

## MINUTES

### SPECIAL COMMITTEE ON INSURANCE

October 27, 2008  
Room 143-N—Statehouse

#### Members Present

Representative Clark Shultz, Chairperson  
Senator Ruth Teichman, Vice-Chairperson  
Senator David Haley  
Senator David Wysong  
Representative Anthony Brown  
Representative Cindy Neighbor  
Representative Virgil Peck  
Representative Scott Schwab  
Representative Vince Wetta

#### Staff Present

Melissa Calderwood, Kansas Legislative Research Department  
Kelly Navinsky-Wenzl, Kansas Legislative Research Department  
Bruce Kinzie, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Sean Ostrow, Office of the Revisor of Statutes

#### Conferees

Margaret Farley, Kansas Association for Justice (KsAJ)  
Charles “Chip” Wheelen, Health Care Stabilization Fund  
John Campbell, Kansas Insurance Department  
Steve Dickerson, Kansas Association for Justice  
Jerry Slaughter, Kansas Medical Society  
Kurt Scott, Kansas Medical Mutual Insurance Company (KaMMCO)  
Tom Bell, Kansas Hospital Association  
Rachelle Columbo, Kansas Chamber (written)  
Craig Van Aalst, Kansas Insurance Department  
Kenneth Daniel, Midway Wholesale, KsSmallBiz.com  
Shirley Martin Smith, Adecco (written testimony)  
Laurie McDonald, Adecco (written testimony)  
Derrick Sontag, National Federation of Independent Business—Kansas (NFIB)

Tim Witsman, Wichita Independent Business Association and the Kansas Independent Business Coalition (written)

## Others Present

See attached list.

## Monday, September 27 Morning Session

Chairman Clark Shultz called the meeting to order at 10:05 a.m. and welcomed everyone to the meeting. The Chairman noted the three topics assigned by the Legislative Coordinating Council (LCC) and indicated the Committee would begin its work with the review of Topic 3.

Study 2008 HB 2782 which would have enacted the Kansas Medical Liability Reform Act. The proposed legislation would have required the collection of Kansas specific information about medical malpractice litigation costs. Review the possibility if such additional reporting requirements were enacted how they could best be coordinated with other reporting requirements. Review and analyze relevant model acts of the National Association of Insurance Commissioners that might relate to HB 2782.

Margaret Farley, Attorney-at-law and President, Kansas Association for Justice, (Attachment 1), presented information on 2008 HB 2782 and the issue of reporting information on medical malpractice insurance claims.

Ms. Farley noted the bill was based on a Tennessee law and indicated that other states have laws or regulations that facilitate the collection of medical malpractice insurance claim information by regulators. The common thread, Ms. Farley continued, is to collect objective data that can be used in considering sound public policy. KsAJ requested the bill introduction to focus legislative attention on the need for reliable, objective, and scientific/empirical research to inform future public policymaking. The conferee noted that, according to statistics compiled by Kansas courts, only two percent of cases filed in FY 2005 were personal injury cases; and only 115 cases decided by Kansas juries in 2004 were torts. Federal court cases have seen a decline by 79 percent in the number of tort trials that ended in U.S. district courts from 1985 through 2003. Ms. Farley indicated that the current statistics are not updated frequently and leave a number of questions about the frequency of and costs of litigation in Kansas. Some data is unique to Kansas and does not allow for reliable state-to-state comparison.

Committee members asked questions about the National Association of Insurance Commissioners (NAIC) model law and if the Association had interest in detailing data specific to rewarded versus punitive damages.

Charles "Chip" Wheelen, Executive Director, Health Care Stabilization Fund, (Attachment 2), presented information on medical professional liability claims reporting.

Mr. Wheelan gave a brief overview of the Health Care Provider Insurance Availability Act and its components and then discussed the statutory requirements for claims reporting (an annual

reporting requirements including “the number of judgments paid from the fund” and “the number of settlements paid from the fund” for the preceding fiscal year, KSA 40-3403). Mr. Wheelen also noted the Health Care Stabilization Fund Oversight Committee, which includes legislative members, that meets annually to receive reports, including a complete description of claims activity during the preceding fiscal year accompanied by a history of claims activity. Mr. Wheelen attached a copy of the FY 2007 report to his comments.

