

1990

Gary Griffiths, Kevin G. Meeham, and Patrick B.
Meeham, and Marian J. Meeham v. J. Dallas
Vanwagoner : Reply Brief

Utah Supreme Court

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BRIEF

900595

IN THE UTAH SUPREME COURT

GARY GRIFFITHS, as guardian)	
ad litem for KEVIN G. MEEHAN)	
and PATRICK B. MEEHAN; and)	Case No. 900595
MARIAN J. MEEHAN,)	
)	Priority No. 16
Plaintiffs and Appellants,)	
)	
vs.)	
)	
J. DALLAS VANWAGONER,)	
)	
Defendant and Respondent.)	

ADDENDUM TO APPELLANTS' REPLY BRIEF

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
JUDGE PAT B. BRIAN

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FILED

DEC 11 1991

SUPREME COURT
UTAH

IN THE UTAH SUPREME COURT

GARY GRIFFITHS, as guardian)	
ad litem for KEVIN G. MEEHAN)	
and PATRICK B. MEEHAN; and)	Case No. 900595
MARIAN J. MEEHAN,)	
)	Priority No. 16
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vs.)	
)	
J. DALLAS VANWAGONER,)	
)	
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U.S. Department of Commerce
Economics and Statistics Administration
BUREAU OF THE CENSUS

