).

Marta Fisher Linenberger, attorney for Kansas Medical Society testified in support of SB 761, provided written testimony (Attachment No. 9) and answered questions from the Committee.

Lori Callahan, Kansas Medical Mutual Insurance Company testified in support of SB 761 and provided written testimony (Attachment No. 10). She asked that page two, line 37 of Sec. 7 be changed to read, "...on or after ~~April 16, 1993~~ July 1, 1994."

Brad Smoot, Kansas Civil Law Forum provided written testimony in support of SB 761 (Attachment No. 11).

Bob Corkins, Kansas Chamber of Commerce and Industry provided written testimony in support of SB 761 (Attachment No. 12).

Jerry Palmer, Kansas Lawyers Association testified in opposition to SB 761 and provided written testimony (Attachment No. 13).

Ron Smith, Kansas Bar Association testified in opposition to SB 761 and answered questions from the Committee. He referred to the Thompson case which does not say you cannot have a threshold. It says the insurance industry has to have a rational basis for such threshold.

The meeting adjourned at 4:45 p.m.

The next meeting is scheduled for February 18, 1994.

GUEST LIST

COMMITTEE: Senate Judiciary Committee

DATE: 2/17/94

[illegible]

#1

**The University of Kansas
Division of Continuing Education
Kansas Law Enforcement Training Center**

Fee Increase Proposal

The Kansas Law Enforcement Training Center, a unit of the Division of Continuing Education, is located at the former naval air station, which is situated south of the City of Hutchinson and west of the City of Yoder in Reno County, Kansas. Its mission, as expressed in the law enforcement training act, K.S.A. 74-5601 *et. seq.* is

the promotion and development of improved law enforcement personnel and procedures throughout the state, and the training center shall offer to qualified applicants . . . such programs and courses of instruction designed to fulfill this end.

Funding for the training center is currently provided from the law enforcement training center fund, as established by K.S.A. 74-5619, and enabled by K.S.A. 20-362 and K.S.A. 28-172a and K.S.A. 12-4117. Currently in accordance with the provisions of K.S.A. 20-362(e), the law enforcement training center fund receives \$5 from the docket fee charged in criminal and traffic-related cases in state district courts. This level of remittance from the docket fee was set by the legislature in its session of 1986. The training center also receives, in accordance with the provisions of 1992 HB 2238, \$4 from the docket fee charged in criminal and traffic-related cases in municipal courts. This level of remittance from the docket fee was set by the legislature in its session of 1992. No monies from the general revenue of the State of Kansas are involved in the funding of the operations of the center. This funding principle may be thought of as the "user tax" concept of funding for law enforcement training. That is, the monies generated come from those individuals who violate the laws of the State of Kansas. Law-abiding citizens do not participate in paying for law enforcement training.

In compliance with the promises made to the legislature in 1986, KLETC did employ an architect to develop a master plan for the facility. This plan encompasses both repairs and rehabilitation to the existing facility as well as the construction of desperately needed additional space. The construction of the multipurpose/gymnasium, lockers, restrooms, administrative offices and two new classrooms/seminar rooms has been completed. The new dormitory,

kitchen/dining spaces as well as the renovations of the instructor office space is currently in the design development phase.

Traditionally, since 1983, approximately 250,000 criminal docket fee transactions have occurred *per annum* in the State district courts, producing, at \$5 each, \$1,250,000 annually to fund the KLETC operating budget. KLETC, again, receives no general revenue monies, being funded exclusively from the law enforcement training fee fund and from a very small (approximately \$40,000 *per annum*) restricted fee income fund.

The Problem

There appears to have been a shift in enforcement philosophy in Kansas which has resulted in a significant decrease in the number of criminal and traffic-related cases in the State district courts. This change, insofar as we are able to determine, appears to be permanent and has resulted in a significant decrease in the monies deposited to the law enforcement training center fund. Deposits to the fund which had been averaging \$108,042 per month have averaged only \$82,069 for the period from December, 1992 through June, 1993 (See Chart "KLETC INCOME—District Court Docket Fee"). July and August, 1993 show a continuation of this trend with deposits of \$96,286 and \$87,704 respectively for an average of \$91,995.

As mentioned above, the current docket fee surcharge was set by the legislature in its session of 1986. However, in the seven years that have elapsed since that time, (1) the fixed costs of operating the KLETC have risen and (2) there has been a decline in the revenue generated by the surcharge. [(1) is caused largely by two factors: (a) the filling of some instructional staff positions which had been left vacant in order to have the monies to complete phases 1 and 2 of the master plan and (b) the bringing on-line of additional physical facilities as described in the master plan for KLETC; (2) is caused by the apparent shift in enforcement philosophy.] With the decline in the number of opportunities to collect the docket fee surcharge, it becomes clear that collecting it at the \$5 level will not generate sufficient income to operate KLETC.

The operating budget for FY 1994, as approved by the legislature is \$1,314,393. When projected into the future, assuming that the capital costs are funded, the operating budget costs rise as follows.

Fiscal Year	Authorized/ Projected Operating Budget	Estimated Income*	Annual Deficit	Increase Needed To Offset Deficit
1994	1,314,393	985,000	329,393	1.67
1995	1,380,112	985,000	395,112	2.01
1996	1,449,117	985,000	464,117	2.36
1997	1,521,572	985,000	536,572	2.72
1998	1,597,650	985,000	612,650	3.11
1999	1,677,532	985,000	692,532	3.52
2000	1,761,408	985,000	776,408	3.94

* Based on receipts in the law enforcement training center fund after the shift in enforcement philosophy.

As a consequence of the dramatic decline in the revenues collected in the law enforcement training center fund, the Kansas Law Enforcement Training Center has had to utilize some of the monies collected from the \$5 surcharge on fines levied in criminal cases in the municipal courts of this State. These monies had originally been intended to be used for the capital improvements costs associated with the master plan for KLETC; however, since state agencies cannot operate at a deficit, it was necessary to use these funds to make up the shortfall in the collections from the State district courts.