A Committee member asked about the provision of excess coverage by the state (through the Fund Plan), rather than by excess carriers. Mr. Wheelen responded that Kansas has the benefit of stability and a provider, such as a hospital, may not be satisfied with coverage at the \$200,000/\$800,000 level and may choose to purchase more coverage.

Chairman Shultz next recognized Melissa Calderwood, Legislative Research Department, ([Attachment 3](#)), to provide an overview of the proposed legislation and a review of the 2009 Legislature’s action on the bill.

Ms. Calderwood described the bill, HB 2782, as a bill that would have enacted the Kansas Medical Liability Reporting Act which would have required specified reporting entities (insurance companies, including the Health Care Stabilization Fund, and health providers who do not have professional liability coverage) to submit an annual report about their operations and medical malpractice and health care professional liability claims to the Kansas Insurance Department. Ms. Calderwood highlighted the initial reporting requirements and reporting requirements to the Kansas Legislature. She also provided background information about the request for the legislation (Kansas Association for Justice) and a hearing held on the bill in the House Committee on Insurance (February 25, 2008). Additionally, Ms. Calderwood presented information on the fiscal note for the bill, as estimated by the Kansas Division of the Budget. Finally, Ms. Calderwood noted a copy of the National Association of Insurance Commissioners (NAIC) model, “Medical Professional Liability Close Claim Reporting Model Law,” was available for review by the Committee.

The Chairman then opened the meeting to discussion on the 2008 legislation, current and proposed reporting requirements and any relevant model law.

John Campbell, General Counsel, Kansas Insurance Department, ([Attachment 4](#)), presented a review of the 2008 NAIC Model Law ([Attachment 5](#)).

Mr. Campbell indicated the Department would be proposing a substitute bill, noting the NAIC model law. Mr. Campbell indicated the Department hopes to have the Model Law ready for introduction in the 2009 Session and work is being done now to review the Guideline for Implementation of Medical Professional Liability Closed Claim Reporting at the NAIC committee level. Mr. Campbell noted the advantages of implementing the Model Law over the HB 2782 include national uniformity and cost and Kansas will have the opportunity to work with other states and develop a reporting system that is complete, secure and cost efficient.

In responding to a question from the Committee, Mr. Campbell indicated that using information can be difficult, especially for the purposes of comparison. Mr. Campbell also noted that some of the difficulties with selecting a national comparative reporting system is the terminology used from state to state (examples cited include “medical provider” and “self-insurer”).

Steve Dickerson, Legislative Vice-President, Kansas Association for Justice, ([Attachment 6](#)), next presented testimony on the proposed legislation and on the broader topic of the collection of data on medical malpractice insurance claims.

Mr. Dickerson noted that there is an emerging regulatory trend towards collecting insurance data on medical liability claims for the purpose of informing public policy, citing both a 2003 GAO report and the recent efforts of the NAIC. Mr. Dickerson responded specifically to issues raised during the 2008 hearing on the bill, including cost (the actual cost may not be as great as the fiscal note suggested for the bill and a differently-drafted bill would have different fiscal impact). Mr. Dickerson further noted that to the extent the data is already collected in Kansas pursuant to reporting requirements for the National Practitioner Data Bank (NPDB), the Health Stabilization Fund, and the Board of Healing Arts, the cost of additional reporting to the Insurance Department would appear to be marginal. Mr. Dickerson responded to the questions raised at the hearing about the duplication of reporting requirements, noting the concern has merit and redundancy should be avoided. He stated that it must be determined if the data insurers currently report is easily accessible by the Legislature from the NPDB and in a form that would lend itself to analysis by policymakers. Finally, Mr. Dickerson responded to the issue of privacy and confidentiality, stating that both must be considered in crafting future legislation and that HB 2782, other states, and the NAIC model have addressed these issues.