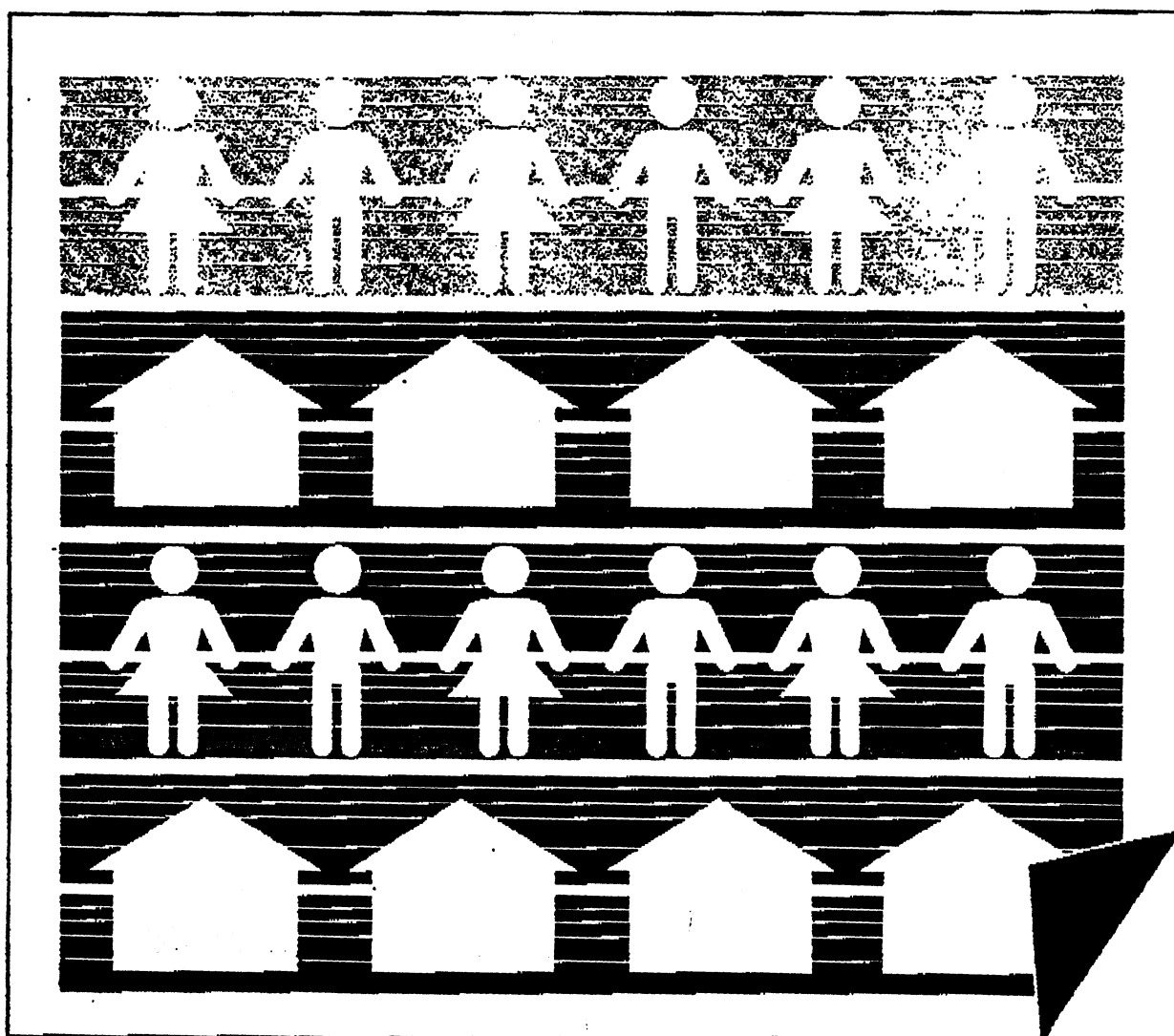
1990 CPH-1-46

CENSUS '90



**1990 Census of
Population and Housing
Summary Population and
Housing Characteristics**

Utah



1990 CPH-1-46

**1990 Census of
Population and Housing
Summary Population and
Housing Characteristics
Utah**

Issued August 1991



**U.S. Department of Commerce
Robert A. Moshbacher, Secretary
Rockwell A. Schnabel, Deputy Secretary**

**Economics and Statistics Administration
Michael R. Darby, Under Secretary
for Economic Affairs and Administrator**

**BUREAU OF THE CENSUS
Barbara Everitt Bryant, Director**

Table 1. Age: 1990

[For definitions of terms and meanings of symbols, see text]

State County County Subdivision Place	All persons	Age												Median age
		Under 5 years	16 years and over	18 years and over	18 to 20 years	21 to 24 years	25 to 44 years	45 to 54 years	55 to 59 years	60 to 64 years	65 years and over	75 years and over	85 years and over	
The State	1 722 850	169 633	1 154 331	1 095 406	90 245	109 741	499 570	138 481	54 930	52 481	149 958	61 771	13 611	26.2
Beaver County	4 765	382	3 216	3 035	154	152	1 109	397	218	230	775	340	75	31.9
Beaver division	2 676	217	1 791	1 685	91	86	621	239	136	123	389	173	37	31.1
Beaver city	1 998	159	1 335	1 251	68	60	459	174	91	96	303	152	35	31.0
Malford-Minersville division	2 089	165	1 425	1 350	63	66	488	158	82	107	386	167	38	32.9
Malford city	1 107	85	795	757	32	35	247	85	48	51	259	120	27	36.0
Minersville town	608	50	390	369	23	25	142	40	16	35	88	36	7	28.7
Box Elder County	36 485	3 791	22 969	21 678	1 219	1 373	9 648	3 124	1 497	1 244	3 573	1 555	334	26.7
Brigham City division	19 868	1 945	12 977	12 251	697	767	5 191	1 823	922	774	2 077	851	202	28.2
Brigham City city	15 644	1 550	10 289	9 726	549	615	4 065	1 402	739	623	1 733	719	172	28.5
Montua town	665	69	371	344	13	14	184	59	27	14	33	11	3	19.9
Perry city	1 211	115	783	726	50	47	288	149	62	51	79	22	5	26.8
Willard city	1 298	107	857	805	50	41	364	125	57	41	127	58	13	29.1
Howell-Snowville division	2 038	240	1 127	1 062	62	58	578	140	56	43	125	59	8	20.1
Garland city (pt.)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Howell town	237	28	130	119	7	6	59	25	8	5	9	7	2	18.1
Phymouth town	267	23	166	161	3	5	75	26	14	9	29	20	2	29.9
Portage town	218	19	133	122	6	2	57	18	9	10	20	8	1	26.6
Snowville town	251	32	144	136	10	9	69	16	3	6	23	7	1	21.3
Tremonton city (pt.)	40	1	24	20	3	-	9	4	2	-	2	1	-	18.0
Tremonton division	14 174	1 553	8 631	8 138	452	534	3 769	1 139	507	414	1 323	626	122	25.3
Bear River City town	700	78	417	396	19	18	190	57	27	16	69	35	8	26.0
Corinne city	639	63	370	354	15	23	181	36	22	23	54	22	2	24.4
Deweyville town	318	27	196	182	14	7	78	30	12	5	36	19	3	25.4
Etwood town	575	58	351	328	27	13	156	48	15	15	54	22	2	25.1
Fielding town	422	40	254	234	8	17	113	32	18	14	32	10	4	24.6
Garland city (pt.)	1 637	193	1 021	962	55	77	446	127	64	45	148	75	18	25.4
Moneyville city	1 112	121	670	621	36	35	269	103	48	33	97	37	7	24.3
Tremonton city (pt.)	4 224	481	2 635	2 504	133	183	1 136	357	134	126	435	223	46	26.1
West Box Elder division	405	53	234	227	8	14	110	22	12	13	48	19	2	25.4
Cache County	70 183	7 508	46 748	44 560	4 937	6 669	19 226	4 656	1 710	1 664	5 698	2 749	710	23.7
Hyrum division	6 268	687	3 704	3 441	271	306	1 737	481	124	124	383	173	52	21.4
Hyrum city	4 829	537	2 833	2 632	202	255	1 346	354	111	102	262	123	42	21.3
Nibley city (pt.)	68	5	37	33	6	1	18	5	2	-	1	1	-	17.1
Paradise town	561	44	360	338	29	22	143	58	13	4	69	31	7	25.1
Wellsville city (pt.)	30	2	18	17	-	-	7	4	1	-	5	-	-	31.1
Lewiston division	5 017	552	2 998	2 799	169	190	1 238	398	148	121	535	276	54	23.1
Clarkston town	645	65	393	366	25	22	158	45	21	19	76	43	11	24.1
Carnish town	205	23	119	116	6	8	60	9	6	2	25	6	-	24.1
Lewiston city	1 532	157	911	854	48	51	359	118	45	41	192	107	19	24.1
Richmond city	1 955	228	1 172	1 089	74	85	485	166	58	41	180	91	14	22.1
Trenton town (pt.)	144	8	86	78	2	7	34	14	3	1	17	8	3	23.1
Logan division	47 712	5 121	33 250	31 981	4 034	5 714	13 271	2 879	1 102	1 108	3 873	1 924	528	23.1
Hyde Park city	2 190	246	1 240	1 146	87	79	593	171	49	48	119	59	15	19.1
Logan city (pt.)	32 762	3 530	24 207	23 555	3 394	5 106	9 198	1 574	661	746	2 876	1 517	444	23.1
Millville city	1 202	110	677	622	38	42	362	82	15	9	74	31	7	19.1
Nibley city (pt.)	1 099	115	665	618	41	38	322	105	24	23	65	28	5	23.1
North Logan city	3 768	459	2 261	2 114	188	173	1 042	333	108	72	198	69	14	21.1
Providence city	3 344	323	2 068	1 914	149	133	874	329	100	97	232	90	19	23.1
River Heights city	1 274	106	886	837	55	60	303	127	64	64	164	66	13	30.1
Smithfield division	7 698	812	4 644	4 342	304	331	2 042	592	213	219	641	256	59	22.1
Amalgam town	366	42	224	210	7	18	109	28	18	11	19	12	3	22.1
Newton town	659	62	409	381	34	32	166	61	21	20	47	21	8	22.1
Smithfield city	5 566	592	3 354	3 141	220	241	1 491	423	144	161	461	175	41	22.1
Trenton town (pt.)	320	38	182	174	13	12	78	9	8	10	44	17	3	22.1
Wasatch division	12	1	11	11	-	1	6	2	-	2	-	-	-	3.1
Logan city (pt.)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wellsville division	3 476	335	2 141	1 986	159	127	932	304	108	90	266	120	17	22.1
Mendon city	684	53	439	403	38	25	178	64	21	26	51	28	2	22.1
Wellsville city (pt.)	2 176	209	1 340	1 245	96	81	574	197	68	49	180	82	15	22.1
Carbon County	20 228	1 603	13 989	13 246	942	761	5 633	1 665	741	804	2 700	1 129	212	22.1
East Carbon division	1 628	106	1 239	1 161	41	38	367	152	67	98	398	151	20	22.1
East Carbon city	1 270	83	963	905	34	26	286	118	55	84	302	127	16	22.1
Sunnyside city	339	20	266	248	7	12	77	34	12	14	92	22	3	22.1
Helper division	4 011	293	2 884	2 762	142	141	1 115	356	166	194	648	273	45	22.1
Helper city	2 148	145	1 587	1 518	81	75	552	180	94	126	410	172	30	22.1
Scofield town	43	7	26	25	1	-	10	6	1	-	7	4	-	22.1
Price division	14 589	1 204	9 866	9 323	759	582	4 151	1 157	508	512	1 654	705	147	22.1
Hiawatha town (pt.)	43	2	28	24	1	1	17	5	-	-	-	-	-	22.1
Price city	8 712	715	6 107	5 806	536	385	2 340	695	322	331	1 197	551	128	22.1
Wellington city	1 632	135	1 017	944	53	63	490	115	51	50	122	51	7	22.1