Conclusions and Recommendations:

Therefore, the University of Kansas, Division of Continuing Education, Kansas Law Enforcement Training Center, will request that the law enforcement training surcharge derived from criminal and traffic-related cases in the State district courts be raised from its present \$5 level to \$9, an increase of \$4. The monies derived from this increase will be utilized to fund the costs of operating the KLETC plus finish the construction as described in the master plan. It is expected that during some of the years of this collection, funds will be collected in excess of those needed for the operating costs. Any such monies so collected will be used for the continuing implementation of the capital improvements master plan. One form of such a usage might be to retire bonds issued to accomplish the goals specified in the master plan.

Failure to provide this infusion of additional capital will have several consequences, all of which are inimical to KLETC and its ability to carry out its statutorily mandated mission.

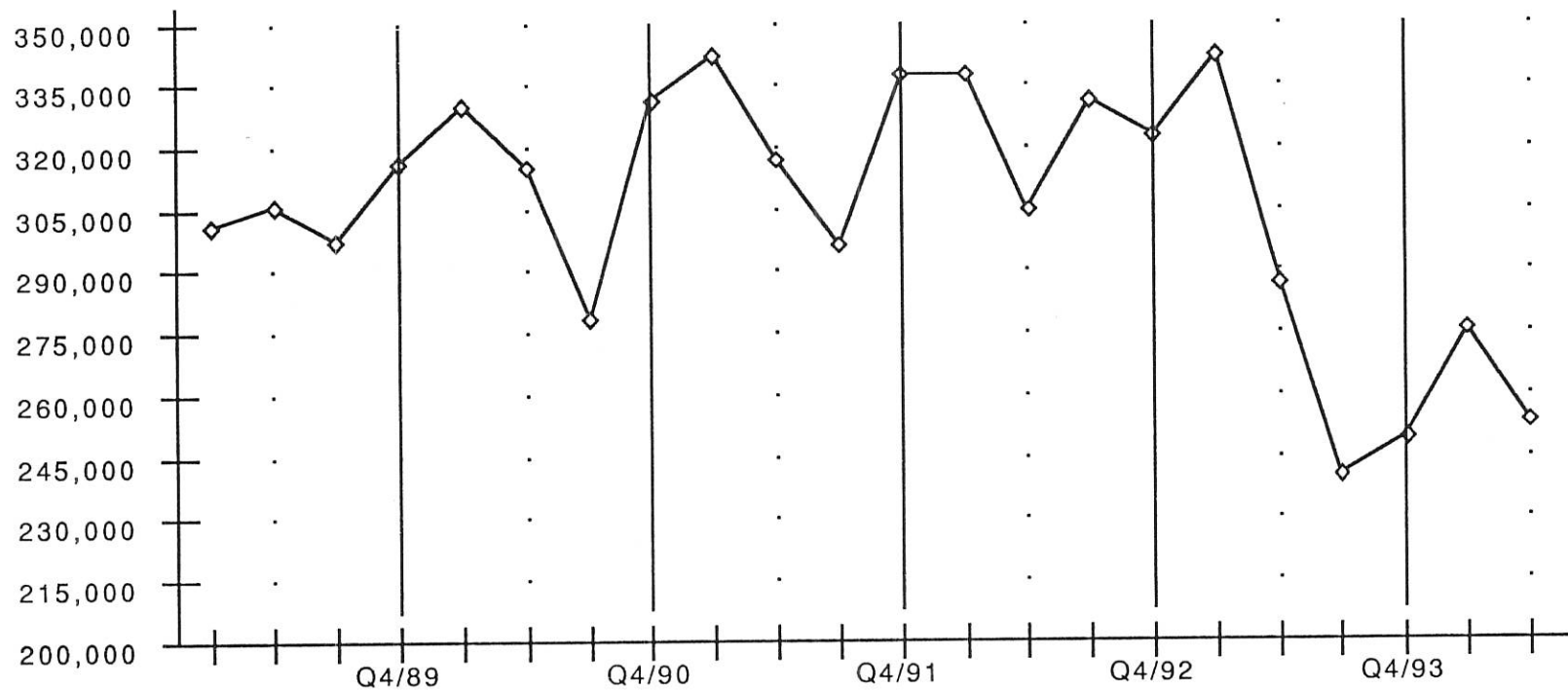
- KLETC will have to continue to use the monies from the municipal courts surcharge to fund that portion of its operating costs that are not provided from the district courts.
- The new additional facilities contemplated in the master plan will not be constructed which will mean that KLETC will not be able to comply with the training requirements for law enforcement officers as mandated in the law enforcement training act, K.S.A. 74-5601 *et. seq.*
- KLETC will be unable to eliminate the current backlog of training requests.
- KLETC will be unable to accommodate the increasingly frequent requests to train female officers on a timely basis due to the present inability to house them in sufficient numbers.

References above to operating costs are "bare-bones" only and do not reflect the following additionally needed capital expenditures which are not contained in the master plan:

1. Rebuilding of Firearms Range	200,000
2. Rebuilding of Driving Course	50,000
3. Resurfacing Parking Lot	35,000
4. FATS II (Firearms Training System)	85,000
5. Weight Machine and Nordic Exerciser	<u>35,000</u>
	405,000