Committee members asked questions about data similarities from state-to-state and whether hospitals and other providers will have additional information gathering and reporting requirements. Mr. Dickerson responded that it would be a very rare occurrence for a single provider to have a reporting requirement (the provider is required to carry insurance).

Jerry Slaughter, Executive Director, Kansas Medical Society, (Attachment 7), then appeared before the Committee to discuss whether Kansas should enact new laws requiring the reporting of detailed information about medical malpractice litigation costs.

Mr. Slaughter indicated that the Medical Society, as was stated at the February bill hearing, is not opposed to the reporting of meaningful claims and financial information related to medical malpractice litigation, but the Medical Society does have concerns about imposing a new reporting requirement because it appears duplicative and unnecessary. Mr. Slaughter further indicated that the Medical Society would not support enactment of any new reporting requirement until it has had an opportunity to carefully study the NAIC model law. Mr. Slaughter noted the current reporting requirements for the Health Care Stabilization Fund and indicated the only area in which the Fund's closed claim information is incomplete is in the smaller claims (those in which the indemnity payment is under the "basic coverage" threshold of \$200,000). One way to address this would be to amend the Fund law to give the Fund statutory authority to require all insurers and self-insurers to report closed claim information on these smaller claims. Mr. Slaughter concluded his remarks by encouraging consideration of such an amendment and considering reporting of information regarding the cost of claim prosecution borne by plaintiffs in medical malpractice claims.

A Committee member then reviewed the Health Care Stabilization Fund report with Mr. Slaughter and indicated support for having the claims information for those closed claims less than \$200,000. The member questioned the issue of claim frequency and affect on premium and noted the value of other states' experiences. Mr. Slaughter responded the Medical Society believes tort reform is working well in Kansas and the Medical Society is concerned about the requirements, especially some of the definitions, and does not want to see a good system upset or the imposition of more costs.

Kurt Scott, Chief Operating Officer, Kansas Medical Mutual Insurance Company (KaMMCO), (Attachment 8), next presented testimony before the Committee on the issue of medical malpractice claims reporting.

Mr. Scott indicated that KaMMCO is a proponent of transparency in the medical professional liability insurance business. Mr. Scott indicated that KaMMCO opposes HB 2782 due to concerns that nearly all of the information requested (with the exception of the claimant's Social Security number and name of the plaintiff attorney) is already contained in numerous reports filed with various state agencies and national statistical agencies. Reports cited include the filing of an Annual Statement (form prescribed by NAIC), annual auditing requirements, and filing of quarterly data to a national statistical agency, the Insurance Services Office (ISO). Additionally, reports are required to be filed with the Health Care Stabilization Fund, the State Board of Healing Arts, and the National Practitioner Data Bank. Mr. Scott also indicated it would be prudent to wait for the work of the NAIC on its model law to determine if it meets the needs of the State. Mr. Scott concluded, noting that privacy and confidentiality provisions in HB 2782 would need to be addressed.

Charles L. Wheelen, Health Care Stabilization Fund, ([Attachment 9](#)), again appeared before the Committee. Mr. Wheelen indicated he Health Care Stabilization Fund Board of Governors believes HB 2782 would create redundant reporting requirements for their agency and would incur unnecessary additional costs.

Mr. Wheelen noted that the Health Care Stabilization Fund is not a commercial insurance company, but instead is a product of a successful public-private partnership which is a result of the Health Care Provider Insurance Availability Act. Mr. Wheelen noted that the agency is directly accountable to the Legislature and each year provides an extensive report to the Legislature's Health Care Stabilization Fund Oversight Committee (a copy is attached to the testimony). Mr. Wheelen stated a concern with HB 2782 as drafted, noting that the Fund could not readily provide all the information detailed in section three. The Fund also reports on a fiscal year; the bill would require calendar year reporting. And finally, Mr. Wheelen noted, it would be difficult to meet the reporting requirements for April 1, 2009. Mr. Wheelen noted that the Fund had reviewed the NAIC model law which would require only the reporting of closed claims for which the Fund had primary responsibility. The reporting requirements under the model, although less demanding than HB 2782, would require the Fund to incur costs for revising its database to accommodate the level of detail. Mr. Wheelen also stated a concern with the confidentiality provisions in section five of HB 2782, noting that most of the Fund's claim payments are the products of a settlement agreement (have provisions for confidentiality). Mr. Wheelen offered an amendment to KSA 40-3407 to accommodate the confidentiality of the Fund's settlement agreements.