HOUSE OF REPRESENTATIVES
STATE OF UTAH



CAROLE E. PETERSON
CHIEF CLERK

318 STATE CAPITOL, SALT LAKE CITY, UTAH 84114
(801) 538-1029 / 538-1280

January 30, 1976
Utah House of Representatives

H.B. No. 35
Utah Health Care Malpractice Act
By Representative Norman H. Bangerter

I hereby certify that the attached transcript is a verbatim record of the discussion regarding H.B. No. 35, UTAH HEALTH CARE MALPRACTICE ACT, by Norman H. Bangerter, which occurred in the House Chamber on January 30, 1976, and is recorded on records #67 and #68 on file in the House office.

A handwritten signature in cursive script, reading "Carole E. Peterson".

Carole E. Peterson
Chief Clerk

December 10, 1991
Date certified

Transcription of Discussion and Vote
on January 30, 1976 in
Utah House of Representatives
on H.B. 35 --
Utah Health Care Malpractice Act

Representative Bangerter

Mr. Speaker, members of the House, I would like to move at this time that we make official that was dealing with Substitute HB 35. I believe technically we have not done that and I so move that we substitute Substitute House Bill 35 for House Bill 35.

Speaker

Representative Bangerter, you're absolutely correct. The motion is to substitute Substitute House Bill 35 for the original bill. The motion has been seconded, seeing no discussion, all in favor say "aye". Aye. Any opposed "no". The motion carries. We have now before us Substitute House Bill 35 for your consideration Representatives.