KLETC Income — District Court Docket Fee

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Quarterly by Fiscal Year

◇ \$ by Quarter

Income and Cost Projections for KLETC

The following table assumes income based on the current fee structure.									
		Income	Income	Total			Total	Annual	
		District	Municipal	Projected	Operating	Capital	Projected	Projected	Cumulative
FY		Courts	Courts	Income	Budget	Improvements	Costs (1)	Balance	Balance
1993		1,121,819	811,587	1,933,406	1,194,981	480,391	-1,675,372	258,034	258,034
1994		985,000	944,000	1,929,000	1,314,393	1,971,433	-3,285,826	-1,356,826	-1,098,792
1995		985,000	944,000	1,929,000	1,380,112	1,415,783	-2,795,895	-866,895	-1,965,688
1996		985,000	944,000	1,929,000	1,449,117	1,023,730	-2,472,847	-543,847	-2,509,535
1997		985,000	472,000	1,457,000	1,521,572	187,543	-1,709,115	-252,115	-2,761,650
1998		985,000	472,000	1,457,000	1,597,650		-1,597,650	-140,650	-2,902,300
1999		985,000	472,000	1,457,000	1,677,532		-1,677,532	-220,532	-3,122,832
2000		985,000	472,000	1,457,000	1,761,480		-1,761,480	-304,480	-3,427,312
The following table assumes that a \$4 Increment is placed on the district court docket fee.									
		Income	Income	Total			Total	Annual	
		District	Municipal	Projected	Operating	Capital	Projected	Projected	Cumulative
FY		Courts	Courts	Income	Budget	Improvements	Costs (1)	Balance	Balance
1993		1,121,819	811,587	1,933,406	1,194,981	480,391	-1,675,372	258,034	258,034
1994		985,000	944,000	1,929,000	1,314,393	1,971,433	-3,285,826	-1,356,826	-1,098,792
1995		1,773,000	944,000	2,717,000	1,380,112	1,415,783	-2,795,895	-78,895	-1,177,688
1996		1,773,000	944,000	2,717,000	1,449,117	1,023,730	-2,472,847	244,153	-933,535
1997		1,773,000	472,000	2,245,000	1,521,572	187,543	-1,709,115	535,885	-397,650
1998		1,773,000	472,000	2,245,000	1,597,650		-1,597,650	647,350	249,700
1999		1,773,000	472,000	2,245,000	1,677,532		-1,677,532	567,468	817,168
2000		1,773,000	472,000	2,245,000	1,761,480		-1,761,480	483,520	1,300,688

UNIVERSITY OF KANSAS
KANSAS LAW ENFORCEMENT TRAINING CENTER

Number of Graduates From Full-time Basic Schools
FY 87 - FY 93

Kansas Law Enforcement Training Center 1,870 (64.8%)

Satellite Academies:

Johnson County Academy	245
Wichita-Sedgwick County Academy	269
Topeka Police Department Academy	119
Kansas City Police Department Academy	71
Lawrence Police Academy	<u>67</u>

Satellite Academies Sub-total 771 (26.7%)

State Satellite Academies:

Kansas Bureau of Investigation	37
Kansas Highway Patrol	<u>209</u>

State Satellite Academies Sub-total 246 (8.5%)

#2
February 17, 1994

To: Honorable Jerry Morgan
Chair, Senate Judiciary Committee.

Members of the Committee:

Good afternoon. I would like to thank the Chairman and the Members of the Committee for hearing my testimony today.

I am Jim Daily, President-Elect for the Kansas Peace Officers Association.

The K.P.O.A. supports Senate Bill 629.

Law Enforcement training in Kansas is something we can all be proud of. It has made substantial progress since its beginning. We have seen it grow from its infancy, from housing students in a Hutchinson hotel, and holding classes in small classrooms to its current location near Yoder.

Training Kansas Law Enforcement Officers, not only in the basic levels, but providing the best advanced specialized training, from accident reconstruction to homicide investigation has been paramount with the staff of K.L.E.T.C.

To further the effectiveness of its efforts K.L.E.T.C. developed a master plan to facilitate the raising training needs of Kansas Officers. A plan to meet not only the increasing requested training, but also the mandated training for our Officers.

Funding for this training has been supplied through District Court Docket Fees. A "user fee" if you will. No tax dollars from general revenues are used to operate the center.

The K.P.O.A. feels that this source of funding is in the best interest of not only Law Enforcement, but the tax paying citizens of our state.

Senate Judiciary
2/17/94
attachment 2-1

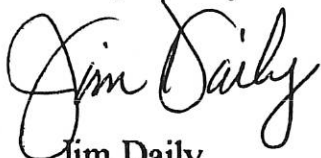
Raising the current Docket Fee from \$5.00 to \$9.00 will raise the needed funds for K.L.E.T.C. to continue providing the highest quality of training for Kansas Peace Officers.

If local units of Government were asked to pay for Basic Training for its officers, we would see a tremendous fiscal short-fall, adding to the already stressed local budgets, increasing the tax burden of the law abiding citizens of our state.

In closing; the K.P.O.A. urges the passage of SB 629 and that you amend this Bill to take effect upon publication in The Kansas Register.

Thank you very much for your time.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Jim Daily".

Jim Daily
Barton County Sheriff
K.P.O.A. President-Elect

Crawford County Sheriff

Lynn Fields

229 S. OZARK
P.O. BOX 157
GIRARD, KS 66743
(316) 724-8274 (316) 231-5377

KANSAS LEGISLATURE
TOPEKA, KANSAS
RE: SENATE BILL NO. 629

MEMBERS OF THE COMMITTEE:

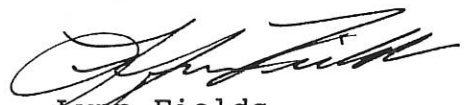
I am Lynn Fields, Sheriff of Crawford County and immediate past president of the Kansas Sheriffs Association. As current Chairman of the Legislative Committee for the Kansas Sheriffs Association, I am here to testify on behalf of and in support of Senate Bill 629.

The majority of law enforcement officers in the State of Kansas rely on the Kansas Law Enforcement Training Center for training and certification. Funding to continue the quality of training required for today's law enforcement officers is an absolute necessity.

The complexity of today's laws and crimes warrant a much more educated individual than ever before in our nation's history. We find ourselves out manned, out gunned and generally under equipped. Our only alleviation is the quality training presented to us by the Kansas Law Enforcement Center.

Training is expensive and we all know how tax payers balk at raising taxes. We can again assess those who violate the laws and keep those violators paying for the services imperative to maintain our safety, as well as our peace and dignity.