A Committee member inquired if the Fund required any legislation to address closed claims in amounts of less than \$200,000. Mr. Wheelen indicated that the Fund does not have any regulatory authority over insurance companies and instead suggested if that information was necessary for the Fund reports and insurers' reports, the law could be amended to direct insurance companies to provide annual reports detailing closed claims.

Tom Bell, Kansas Hospital Association, ([Attachment 10](#)), next presented testimony before the Committee stating that Kansas should not proceed in creating a new law that could possibly conflict with or duplicate the provisions outlined by the NAIC model law.

Mr. Bell's remarks indicated that HB 2782 was not necessary as the NAIC is working on the model law; concerns regarding the confidentiality provisions in the bill and their contradictory nature and the affect on settlement agreements; and the estimated fiscal note of \$444,500 in FY 2009.

Written testimony was received from Rachelle Colombo, The Kansas Chamber, ([Attachment 11](#)).

The Chairman then opened Committee discussion on Topic 3. A Committee member asked the Insurance Department to comment on the possibility of federal oversight of insurers. The Department responded that the issue is still in play and indicated that the NAIC provides a framework for states to regulate insurance companies in a more uniform manner. The Chairman then indicated that the proponents of HB 2782 appear to be more inclined to pursue the NAIC model legislation. A Committee member indicated that the subject matter could be tabled or considered during the Session when the NAIC model has been introduced.

The following motion was made following the Committee discussion on Topic 3. *Representative Schwab moved the Special Committee on Insurance take no action on HB 2782 and recommended the Kansas Insurance Department report at Turnaround to the Insurance Committees on the status of the Model Law, if it has not been introduced before that time. Senator Teichman seconded the motion. Motion carried.*

The meeting was adjourned at 12:00 Noon.

### **Afternoon Session**

Chairman Shultz reconvened the meeting at 1:35 p.m. and directed the attention of the Committee to Topic 1.

Review health insurance legislation proposed during the 2008 Legislature, with particular attention to SB 540 and SB 564. SB 540 would create the Kansas Small Business Health Policy Committee, amend coverage requirement for dependent children and create a reinsurance pool for very small groups. SB 564 would create the Small Employer Health Care Act and would make amendments to specify coverage requirements in the Kansas Uninsurable Health Insurance Act and the State Employee Health Benefits Program. The bill also would establish a "qualified health insurance premium" as part of federal taxable income (subtraction modification).

Melissa Calderwood, Legislative Research Department, (Attachment 12-15) gave an update on the topic, providing a comparative summary of health insurance legislation including SB 540 and SB 564 proposed during the 2007-2008 biennium. Ms. Calderwood also highlighted H. Sub. for SB 81 and noted the insurance provisions enacted by the bill.

The Chairman then recognized Craig Van Aalst, Policy Examiner II, Kansas Insurance Department, (Attachment 16), to present an update on the status of small employer health insurance and employer-based health insurance in general. Mr. Van Aalst introduced Linda Sheppard, Director of the Accident and Health Division and Barbara Torkelson, Policy Examiner in the Accident and Health Division.

Mr. Van Aalst expressed support and interest on behalf of the Commissioner in finding ways to help all employers, including small businesses, to provide affordable health coverage for their employees. Mr. Van Aalst highlighted statistics from a May 2008 Kansas Health Institute (KHI) report that indicated 86 percent of all private-sector employees in Kansas work for employers that sponsor health insurance, noting, however, that at any given point in time, 36 percent of those employees do not have access to coverage either because it is not offered or because they are not eligible. Additionally, Mr. Van Aalst continued, about three-fourths of all employers require a waiting period

before new employees are eligible for coverage, with an average waiting period of seven weeks. Mr. Van Aalst noted that access to health insurance is even more limited for employees who work for small businesses (firms of 2 to 50 employees), citing statistics, including, 25 percent of all full-time Kansas employees work for these companies, but 35 percent have no access to health insurance because coverage is not offered by their small employers and an additional 7 percent are not eligible for coverage.