Representative Bangerter

The problem of malpractice, I guess has been one of the topics that has occupied the press and the public more keenly the last few months than most any other topic and we see that the discussion is obviously not at an end with problems still coming along in many parts of the country. I think that we can say that in, as we deal with this problem in Utah, and that's where we're having to deal with it, in this legislature, is that in 1975, just last October or November, that rates on malpractice insurance rose approximately 70%. Doctors in the highest risk category are now paying as high as \$10,500 a year for hospital insurance, for malpractice insurance. If I could read to you just a couple of statements from the Governor's Report on Malpractice, I'd like to do that:

"Our work has included an examination of the studies as well as the laws passed by many of the other states. The problem is nationwide and its impact is as to be expected greater and more damaging to the public in larger states. Each state, therefore, has tried to answer the situation with varying measures, degrees and legislation. In some of the larger states where lengthy comprehensive omnibus laws have been approved, we have statutes which may have gone too far and will inevitably be challenged by the courts. In

many instances, these laws contain clauses that are really not applicable to the conditions in our state."

So I think if we recognize that, that we have tried in Utah to deal with the problem as it occurs in Utah, and try to fit a solution that will be helpful in our own area. If you have read the legislative report on malpractice, you will find that in the last five years that insurance carriers of malpractice insurance have had non-profitable experience. In other words, they have over all lost money in insuring against this risk. Malpractice insurance is becoming difficult to obtain. Not only are rates going up but also in addition to that, insurers are withdrawing from the field and its becoming unavailable to our profession. Our status here in Utah is that we have a guaranteed insurability insurance contract through the Fall of this year and with certain provisions that will be renewed this year for another year but without a guarantee as to the amount of premiums that will be charged. I think we could say that our intent here is to try and start a reasonable solution in Utah to the malpractice question. We do not present this bill as a cure-all; we do not represent that it will automatically hold premiums from rising; we do offer it as a solution that we hope will stabilize the premiums while this problem is studied in greater depth in our state and, hopefully, long-lasting solutions can be resolved so that we continue with the high caliber of health care which we receive from our physicians and our other health care providers. There is just one other thing that I would like to refer to in the medical malpractice insurance problem report, that is you ought to look at the rates as they relate to the hospitals. You will find that hospital malpractice insurance in the last year has increased a minimum of about 250% to a maximum of nearly 2,500%. Some of these larger increases are in some of our rural hospitals. So not only is malpractice a threat to the physician who serves you, but I would think that it is more of a critical threat to the hospitals who, if they do not have patients, do not function and will not have the economic stability to continue to provide that care. I appreciate your indulgence. I know that this is a topic that has been on all of your minds. If you have questions, certainly we would be happy to try and answer them for you. I would now recommend that Mary Lorraine Johnson, Representative Johnson, take the balance of this time.

Representative Lorraine Johnson

Thank you Mr. Speaker. I think that this is a lot like the lady that got on the delivery table and said "hey, I'm not going to go through this," waiting this long for this Bill to come up. I'm absolutely delighted to stand here today and finally get this job done. The Interim Social Services Committee were assigned the responsibility of studying the malpractice insurance by the passage of S.J.R. 29 in the 1975 General Session. A committee of five members was organized under the auspices of the Interim Social

Services Committee, whose leadership is under the Chairmanship of Representative Beverly White and Senator James McFarland. We sincerely thank this committee for all of the services that they have rendered for we have had many of them, the insurance companies, the state bar, independent insurance agencies, the Utah Medical Association, Utah Trial Lawyers, Intermountain Health Care people, and we deeply appreciate the services that they have given to us. The medical malpractice committee has heard testimony from each of the advisory committees and many of the experts, and from this discussion, became rather heated, and always there was room for common sense treatment and compromise of the issues. A very, very special thanks must be extended at this time to our staff who have helped us so much in research and helping us to summarize Utah's problem as it relates to the national problem, and the problems of legislative solutions of other states. The Social Services Committee sponsored a two-day seminar on medical malpractice in which each of you legislators were invited to attend. The committee appreciates the support that you gave us in this endeavor and hopes that you gleaned much from that seminar. This seminar was conducted by the Health Systems Research Institute, and also involved national experts as well as legislators from all of the western states. Governor Rampton appointed a citizen's committee which was known as the Rosenblat Committee on Malpractice and we appreciate the efforts that they have done because it was through their findings that is also incorporated into this Bill. Obtaining information, I do believe, from the insurance companies is incomplete. We came upon the same agreement with both committees, it was vague and in a very confusing state. Now, the insurance companies set aside large reserves to pay that might be filed years after premiums are paid so that its more than a reasonable assumption that interest is generated from such reserves between the time the premiums and the reserves are received and the claims are paid. The insurance companies testified that they were losing money on malpractice and Aetna reported to have lost some \$67 million nationally, which was reduced to \$47 million of invested income nationally. Now, invested figures were not available for Utah alone. The insurance companies could not provide that for us. So, Utah is caught in the precarious position of subsidizing other states who have brought about a high malpractice case rate whereas Utah has a low malpractice rate. There are a few reasons why a limit on the amount a person could recover on malpractice suit is admitted in this Bill, and as we go through it, we will find that, simply because it would deny the citizens the fundamental right of equal protection in the laws. And later on this will be discussed. Number one, it would be considered unconstitutional. The doctors and the citizens of the State of Utah cannot wait for a court battle to resolve this question. The doctors' insurance with Aetna will run out in November of 1976, and the citizens need a legislative decision now. Your family and my family have the right to expect and receive good health delivery.