Respectfully submitted,



Lynn Fields
Crawford County Sheriff

lf/vv

Shirley Judson
2-17-04
attached 3-1



ROBERT B. DAVENPORT
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200

FAX: 296-6781



ROBERT T. STEPHAN
ATTORNEY GENERAL

**TESTIMONY
ROBERT B. DAVENPORT, DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE SENATE JUDICIARY COMMITTEE
IN SUPPORT OF SENATE BILL 629
February 17, 1994**

Mr. Chairman and Members of the Committee:

I am Robert Davenport, Director of the KBI, representing the Kansas Law Enforcement Training Commission.

The Kansas Law Enforcement Training Center is vital to Kansas Law Enforcement. Virtually every sheriff and police department in the state relies upon the KLETC to provide the mandated 320 hours training for basic certification of officers. Additionally, KLETC provides in-service and specialized training to hundreds of officers.

Last year KLETC furnished basic training to about 250 officers and provided outreach programs to 4653 officers. Kansas law enforcement will be severely hampered if KLETC is unable to fulfill its mission due to a lack of funding.

With increased concern over crime and violence throughout the state, this is not the time to reduce training to law enforcement officers.

The Training Commission gives wholehearted support for KLETC funding through an increase in court docket fees and fully endorses SB629.

*Senate Judiciary
2-17-94
attachment 4-1*



February 1, 1994

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Senator Jerry Moran
Chairman
Senate Judiciary Committee
State Capitol Building
Room 255-E

Topeka, KS 66612

Dear Senator Moran:

As President of Kansas Association of Chiefs of Police, I am writing to inform you of the Association's support of SB 629, District Court Docket Fee.

It is vital to the continuing operation of the Kansas Law Enforcement Training Center that the increase in docket fees be approved.

The current docket fee surcharge was set by the legislature in 1986. Since that time costs have increased, plus there has been a decline in the amount of revenue coming from district court. It is important to remember that the monies generated come from those individuals who violate the laws of the State of Kansas. Law-abiding citizens do not pay for law enforcement training.

The passage of this bill will allow the KLETC staff to work towards eliminating the back log of recruit training that now exists. Example: My department hired two officers early 1994. Due to the back log my officers cannot attend the academy until October 1995.

This does not meet the training requirements as mandated in the law enforcement training act, K.S.A. 74-5601 et.seq. The Kansas Association of Chiefs of Police support the passage of SB 629.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald G. Jackson", with a long, sweeping horizontal line extending to the right.

Ronald G. Jackson, President
Kansas Association of Chiefs of Police
Newton, Kansas

Senate Judiciary
2-17-94
Attachment 5-1

HEARING ON S.B. 629
SENATE JUDICIARY COMMITTEE
FEBRUARY 17, 1994

TESTIMONY OF DELBERT FOWLER, CHIEF OF POLICE, DERBY, KS

Chairperson Moran and other members of the Committee:

I am Delbert Fowler, Chief of Police for the City of Derby. I am here today supporting S.B. 629. We are in desperate need for an increase in funding for the Kansas Law Enforcement Training Center.

The majority of the Basic Law Enforcement training for cities, counties and the Kansas Wildlife and Parks is through KLETC. Unfortunately, due to the decrease in funds available, classes have had to be cancelled. The cancelation of these classes has caused a back log resulting in our officers not receiving there basic training in a timely manner.

Most departments in the State are of a small to medium size. They usually do not have the luxury of sending a new officer to a basic academy until they have been on the job for several months. The longer the wait, the more the potential for liability exists because of a lack of training.

I currently have two officers waiting to attend KLETC to receive their basic training. When we called to make arrangements for them to attend, we were told we would have to wait 14 or 15 months to get them in. Under Kansas law, they are supposed to attend within their first year of employment. Although there is a provision allowing the Director of the Kansas Law Enforcement Training Center to extend this time due to unexpected circumstances, the need is very real to cut this time as short as possible.

It is unfortunate that we have to come back to you so soon after asking for your support in 1992 to add costs to Municipal Court Dockets. No one at that time could foresee a shift in the enforcement philosophy in the State, thereby reducing the amount of funds coming from the docket fees of the District Courts.

Please remember this funding is not paid by the normal taxpayer but by persons violating the laws of the State.

I urge your support for S.B 629.

Senate Judiciary
2-17-94
attachment 6-1

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Kansas County & District Attorneys Association

827 S. Topeka Blvd., 2nd Floor • Topeka, Kansas 66612
(913) 357-6351 • FAX (913) 357-6352

EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

SENATE BILL NO. 629

The Kansas County and District Attorneys Association appears in Support of SB 629, which raises the docket fee for the law enforcement training center from \$5 to \$9. As a member of the committee that set up law enforcement standards and training, I have a personal as well as professional sense of pride in LETC.

Due to recent changes in the policy of the Kansas Highway Patrol, there has been a decline in the number of traffic tickets issued by that agency, to the economic detriment of those entities funded by docket fees on traffic tickets. An example of its effect on KCDAAs members is attached. In response to this decline in funding, a delegation of KCDAAs Board members and officers met with Superintendent McCollum and his staff to discuss KHP policies. The Colonel was very open and honest with us regarding changes in these policies, and it was apparent to KCDAAs that these changes will enhance public safety in Kansas, even at the economic detriment of docket fee funding.

Our Association has resolved to seek other avenues of funding for our members, one of which is to attempt to conduct more joint training with law enforcement officers, through LETC. Such planning is in the works for a domestic violence program this fall. This type of training, of course, demands that funding for LETC remain at its current level, and SB 629 is an effort to meet that goal.