Mr. Van Aalst indicated there are approximately 25 insurance companies in the Kansas small group marketplace offering a variety of plan designs. While the numbers, Van Aalst continued, of small group health insurers operating in this market has remained fairly constant over the past 12 months, providing health insurance to each and every small employer and their employees requires not only accessibility but affordability, and Kansas has experienced increases in premiums. We understand, Mr. Van Aalst noted, that small employers are seeing increases in the range of 7 to 15 percent per year. In addition, costs for employees continue to rise as employers transfer some of those costs to employees in the form of contributions to premiums, co-payments, deductibles, and uncovered services. Mr. Van Aalst noted the importance of controlling costs to maintaining affordable premiums, noting each Kansas small group's renewal rate is based on three factors: (1) the combined effect of the change in new business rate (increased medical trend changes in network and discount arrangements); (2) changes in the case characteristics of the group (age, gender, geography, etc.); and (3) that particular group's utilization. Mr. Van Aalst also noted the tax credit available to small employers who start new group health plans (KSA 40-2239 *et seq.*). Mr. Van Aalst concluded his remarks by encouraging Kansas to try to find innovative ways to reduce the cost of health insurance for small employers, noting the potential for impact by the new presidential administration and the potential for utilizing reinsurance program for cost shifting.

A Committee member asked the Department representatives about the issue of subrogation and giving consideration to subrogation in certain cases. Ms. Torkelson responded that, in the instance of health insurance, people are paying premiums to have services available, if needed. The Department indicated it would look into further and respond.

Kenneth Daniel, Executive Director, Topeka Independent Business Association and publisher of KsSmallBiz.com, ([Attachment 17](#)), next appeared before the Committee.

Mr. Daniel provided an outline of small business insurance issues for the 2009 Session. Mr. Daniel highlighted: tax equity (6 versions introduced); consumer-directed health plans (need to concentrate on Health Savings Accounts and Health Reimbursement Accounts and need to make sure employers can contribute to the cost of individually-owned policies and even government-owned plans); encourage, strengthen and nurture individual policies (individually-owned policies are important to start-up businesses with young, healthy owners); promote association health plans (Kansas-compliant plans); allow "Mini-Med" and "Mandate Lite" policies (a cheaper plan with lower limits on benefits or fewer mandated coverages is better than no policy at all); avoid and reduce mandates; allow the purchase of insurance policies from other states (noted the Health Care Choice Act and the ability for consumers to shop in other states to find affordable health insurance policies that best meet their needs); strengthen, nurture, and lessen red tape for 2-10 employee groups (examples cited include a standard underwriting form [employee health information], and an on-line application process that obtains competitive quotes); and revise small group laws. Mr. Daniel also cited a number of legislative items small business should support, but not lead: transparency; electronic health records; strengthen and expand the Kansas High Risk Pool (encourage greater enrollment); "Connectors" (avoid any requirement that individual policies can be combined with the small employer insurance pools); Kansas Small Business Health Insurance Tax Credit (phasing out); and reinsurance (considered "state-controlled" to stabilize the small group market).

Rachelle Colombo, Senior Director of Legislative Affairs, The Kansas Chamber, (Attachment 18), then appeared before the Committee.

Ms. Columbo indicated that managing health care costs remains one of the most important factors to the profitability of business, and the Chamber is supportive of proposals decreasing the overall cost of health care and providing incentives for those businesses choosing to purchase health insurance benefits for their employees. Ms. Columbo stated that some of the measures in the health reform bills last session could help with health insurance expenses and strengthen the current employer based health care system. Ms. Columbo indicated the Chamber generally opposes health care mandates and is supportive of mandate-lite or reduced-mandate plans. Ms. Columbo also indicated that Kansas business owners want to provide health insurance and remain competitive, but the cost is too high. A recent Chamber poll of CEOs, Ms. Columbo continued, indicated managing health care costs remains one of the top three most important issues to profitability in their business. Ms. Columbo reviewed other measures considered during the previous legislative session and stated the Chamber's opposition to measures including increasing the dependent age, establishing young adult policies, and the creation of a clearinghouse. Conversely, the Chamber is supportive of proposals which encourage the use of Section 125 plans because they are more affordable for employers and provide employees with the ability to purchase their own health care plans. The Chamber also is supportive of tax incentives to encourage employer purchase of health insurance if the incentives can be easily utilized and quickly realized.