Speaker

Representative Fisher.

Representative Fisher

Thank you Representative Johnson, your time has run out. I yield my five minutes also.

Representative Johnson

Thank you so much guys, I just have one more sentence to add, Representative Fisher.

This Bill deserves your careful consideration, Mr. Fisher, and, on that note I would say thank you, and the Bill is all yours. Oh, I, excuse me, Mr. Speaker, I return my time back to Representative Bangerter.

Representative Bangerter

Maybe its Representative Fisher, I'm not sure. I neglected while I was up to offer some amendments that we feel are worthy and should be incorporated into this Bill at this time. If you would refer to the pink copy in front of you and turn to page 5 of the Bill, line 25. We would like to move that we delete subsection 32 in its entirety, and in the same motion I would like to move the second amendment that we delete line 28, er, Section 4 starting on line 28 in its entirety.

Speaker

Is there a second?

Second.

Speaker

Representative, the motion, you will see the pink sheet, the motion is contained in the first two lines, page 5, line 25 as it reads, and then the next one, page 5 line 28, so basically the motion is to delete lines 25 through 30 of the Bill. The motion has been seconded. If there is any discussion on the motion, I will ask you to stand.

They all have it?

They have been passed out. Representatives, do you all have a copy of this. I think we need a copy here in the circle. If there are any others who don't have a copy if you would raise your hand, we

have a messenger with some.

Okay Representatives, if there is any discussion, would you please stand?

Seeing none.

Representative Bangerter

I would just like to say something.

Speaker

Surely Representative Bangerter.

Representative Bangerter

Section 4 that we would like to take out gives the courts discretionary power to say that a judgment which is rendered in behalf of a plaintiff can be paid in periodic rather than a lump sum payment. It was my feeling when we left this provision in the Bill in committee that it would not effect the insurance premiums and, since thats the issue that we are trying to get to in this matter, we feel that this section will not have a bearing on the problem that we're trying to address ourselves to, that being the problem of reducing the insurance premiums. So, for that reason we have moved that this section be taken out.

Speaker

Okay, Representatives, you have heard the motion. Being no further discussion, all in favor of the Bangerter motion say "aye".

Aye.

Any opposed "no".

The motion carries, Representative Bangerter.

Representative Bangerter

I would like to move to page 9, lines 27 and through 34 and delete Section 8 of the Bill in its entirety. This section deals with, okay well, I'll leave it with the motion.

Speaker

Representatives, the motion is to delete Section 8 in its entirety, that means lines 27 through 34 on page 9, and lines 2 through 9 on

page 10. Is there a second?

Second.

You will find it on this, you will find the motion on the pink sheet if you go down to the middle of the page where it says page 9 lines 27 and page 10 lines 2. That's the motion being made. It has been seconded. Representative Bangerter, do you wish to speak to it?

Representative Bangerter

I would just add that the reason we desire to take this section out is the same reason. In committee it was my feeling that this section being permissive to the judge would not effect the premium, and for that reason I recommended that it be removed.

Speaker

Any discussion on the second Bangerter amendment? Seeing none, all in favor of the motion, say "aye".

Aye.

Any opposed "no".

The motion carriers Representative Bangerter.

Representative Bangerter

If we can go now to line, uh, to page 8 line 13, we would like to delete the words following the word "forth" "in general terms". Also, starting on lines 22 through 27, delete the material and insert the materials on the pink sheet which says "consent shall be a defense to an action against a health care provider based upon failure to obtain informed consent unless the patient proves that the person giving the consent lacked the capacity to consent or shows by clear and convincing proof that the execution of the written consent was induced by the defendant's affirmative acts of fraudulent misrepresentation or fraudulent omission to state material facts."

Speaker

The motion has been seconded. Is there any discussion? Representative Atwood.

Representative Atwood

In general I am in favor of this amendment, but I wonder whether we should delete on the next to the last line "fraudulent" in both

cases. It is very hard to prove fraud and I think it would be more easier for the patients and the public in general if they didn't have to prove fraud. Thank you. And I so move that we delete "fraudulent" from both.

Speaker

Representatives, the substitute motion is that we pass the same amendment except that the word "fraudulent" is to be deleted on the next to the last line in two places, that's the Atwood substitute motion. Representative Judd.