Senate Judiciary
2-17-94
attached 7-1

KANSAS PROSECUTING ATTORNEYS TRAINING FUND
Comparison of 1992 / 1993 Income

<u>County</u>	<u>1992 Income</u>	<u>1993 Income</u>
Barton	\$3,999.00	\$2,322.00
Coffey	\$1,829.50	\$814.50
Cowley	\$3,634.00	\$2,678.00
Ford	\$3,113.50	\$2,837.00
Gove	\$794.00	\$625.50
Neosho	\$2,000.00	\$1,640.00
Osage	\$2,681.00	\$1,931.00
Pawnee	\$1,567.00	\$1,110.00
Riley	\$5,271.00	\$3,405.70
Russell	\$2,404.50	\$1,461.50
Seward	\$2,047.00	\$1,387.00
Thomas	\$2,540.00	\$1,821.00
<u>Washington</u>	<u>\$1,055.00</u>	<u>\$720.50</u>
Totals	\$32,935.50	\$22,753.70

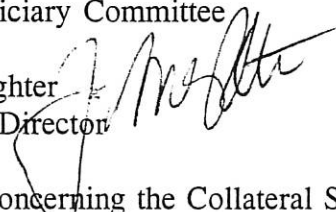


KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 17, 1994

TO: Senate Judiciary Committee

FROM: Jerry Slaughter
Executive Director 

SUBJECT: SB 761; Concerning the Collateral Source Rule

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 761, and we would also like to express our appreciation to the Committee for introducing this bill at our request.

SB 761 would reinstate legislation enacted in 1988 which abrogated the common law collateral source rule in personal injury actions. Last April the Kansas Supreme Court struck down this law on equal protection grounds because it applied only to cases in which the claimant's demand for damages exceeded \$150,000. The bill before you does not contain that \$150,000 threshold, but is identical in every other respect to the legislation enacted in 1988.

Simply put, this issue is about ending duplicate payments to plaintiffs in personal injury cases, wherein the collateral source rule serves to deceive the jury into believing the plaintiff has sustained monetary damages for which he or she has not been compensated. At the time of trial, a plaintiff whose medical expenses had been paid by his or her health insurance company, can nevertheless keep that information from the jury so that, in effect, the plaintiff is compensated again for expenses which have already been paid. This bit of deception not only drives up professional liability costs, for physicians in our case, but also keeps the jury from being fully informed about the true nature of the plaintiffs' losses.

We believe the bill before you is reasonable and fair in its application. It merely allows the defendant to produce evidence of collateral source payments so that the jury may take such evidence into consideration before an award is made. Additionally, the plaintiff may introduce evidence to show what it cost to secure the collateral source benefit, such as through the payment of health insurance premiums. That way, the plaintiff does not suffer any out-of-pocket loss.

This legislation was an integral part of the package of tort reform bills which were enacted by the Legislature by substantial majorities in the late 80's. For physicians, this law has played a substantial role in moderating the cost of professional liability insurance. This moderation has begun to reverse the trend of the mid-80's in which high professional liability costs were forcing physicians to retire early, discontinue providing high risk services, or leave our state altogether.

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It is significant to note that virtually all of the comprehensive health care reform proposals before Congress, including President Clinton's Health Security Act, call for eliminating the collateral source rule because of its costly implications for professional liability insurance.

The collateral source rule is an outdated common law rule which keeps relevant information from the jury, and creates a deception of uncompensated losses which drives up settlement and judgment costs. We would urge the Legislature to enact this law again, with the change of deleting the threshold provision which was struck down by the Supreme Court. We respectfully request your favorable consideration of SB 761, and appreciate the opportunity to appear today. Thank you.

JS:cb

TESTIMONY
SENATE BILL NO. 761

Members of the Committee,

I appreciate the opportunity to comment on Senate Bill 761 on behalf of the Kansas Medical Society. This is not the first time that the issue of abrogation of the collateral source rule has come before the Kansas Legislature. In 1976 and in 1985, this body acknowledged the need for changes to the collateral source rule. Notwithstanding two decisions of the Supreme Court finding infirmities in these laws, in 1988 the Kansas Legislature reaffirmed its commitment to reform of the collateral source rule. The Kansas Supreme Court again found constitutional impairments with that law. A brief history of the case law governing the collateral source rule in this state is beneficial in understanding the present bill.

In 1976 K.S.A. 60-471 permitted admission into evidence of reimbursement or indemnification received by a party (except payments from insurance paid for by the party or his employer). The distinction between gratuitous reimbursement and paid for reimbursement was deemed to be a violation of the equal protection and due process clauses of the United States and Kansas Constitutions. Wentling v. Medical Anesthesia Services, 237 Kan. 503 (1985). In 1987, K.S.A. 60-3403, which abrogated the collateral source rule in medical malpractice actions, was held unconstitutional. K.S.A. 60-3403 was enacted in 1985 and allowed the jury to receive evidence of payments made to the plaintiff from insurance. Because K.S.A. 60-3403 applied only to medical malpractice actions, it was held to violate the Kansas equal protection clause. Farley v. Engelken, 211 Kan. 663 (1987). In 1988, the abrogation of the collateral source rule was applied to all personal injury actions. It too was held unconstitutional under the equal protection clause based upon a distinction between claims under \$150,000 and claims over that amount. Thompson v. KFB Insurance, 252 Kan. 1010 (1993).

Senate Bill 761 differs from previous legislation and should be enacted. It does not discriminate against the gratuitous receipt of benefits as did K.S.A. 60-471; it applies to all personal injury cases, not simply medical malpractice cases as did K.S.A. 60-3403; and it does not distinguish between claims over \$150,000 as did K.S.A. 60-3802. Senate Bill 761 allows the jury to consider benefits paid as well as amounts paid to secure those benefits. It falls equally upon all classes of personal injury plaintiffs and defendants. It substantiates the trust placed in the jury system by our forefathers by allowing juries to hear all the evidence related to damages. Senate Bill 761 is virtually identical to K.S.A. 60-3801 et seq., without its constitutional infirmities. Because the societal basis for that legislation has not changed, this committee should adopt and include in its

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deliberations the legislative history of that Act.

The collateral source rule is simply a rule of evidence that allows a plaintiff to sit in the witness chair and claim that they are entitled to recover for expenses that have already been paid. With federal legislation governing employee benefit plans, some companies have the right to subrogate for medical expenses paid on behalf of a claimant. Other companies, governed by state law, do not. See FMC Corp. v. Holliday, 111 S.Ct. 403 (1990) (self-funded plans exempt from state laws regulating insurance). Without admission of evidence of benefits received and rights of subrogation or liens, there is the danger of inequity of recovery among plaintiffs. Some receive a windfall in the form of double recovery, others do not.