A Committee member asked Ms. Columbo where the Legislature would find revenues to replace moneys lost to tax credits and incentives. Ms. Columbo responded the Chamber was evaluating these incentives.

Ms. Columbo then introduced Chamber member Shirley Martin Smith (Adecco) and Lori MacDonald, Adecco Vice President for operations. Ms. Martin Smith and Ms. MacDonald discussed the challenges of providing health insurance for their employees, noting that health benefits are almost as important as wages. In responding to a Committee member's question, Ms. MacDonald indicated that employees contributed to a plan where moneys had to be spent within a specified time frame and an annual election was required (Flexible Spending Account).

Derrick Sontag, National Federation of Independent Business—Kansas (NFIB), (Attachment 19), appeared before the Committee to address the affordability of small employer health insurance in Kansas.

Mr. Sontag began his presentation by noting that for more than 20 years, small business owners have identified cost, not coverage, as the principal health care issue facing their business today (74 percent of NFIB members in the most recent poll). Mr. Sontag also indicated that the number of small businesses offering health benefits continue to decrease, especially among start-up businesses and that owners of new firms are increasingly reluctant to offer it. Mr. Sontag was supportive of encouraging individual ownership of accounts and indicated that Kansas can build upon provisions of H. Sub. for SB 81 (requiring insurers to offer a POP). Policymakers could continue evaluating legislation enacted in Missouri that benefits employees who work for a business that doesn't offer a health benefit plan (employees able to own a policy of their choosing, while at the same time grants the employer the ability to contribute to a section 125 plan with pre-tax dollars). Tax advantages, Mr. Sontag continued, should be considered for the more than 175,000 owners of non-employer firms in Kansas. Mr. Sontag then addressed the small business health care tax credit and indicated that measures could be taken to allow small businesses the flexibility to take the tax credit against other types of taxes owed to the state and was also supportive of extending the current tax credit to four years (health insurance coverage incentive). Mr. Sontag then addressed health



insurance mandates, noting that NFIB polling indicates that 88 percent of members oppose added mandates to health insurance plans and suggesting that limited mandate plans for small businesses (as detailed in HB 2822) should be enacted. Mr. Sontag then stated that the NFIB/Kansas is opposed to any legislation that would increase the age of dependents to 25.

A Committee member noted often businesses insure only the employee, rather than the employee and family, and inquired if NFIB supported this action. Mr. Sontag stated the NFIB is for promoting options and this policy could work for some businesses. Another Committee member asked how a mandate lite or mandate free policy would work for employers, when some employers are already offering policies with required coverages. Mr. Sontag indicated groups to reach for coverage include "in-betweeners" and families. Committee members also visited with Ken Daniel about limited mandate policies and the take up of lower cost policies. A Committee member noted that there have been issues (policy with an HSA) of timing and billing.

The Chairman then noted that Tim Witsman, Wichita Independent Business Association, (Attachment 20), had provided written testimony.

The Committee members and staff then discussed questions and items needed prior to the next Committee meeting. Melissa Calderwood will e-mail the agenda and discussion notes to Committee members prior to the next Committee meeting, scheduled for November 19, 2008.

Chairman Shultz announced the Special Committee on Insurance comments and discussions on Topic 1 will carry over to the next meeting which will be held on November 19, 2008, 10:00 a.m. (This meeting was cancelled and rescheduled for December 8, 2008, at 10:00 a.m.)

The meeting adjourned at 3:15 p.m.

Prepared by Sue Fowler and Melissa  
Calderwood  
Edited by Melissa Calderwood

Approved by Committee on:

December 8, 2008

(Date)