Representative Judd

Mr. Speaker, I rise to speak against that. The preparation of these amendments was a very long and intricate process. The concept of fraud as it appeared in the original Bill was a positive thing and now I suppose what we're saying is a negative thing, so that the burden in reality shifts and gives the individual the opportunity of making the charge rather than under the old Bill tying him to the words which were written on the paper or on the release or whatever. I submit to you that its very necessary that there be some means by which the consent be overturned which is, which lends credence to the consent. In other words, you can't just say I'm sorry I made a mistake and overturn the consent. You've got to be able to demonstrate that in fact the consent was not adequately explained before you signed it. And in reality that is the nature of the words "fraudulent misrepresentation" or "fraudulent omission". And, so that we're not here telling you that its going to be easy to overturn the consent; we're simply saying to you that the opportunity to overturn is present but that the requirement to overturn is rather higher than the individual simply saying no I don't now have to honor that which I gave. Because of the very delicate nature of the negotiations which went into the obtaining of this language, I heartily recommend that you not accept the substitute motion and that you accept the amendment exactly as it is written and is before you.

Speaker

Okay, Representatives, is there any more discussion on the Atwood substitute motion. Representative Bangarter.

Representative Bangarter

If I might just add one thing. I call to the attention of the representatives that we're dealing here with a written signed agreement that the patient has executed. And it should be very difficult for a person to overturn an agreement which they have signed. So I would speak against the substitute motion and would advise you to leave it as written.

Speaker

Representative Atwood do you wish to oppose the debate on your motion? She waives the right. Representatives, the substitute motion is, if you will look at your pink sheet, it says page 8, line 13, and then page 8, line 22 and adds language, but its different than the original motion because the substitute motion is that the two words "fraudulent" on the next to the last line of the new material be deleted. I am going to call for the question. All in favor of the Atwood amendment say "Aye".

Aye.

Any opposed "no".

No.

It appears, Representatives, that the Atwood amendment fails. Representative Bangerter, on your original motion. We'll call for the question on the original motion and that is the amendment I identified for you as printed. All in favor of the Bangerter motion say "Aye".

Aye.

Any opposed "no".

The motion carries. Representative Bangerter.

Representative Bangerter

I would like to yield to Representative Hansen to make an amendment.

Speaker

Representative James Hansen.

Representative Hansen

Thank you, Mr. Speaker. This last amendment is put in there to clear up any ambiguities you may have in that particular section which we find on line 10 and in Section 11. The way its originally put in the Bill it doesn't seem to give us much information. It says "The commissioner may regulate, promulgate and implement plans to provide insurance coverage". What it doesn't do, it doesn't specify or point out to who the coverage may go to. Therefore, the last amendment that we see there, on line, excuse me, page 11, line 5, you put brackets after the word "coverage" and after the word "available" on line 11, and the information on the pink sheet would be the information we would like to include in there. Mr. Speaker if you would give me some assistance here, I think we've made a

very minor mistake there, and we would like to add four additional words, would it be proper to do it now, or pass the amendment first?

Speaker

Do you want to pass this amendment first and then add the words?

Representative Hansen

And then add the last four words?

Speaker

I think you can include the four words if you would like.

Representative Hansen

Okay, if I may, on the first it says "to all insurance issuing" and there add these words "professional liability policies and". And the reason for that is so we don't exclude those. Its never intended there to take out the insurance carriers who write medical malpractice. We're afraid that if that wasn't in there it may be construed that they would be taken out of it.

Speaker

Okay, Representatives, the motion before you, if you will look at the same pink sheet, towards the bottom, it reads "page 11, line 5", etc. and then it adds new language. Now, the amendment is as printed with this addition, if you will look at the top line, it says "through all insurers issuing" and between the words "issuing" and "individual" insert these words "professional liability policies and", is that correct?

Representative Hansen

Yes.

Speaker

Any discussion on the Hansen motion? The motion has been seconded. I see no discussion, I am going to call for the question. All in favor of the Hansen amendment say "aye".

Aye.

Any opposed "no".

No.

The motion carries. The Bill is now before us as amended.

Representative Bangerter, did you still wish the floor?

Representative Bangerter

We've spent so much time dealing with these two or three sections that I'd like to just call to your attention quickly the other items that are in the Bill. We have the statute of limitations which reduces that statute of limitations to a two year for discovery and two year for suit following discovery. Section six is the informed consent section which sets forth in writing the procedures which a patient and a doctor must go to prove that they were not informed or that he did inform the patient. Section seven deals with written guarantees. Section nine removes the addendum clause which merely says that when a suit is filed that you cannot specify in the suit how much you're asking for damages. Section ten deals with prior notice. This says that before an action can be brought the defendant, or the potential defendant, must be given 90 days written notice before this action can be brought. This is hoped to bring together the differing opinions and reach solutions before they require court action. Section 12 excludes government, hospitals and health care providers from the major portions of this Act. If we were to go into that we would have to get into the Governmental Immunity Act and we don't intend to that. Section 13 gives the commissioner some authority to organize insurance in the event the insurance coverage is unavailable through private carriers. And 14 deals with reports that will be made to the commissioner which will help us in the future establish the need of further action in this matter if its so deemed. And, I think essentially thats the Bill, and we would appreciate your support.

Speaker

Representative Matheson on the Bill.