The collateral source rule simply effects an unfair and unjustifiable result in the modern tort environment and legal commentators have concluded for two decades that it should be abolished.

The need for preservation of the collateral source rule no longer exists. Insurance is more common than not. Even jurors know that, although unspoken, insurance permeates every case. The need for modification or abolition of the rule is great. Of all tort reform measures, abrogation of the collateral source rule and caps have proven to be most effective in reducing insurance costs. Costs and availability of liability insurance continues to be a problem today, as it was in the 1980s. The people of Kansas, speaking through their elected representatives on three separate occasions, have demonstrated their commitment to the jury system and their belief in the ability of a jury to receive all the evidence and evaluate all the evidence in a case by calling for abolition of the collateral source rule.

Marta Fisher Linenberger
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515 S. Kansas Avenue
Topeka, KS 66603
(913) 233-0593

KaMMCO
KANSAS MEDICAL MUTUAL INSURANCE COMPANY
AND
KANSAS MEDICAL INSURANCE SERVICES CORPORATION

TO: Senate Judiciary Committee
FROM: Lori Callahan, General Counsel
RE: S.B. 761
DATE: February 17, 1994

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas domestic, physician-owned, professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures over 1,000 Kansas physicians.

KaMMCO supports S.B. 761. As a part of the tort reform package of the late 1980's, the Kansas Legislature enacted collateral source legislation designed to eliminate duplicate recoveries. This 1988 legislation was one of the premier components of tort reform and had a substantial effect on stabilizing liability rates.

The concept of collateral source legislation is to prevent unjust enrichment by a plaintiff. Without this legislation, plaintiffs are allowed to accept, without any obligation of repayment, full medical benefits from their health insurer and then allege as damages those same medical costs in the liability suit. This thereby allows a plaintiff to recover twice for the same damages.

The profound effect of this rule can be shown in a case where the plaintiff has had \$500,000 in medical damages fully paid by their health insurer. In such a case, which is not an atypical medical malpractice case, the plaintiff would receive an additional \$500,000 as a part of their award in the medical malpractice case. This money is not repaid to the health insurer. Thus, plaintiff receives not only all past and future lost economic damages such as wages, all pain and suffering and disability and disfigurement, but an additional one half million dollars over their actual damages. This jackpot, which allows unjust enrichment, further encourages litigation.

In April 1993, in the case of Thompson v. KFB Insurance Co., 252 Kan. 1010 (1993), the Kansas Supreme Court held the 1988 collateral source law unconstitutional based upon a technical aspect of the 1988 legislation. That constitutional infirmity has been addressed in S.B. 761. Passage of this legislation is necessary for reenactment of the collateral source rule.

In recognition of the significant effect the collateral source rule has on medical malpractice losses, thereby increasing health care costs, President Clinton has promoted enactment of the collateral source legislation to eliminate double recoveries as a part of his health care package.

Endorsed by the Kansas Medical Society

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Memo to Senate Judiciary Committee
February 17, 1994
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Even with the 1988 collateral source legislation, Kansas was in the top one fourth of all states in the highest medical malpractice insurance premiums. Without reenactment of this legislation, Kansas stands to lose considerable ground in its fight for tort reform, harkening back to the day when doctors were leaving our state for more tenable litigation environments. The enactment of this collateral source legislation in 1994, will be the fourth time the Kansas legislature has considered and passed such collateral source reform.

KaMMCO would request one amendment to S.B. 761. In order to assure this legislation meets constitutional scrutiny, we would propose the date in Section 7 be changed from the date of the most recent Supreme Court case to the date of enactment. This proposed amendment is attached.

We would ask the Senate Judiciary Committee to adopt all prior Legislative history pertaining to the passage of this collateral source legislation including recognition that this legislation will only pertain to cases of personal injury not property damage since there has never been evidence presented to the Legislature on the lack of availability of property insurance due to the collateral source rule, while the evidence regarding lack of availability of insurance for personal injury has been overwhelming. S.B. 761 is critical to the preservation of the stable environment experienced in Kansas prior to the Thompson decision in April 1993. We would ask the committee to vote this bill favorable for passage.

SENATE BILL No. 761

By Committee on Judiciary

2-14

8 AN ACT concerning collateral source benefits in certain actions for
9 damages; repealing K.S.A. 1993 Supp. 60-3801, 60-3802, 60-3803,
10 60-3804, 60-3805, 60-3806 and 60-3807.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this act:

14 (a) "Claimant" means any person seeking damages in an action
15 for personal injury or death, and includes the heirs at law, executor
16 or administrator of a decedent's estate.

17 (b) "Collateral source benefits" means benefits which were or are
18 reasonably expected to be received by a claimant, or by someone
19 for the benefit of a claimant, for expenses incurred or reasonably
20 certain to be incurred as a result of the occurrence upon which the
21 personal injury action is based, except life or disability insurance
22 benefits or benefits gratuitously bestowed on the claimant. Such term
23 shall not include:

24 (1) Services or benefits for which a valid lien or subrogation
25 interest exists; however, nothing in this act shall be construed to
26 create or modify lien or subrogation interests not otherwise allowed
27 by law; and

28 (2) amounts included as part of a criminal sentencing order or
29 pursuant to state programs of victims assistance incurred by virtue
30 of the defendant also committing a criminal act.

31 (c) "Cost of the collateral source benefit" means the amount paid
32 or to be paid in the future to secure a collateral source benefit by
33 the claimant or by anyone on behalf of the claimant. If the amount
34 of any benefit paid or to be paid encompasses amounts paid over a
35 period of time, thus making the benefit greater than it would be
36 without such amounts paid, then evidence of such amounts paid shall
37 be admissible in determining the cost of the collateral source benefit.

38 (d) "Net collateral source benefits" means the sum of collateral
39 source benefits after subtracting the cost of the collateral source
40 benefit.

41 Sec. 2. In any action for personal injury or death, in which the
42 claimant demands judgment for damages, evidence of collateral
43 source benefits received or evidence of collateral source benefits

1 which are reasonably expected to be received in the future shall be
2 admissible.