Representative Matheson

Mr. Speaker, I rise to propose an amendment to the Bill. I recognize that this Bill has been prepared after a great deal of work and that its proposed to us in the spirit of doing something constructive in connection with the problem of rising malpractice insurance costs. But I am concerned about the language in the preamble that starts on Section 2, in Section 2 on the second page of the Bill, and the findings that are recited there. In the spirit of trying to help and continue the spirit of cooperation which apparently has taken place between the medical profession, the legal profession, the insurance industry and others that have been involved in this, I would like to propose an amendment that we strike some of that language and, if I have a second, Mr. Speaker, I would like to speak to that.

Speaker

I think you'll have to identify the language you want to strike before anyone is willing to . . .

Representative Matheson

Mr. Speaker, I would like to propose that, may I make the amendment then, Mr. Speaker, without you. . .

Speaker

Why don't you go ahead and state the amendment, yes.

Representative Matheson

The amendment would be to strike after the word, or place a bracket after the word "finds", you have the first three words "The Legislature finds" and then place a bracket and strike out all the material thereafter down to line 19 after the word "systems", that last phrase that reads "health care systems", and then continue. So that the language would read "The Legislature finds it is necessary to protect the public interest by enacting measures", etc., etc. And the information that I would like to strike is findings as to the reasons why we're doing this which I don't think are borne out by the research material and the information that we were given by the interim committee in the medical malpractice report. And I would like to speak further to that, Mr. Speaker, if I do, if I'm allowed to do so.

Speaker

Is there a second to that motion?

Second.

There is a second, you may speak to your motion, Representative.

Representative Matheson

Mr. Speaker, the motion, ah, the language as its presently stated reads "The Legislature finds" and this is a finding by this body "and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from health care has increased greatly in recent years." Now, Mr. Speaker, that may be the case on a national basis, but from the information that's been furnished to us from the interim committee study, that certainly is not the case or doesn't appear to be the case locally. And I refer, or that is in the State of Utah, and I refer you to page 21 of the report in relation to court experience, and this would now be talking about suits, and the statement is made "Through limited research it was found that high damage awards by courts are not common in Utah." Then it goes on to say that from January '73 to July 1975 only 12 suits were found in examining the

records of the district courts and in only one of those cases only one of the 12 was there a judgment in favor of the plaintiff. Now, that does not sound to me as if there's been some type of an extreme problem in the State of Utah in relation to malpractice suits. And then, again, as to claims, if you look at page 10 of the report, that's charts 4, 5 and 6, you see that, in fact, insofar as the three companies apparently the primary companies writing this type of insurance in our state, Aetna Life, there's actually been a decrease in claims from '72 to '73, we don't have the figures for '74 and '75. The same thing with USF&G from '72 through '74, and the same thing with St. Paul Fire & Marine Insurance Company from '72 through '74. And so, in fact, it doesn't appear that the claims have been increasing, but in fact have been decreasing. Now, there is obviously an increase in the severity of some of the claims and the amount of some of the claims, but I would suggest that may very well be related to the increase of medical costs and not a cause of increased medical costs. Now, finally, fellow legislators, in my argument is that these, this statement is apparently based upon nationwide experience. If you look on page three of your report, and this is a quote from Mr. Parker who is one of the members of the advisory committee that worked on this problem, he said "Utah is being penalized as the result of being subject to national experience." Now, I just don't want any misunderstanding in the preamble of this Bill that the primary reason for this is because of increased claims and judgments in the State of Utah. We could also list numerous other things if we wanted to do so. In connection with what has been reported in the newspapers, and we've all seen the polls as to perhaps deterioration in somewhat of the doctor/patient relationship. So, I would suggest that amendment. It isn't a great substantive thing and it doesn't affect any of the substantive part of the Bills, but I don't want to freeze into legislative language some findings which I don't think are borne out.

Representative Dennis

Representative Matheson, would you acknowledge that there definitely is a problem with the practitioner in Utah practicing a form of defensive medicine such as additional x-rays and doing additional lab work and all of the additional things that they do to cover themselves so that they would be clear in case of pursuit. Now this is the real problem that many of them are faced with. They're doing many things that they would not ordinarily do because they're afraid of what might happen if they were sued, and this definitely adds to the cost of, of medical cost to the people, and I think that that is expressed in that preamble, and I think that we ought to consider that.

Representative Matheson

I would respond to that, Mr. Speaker. I don't question that for a minute. We discovered that when I sat on a medical malpractice advisory committee many years ago, several years ago, that the doctors were concerned about defensive medicine. But my suggestion to you and my case is that this is because of nationwide experience and not because of any local increase or suit-conscious, litigation-conscious concern. If you will look on page three in your report, it states very clearly, it says "the causes of this problem, the two major causes" it indicates what they are then it says "this is nationwide experience as reported by the American Medical Association." I attended a medical malpractice conference in an adjoining state here on a legislative assignment, the representatives from all the western states except California, and the consensus seemed to be that we unfortunately are involved, in most of the western states, in paying the price for some bad experience in one particular state, the State of California. And I don't know, Representative Dennis, I just feel that that is misstated, that its not a proper conclusion to have written into a statute. I'm not objecting to the Bill, I don't, I'm not arguing with the substantive portions of the Bill. I don't even know why we have to have this preamble. I think its a, if it was an effort to lay the groundwork and lay the foundation and establish a good feeling, I think it misses the mark and shouldn't be there at all, or at least we should take out that part.

Speaker

Okay, Representatives, the motion before us is to delete from page 2 of the Bill, on line four, beginning with the word "and" delete all of that language down through the word "systems," on line 19, "systems," on line 19. Representative Bangerter, do you wish to speak to this?

Being no further discussion on the Matheson amendment, all in favor say "aye".

Aye.

Any opposed "no".

No.

It appears to the speaker that the "nos" have it. The motion fails unless there is a request for division. Division is requested of five by which division shall have one. Five are standing. Representatives, the question is shall the bill be amended as I indicated to you earlier, lines 4 through 19. On line 4 you start deleting after the word "find" and you delete down through, . . . on line 19 through the word "systems," the division has been requested if you favor, if you wish to delete that language vote yes. The voting is open. Representative Sowards.

Representative Sowards

Point of clarification, please, on our meeting time tonight. It was my understanding that we were going to meet from 8 until 9, right in that area, it is my understanding that the Senate is only going to meet until 6 tonight, and I propose that rather than taking a lunch break for this evening, that we get with it and maybe meet until 6 or 7 so that we can make some previously made appointments.

Speaker

Representative Sowards, Representative Reese is listening to you, but he was about to make a motion that we break because the executive appropriations committee needs to meet again, and, so, I appreciate your concern. One of the problems we had in the House is that we took up the recall matter which cost us a day, and we have a number of things that the Senate has passed on to us that need consideration. The motion, I'll be glad to place it if you .

. . .

Representative Sowards

Well, whatever has to be done. I certainly wouldn't want to impede the progress of this group, but I suggest that we try to proceed forth and meet, er, as expeditiously as we can until 7:00 and adjourn then. I would like to make that in the form of a motion.

Speaker

The motion is that we work until 7 and the adjourn. Representative Bernard.

Representative Bernard

I would like to speak against the motion. The Senators told us that they don't have many Bills. We're trying to get them some Bills. We've got a whole list of Bills to be heard tonight that will not get to the Senate if we don't stay here tonight and do it. And, I would strongly like to speak against the Bill, and the executive committee needs to meet, I understand, for a short time, but hopefully we will back on the floor and get some Bills over there if we'll just limit our talking about it.

Speaker

Representatives, the motion is that we work straight until seven and then adjourn at that time. All in favor the the Sowards motion say "aye".

Aye.

Any opposed "no".

No.

It appears to the Speaker that the "nos" have it, and the motion fails. Division is called for, if five Representatives wish a division we'll have one. There are only, well, there are five standing now. Okay, Representatives, the question is shall we work until seven and then adjourn. If you to vote "yes", voting is open.

The executive committee could meet at seven and we could continue the business here.

Speaker

We'll check and see. Representatives, it appears that all present have voted on the motion and therefore, voting is closed. The motion fails, 26 Yes, 39 No. May we proceed with the debate. Any further debate on the . . . Representative Judd.

Representative Judd

Mr. Speaker, a number of you have received telegrams from you County medical association presidents. I should tell you that those telegrams were prepared and sent before the compromises which resulted in these various amendments were arrived at and, therefore, to use a famous phrase, they are "inoperative."

Speaker

Representative Nemelka. Seeing no others who wish to speak on this measure, Representative Bangerter, do you wish to close debate quickly.

Representative Bangerter

Very quickly. I think that its been in front of us at our attention for many months. I think that we can say to you that as a committee we have tried to strike the middle ground in this area, and that what we have proposed will hopefully have an effect large enough on premiums that when those insurance policies come due again this fall that the insurance carriers will stay in the State of Utah and that we'll be able to stabilize this most important area of our society. I would just urge that you support the Bill.

Speaker

Representatives, voting is open on Substitute House Bill 35.
Representative Harvey, we'll give you a few seconds.

Representative Mitchell?

Representative Mitchell

I move that we have a ten minute break . . .

Speaker

Can I announce this vote first?

Representative Mitchell

Oh.

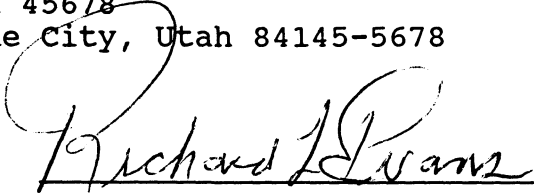
Speaker

Representatives, it appears that all have voted on Substitute House Bill 35. And therefore, voting is closed, the Bill having received 73 yes votes and 2 no votes, has passed the House and will be referred to the Senate now for their action.

CERTIFICATE OF SERVICE

I do hereby certify that four copies of the foregoing Addendum to Appellants' Reply Brief have been mailed, postage prepaid, addressed to the following this 11th day of December, 1991:

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