3 Sec. 3. When evidence of collateral source benefits is admitted
4 into evidence pursuant to section 2, evidence of the cost of the
5 collateral source benefit shall be admissible.

6 Sec. 4. In determining damages in an action for personal injury
7 or death, the trier of fact shall determine the net collateral source
8 benefits received and the net collateral source benefits reasonably
9 expected to be received in the future. If the action for personal
10 injury or death is tried to a jury, the jury will be instructed to make
11 such determination by itemization of the verdict.

12 Sec. 5. (a) The amount of the judgment shall be reduced by the
13 court by the amount of net collateral source benefits received, or
14 reasonably expected to be received in the future but only to the
15 extent that such benefits exceed the aggregate amount by which:

16 (1) Such judgment was reduced pursuant to subsection (a) of
17 K.S.A. 60-258a and amendments thereto;

18 (2) the claimant's ability to recover such judgment was limited
19 by the application of subsections (c) and (d) of K.S.A. 60-258a and
20 amendments thereto, other than by virtue of claimant's settlement
21 with or decision not to assert a legally enforceable claim against a
22 named or an unnamed party;

23 (3) the amount to which the claimant's ability to recover such
24 judgment was limited by the insolvency or bankruptcy of a person;
25 and

26 (4) the award of damages has been reduced because of a statutory
27 limit upon the recovery of damages.

28 (b) If there is no amount falling within subsection (a)(1) through
29 (4) then the court shall reduce the judgment by the full amount of
30 the net collateral source benefits.

31 Sec. 6. If any provision or clause of this act or application thereof
32 to any person or circumstances is held invalid, such invalidity shall
33 not affect other provisions or applications of the act which can be
34 given effect without the invalid provision or application, and to this
35 end the provisions of this act are declared to be severable.

36 Sec. 7. The provisions of this act shall apply to causes of action
37 pending in any court on or after ~~April 16, 1993~~-----July 1, 1994

38 Sec. 8. K.S.A. 1993 Supp. 60-3801, 60-3802, 60-3803, 60-3804,
39 60-3805, 60-3806 and 60-3807 are hereby repealed.

40 Sec. 9. This act shall take effect and be in force from and after
41 its publication in the statute book.

10-01

#11

KANSAS CIVIL LAW FORUM

A Coalition of Professionals and Businesses Interested in the Kansas Court System

Brad Smoot, Coordinator
Mercantile Bank Building
800 SW Jackson, Suite 808
Topeka, Kansas 66612
(913) 233-0016 FAX (913) 234-3687

STATEMENT OF BRAD SMOOT, LEGISLATIVE COUNSEL FOR THE KANSAS CIVIL LAW FORUM

SUBMITTED TO THE KANSAS SENATE JUDICIARY COMMITTEE REGARDING 1994 SENATE BILL 761, FEBRUARY 17, 1994

Mr. Chairman and Members of the Committee:

I am Brad Smoot, coordinator for the Kansas Civil Law Forum, a coalition of numerous businesses, professionals and trade associations interested in Kansas civil law. A copy of our membership list is attached.

The Kansas Civil Law Forum supports the passage of 1994 Senate Bill 761. We believe that the common law collateral source rule unfairly increased damage awards and that the legislature acted wisely in changing the rule in 1988. Unfortunately, the 1988 law contained a dollar threshold which ultimately made the entire act unconstitutional. We support the reenactment of the statutorily-created collateral source rule without such a threshold.

KCLF members believe that reducing expensive litigation and promoting reasonable damage awards can be accomplished through moderate statutory rules and limitations. The rule proposed for reenactment in Senate Bill 761 is just such a measure and we urge the Committee to favorably consider this bill.

Ms. Lori Callahan, General Counsel for KaMMCO and a KCLF member, appears on behalf of the KCLF and will present additional information for the Committee.

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KANSAS CIVIL LAW FORUM
A Coalition of Professionals and Businesses
Interested in the Kansas Court System

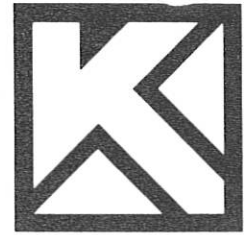
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KCLF MEMBERSHIP LIST

AIA Kansas
Alderson, Alderson, Montgomery & Newbery
Beech Aircraft Corporation
The Boeing Company
The Coleman Company, Inc.
Farmer's Insurance Group
Gehrt & Roberts, Chtd.
Glaxo
KPL Gas Service
Kansas Association of Defense Counsel
Kansas Association of Property & Casualty Insurers
Kansas City Power & Light
Kansas Hospital Association
Kansas Medical Mutual Insurance Company
Kansas Medical Society
Kansas Optometric Association
Kansas Railroad Association
Marion Merrell Dow, Inc.
Professional Independent Insurance Agents of Kansas
Puritan Bennett Corporation
Shook, Hardy & Bacon, P.C.
Southwestern Bell
Western Retail Implement & Hardware Association

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732

SB 761

February 17, 1994

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Judiciary

by
Bob Corkins
Director of Taxation

Honorable Chair and members of the Committee:

My name is Bob Corkins, director of taxation and small business development for the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express our members' support for the collateral source tort reform proposition contained in SB 761.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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The business community's concern with this area of law should be apparent to everyone. For many decades, our organization has been an active force in working to restrain business costs through fair judicial reforms, thereby protecting jobs, creating jobs, curbing inflation, and developing the earning power of Kansans at large.

We view this proposal as embracing those efforts -- goals which are as important to our small businesses as they are to large. KCCI has consistently supported the collateral source rule concept with that in mind. Moreover, SB 761 would advance a reform which is one of simple equity: no claimant should receive unjust enrichment by getting compensated twice for the same injury. Thompson v. Kansas Farm Bureau acknowledged the deprivation of equal protection inherent in our current dollar threshold for admitting collateral source benefit evidence.

Consequently, we respectfully ask that you endorse today's proposal and recommend it favorably to the full Senate. Thank you again for your time and consideration.



KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
SENATE JUDICIARY COMMITTEE

S.B. 761

February 17, 1994

The simple premise of the Collateral Source Rule which this statute seeks to overcome is that if the plaintiff has secured unto himself insurance against risks and then he is wrongfully injured by another person, that the wrongdoer should not benefit from the foresight of the innocent injured person in securing insurance. The proposed statute would work an inequity between those who have financial resources and do not need to buy insurance who can then claim their entire damages from the wrongdoer versus those who have to participate in insurance pools and have regularly paid premiums and under this proposal will have at least the burden of proving up future benefits and premiums. (Are there any legislators who feel they could make that proof in the current climate of health care reform?)

The purpose of tort law is two-fold:

- (1) To compensate the victim; and
- (2) To deter other wrongdoers from like conduct.

In a simple example, a driver who is reckless and can no longer be insured in the standard insurance pools is in the assigned risk pool and pays a much larger premium in order to exercise the privilege of driving an automobile, which encourages better driving. The more the cost is actually shifted from the innocent injured to the wrongdoer, the better the deterrent affect.

That same theory should apply across the board in terms of negligent manufacturers, doctors and drivers.

The Collateral Source Rule is a Common Law Rule:

The courts in fashioning the tort system to achieve the dual goals of compensation and deterrence decided that the Collateral Source Rule made sense in tort law. Four times the Legislature has attempted to overcome that judicial policy and four times it has for one reason or

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another been found unconstitutional. There is great hostility in the judicial system to modifications to the Collateral Source Rule and its underlying policy. The Legislature should give some consideration to its sister branch of government as to whether it should enact policy in this area unless there is some very compelling need to do so.

Medical Malpractice and the Collateral Source Rule:

The basic bargain between injured victims and the medical profession was the original act which set up the Health Care Stabilization Fund in the mid-70s. At that time the medical industry agreed to provide a fund that would provide unlimited coverage to health care providers to satisfy the judgment of persons injured by medical malpractice. Later on that coverage was reduced to \$3,200,000 which in all but a handful of cases was adequate. Since then the Fund has been scheduled to be phased out and the mandatory coverages are \$200,000 primary and \$100,000 excess, which will undercompensate a substantial number of cases.

The Fund only will provide up to a total of \$1 million worth of coverage and higher levels of insurance aren't even available through the State Fund. The medical industry has systematically disassembled the protection for the injured that it promised when it started getting concessions from the Legislature to interfere in the tort system. It is therefore fundamentally unfair for the Legislature to further the agenda of the medical industry in this way by passing a collateral source limitation or in giving any further benefits to this industry which burdens the innocent injured in Kansas. The industry cannot show dislocations because of the abrogation of this statute on constitutional grounds, cannot show any great detriment to the system in Kansas if you do not pass this legislation, and cannot even show a premium impact if you do. That's of course assuming that the small premium impact on malpractice insurance this would have should be of any consequence to this Legislature in any event as a matter of public policy; what goal of society is served by slightly higher profits for the medical industry?.

Timeliness:

The medical industry asked for this special benefit, but recognizing that it can't ask for it alone, asked it to be imposed on all tort cases benefiting drunk and negligent drivers, irresponsible manufacturers, as well as negligent doctors and hospitals. (If you aren't negligent, you don't benefit, because it is only the persons found to be wrongdoers who don't have to pay the additional cost imposed by the Collateral Source Rule once they are found liable.)

Health care reform is an enormous issue in this legislative session and in this Congress. Virtually every congressional plan for health insurance involved some modification of the Collateral Source Rule in medical malpractice actions only. The constitutional issues for collateral source at the federal level are different than they are at the state level, and it is not likely that anything Congress will do will be disturbed by the United States Supreme Court. Thus, if we really expect within the next year or two that health care will be dealt with broadly by Congress, then we can full well expect that the collateral source issue will be likewise dealt with in that package. Even the Clinton proposals have limitations on recovery for collateral sources in malpractice cases, and at least one of the Democratic and all of the Republican plans likewise have

that feature and other more stringent limitations on medical malpractice actions.

If the medical industry in Kansas has a problem, it won't be there for long, and whatever solution this Legislature imposes, will have a short-lived effect and there is no compelling reason to have any kind of "bridge" on collateral sources since we yet to have a legal limit on the Collateral Source Rule up until 1994.

The legislation is overly broad and impacts a whole variety of other insuring mechanisms adversely. The Kansas Supreme Court statistics indicate that the overwhelming volume of litigation involved vehicular collisions. Personal injury protection benefits are subrogated. Thus, any alteration like the one proposed for the Collateral Source Rule necessarily has to mean less recovery by subrogation for personal injury protection benefits paid by insurers, and thus a premium impact for higher personal injury protection benefits in all auto insurance policies should be expected, since all policies have personal injury protection benefits mandated by statute. Thus, every Kansan who owns an automobile is liable to sustain some premium impact on the medical benefit side for a higher premium. It may be argued that there will be some reduction on the liability side that will offset this, but it might be hard to find historic examples to support that conclusion.

The Act would likewise affect medical benefits provided under ERISA where subrogation is provided to these employee benefit health insurance plans which will then likewise involve some premium impact to the employers (or to their employees), again a much larger base than the few entities involved in the medical industry that might theoretically benefit.

Taxpayers themselves will have lose something in the inability to recover subrogation for SRS benefits and Medicare benefits.

Conclusion:

For very good policy reasons, the Legislature should let the judiciary decide this issue as the issue has been decided up to this point in the courts. That in order to assist the medical industry it is unjustified to affect the rest of tort litigation where the benefits are going to be lost by innocent injured and reaped by negligent wrongdoers. Even if the medical industry can make a compelling argument for a Collateral Source Rule limitation in Kansas, the impact of that rule in view of the National Health Insurance Program would be one of a relatively short life and the Legislature can be spending its time on issues which will have more impact over a longer period of time, rather than issues that have a little impact on a few people for a short time.

The desirability of the proposal is further diminished by the shift of cost to the consumers of automobile insurance and the employers who through ERISA provide benefits for their employees as well as taxpayers.