

HOUSE BILL No. 2463

By Committee on Appropriations

2-8

AN ACT concerning physical therapy; relating to licensure; amending K.S.A. 40-2,111, 40-3401, 40-3403, 60-513d, 60-2609, 65-2901, 65-2904, 65-2905, 65-2907, 65-2908, 65-2909, 65-2910, 65-2912, 65-2914, 65-2915, 65-2918 and 65-4909 and K.S.A. 2000 Supp. 7-121b, 17-2707, 21-3721, 65-1501, 65-1902, 65-2891, 65-2906, 65-2913 and 65-5912 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-2901 is hereby amended to read as follows: 65-2901. (a) As used in this act, the term "physical therapy" means a health specialty concerned with the evaluation, treatment or instruction of human beings to assess, prevent and alleviate physical disability and pain. This includes the administration and evaluation of tests and measurements of bodily functions and structures in aid of treatment; the planning, administration, evaluation and modifications of treatment and instruction, including the use of physical measures, activities and devices for prevention and therapeutic purposes; and the provision of consultative, educational and advisory services for the purpose of reducing the incidence and severity of physical disability and pain.

(1) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and disability or other health and movement related conditions in order to determine a physical therapy diagnosis, prognosis or plan of therapeutic intervention and to assess the ongoing effects of intervention;

(2) alleviating impairments and functional limitations by designing, implementing and modifying therapeutic inventions that include, but are not limited to, therapeutic exercise; functional training in self care and in-home, community or work reintegration; manual therapy including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive and adaptive orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient related instruction;

(3) reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health

1 *and quality of life in all age populations; and*

2 *(4) engaging in administration, consultation, education and research;*

3 *(b) The use of roentgen rays and radium for diagnostic and thera-*
4 *peutic purposes, the use of electricity for surgical purposes, including*
5 *cauterization, and the practice of medicine and surgery are not authorized*
6 *or included under the term "physical therapy" as used in this act.*

7 ~~*(c) "Physical therapist" means a person who practices physical*~~
8 ~~*therapy as defined in this act and delegates selective forms of treatment*~~
9 ~~*to supportive personnel under the supervision of such person. Any person*~~
10 ~~*who successfully meets the requirements of K.S.A. 65-2906 and amend-*~~
11 ~~*ments thereto shall be known and designated as a physical therapist and*~~
12 ~~*may designate or describe oneself as a physical therapist, physiotherapist,*~~
13 ~~*registered licensed physical therapist, P.T., Ph. T. or R.P.T. Physical ther-*~~
14 ~~*apists may evaluate patients without physician referral but may initiate*~~
15 ~~*treatment only after consultation with and approval by a physician li-*~~
16 ~~*censed to practice medicine and surgery, a licensed podiatrist or a li-*~~
17 ~~*censed dentist in appropriately related cases. L.P.T.*~~

18 ~~*(c) (d) "Physical therapist assistant" means a person who works under*~~
19 ~~*the direction of a physical therapist, and who assists in the application of*~~
20 ~~*physical therapy, and whose activities require an understanding of phys-*~~
21 ~~*ical therapy, but do not require professional or advanced training in the*~~
22 ~~*anatomical, biological and physical sciences involved in the practice of*~~
23 ~~*physical therapy. Any person who successfully meets the requirements of*~~
24 ~~*K.S.A. 65-2906 and amendments thereto shall be known and designated*~~
25 ~~*as a physical therapist assistant, and may designate or describe oneself as*~~
26 ~~*a physical therapist assistant, certified physical therapist assistant, P.T.A.,*~~
27 ~~*C.P.T.A. or P.T. Asst.*~~

28 Sec. 2. K.S.A. 65-2904 is hereby amended to read as follows: 65-
29 2904. The state examining committee shall be appointed as follows: The
30 state board of healing arts shall appoint one physician licensed to practice
31 medicine and surgery and one member of the state board of healing arts,
32 and the governor shall appoint three physical therapists who are duly
33 ~~registered~~ licensed physical therapists who have at least three years' ex-
34 perience in physical therapy immediately preceding the appointment and
35 are actively engaged, in this state, in physical therapy. The foregoing ap-
36 pointees shall constitute the state examining committee for physical ther-
37 apy. Except as otherwise provided in this section, the members appointed
38 in accordance with this section shall be appointed for terms of four years
39 and shall serve until their successors are appointed and qualify. Of the
40 first three physical therapist members appointed by the governor on or
41 after July 1, 1983, one shall be appointed for a term of two years, one
42 shall be appointed for a term of three years and one shall be appointed
43 for a term of four years, and these members shall serve until a successor

1 is appointed and qualified. Thereafter, physical therapist members ap-
2 pointed by the governor shall be appointed for terms of four years and
3 shall serve until their successors are appointed and qualified. Each mem-
4 ber of the committee shall take an oath as required by law for state of-
5 ficers. No physical therapist member appointed by the governor on or
6 after July 1, 1983, shall be appointed for more than two successive four-
7 year terms commencing on or after that date.

8 Sec. 3. K.S.A. 65-2905 is hereby amended to read as follows: 65-
9 2905. (a) The state examining committee for physical therapy provided
10 for in this act shall elect from their members a president and a vice-
11 president, who shall serve for one year or until their successors are elected
12 and qualified. The executive director of the state board of healing arts
13 shall act as secretary of the examining committee.

14 (b) The state examining committee shall serve in an advisory capacity
15 to the state board of healing arts in matters pertaining to physical therapy.
16 The state board of healing arts may adopt reasonable rules and regulations
17 relative to the qualification and examination of applicants as may be found
18 necessary for the performance of its duties. As to any matters coming
19 under its jurisdiction, the state examining committee while in session may
20 take testimony and any member may administer oaths in the taking of
21 such testimony.

22 (c) A simple majority of the committee shall constitute a quorum for
23 the transaction of business. The secretary shall keep a record of all pro-
24 cedures of the committee.

25 (d) The examining committee shall meet at a city designated by the
26 examining committee and the board, and under the direction of the state
27 board of healing arts, there conduct the examination for the ~~registration~~
28 *licensure* of physical therapists and certification of physical therapist as-
29 sistants, at least once each year, and may hold other meetings and ex-
30 aminations at such times and places as the examining committee and
31 board may determine.

32 (e) The board may appoint and fix the compensation of such em-
33 ployees as may be necessary to assist the examining committee, and the
34 board shall have the power to employ such expert assistance as it may
35 deem necessary to carry out the purposes of this act. Members of the
36 state examining committee for physical therapy attending meetings of
37 such committee, or attending a subcommittee meeting thereof authorized
38 by such committee, shall be paid compensation, subsistence allowances,
39 mileage and other expenses as provided in K.S.A. 75-3223 and amend-
40 ments thereto.

41 Sec. 4. K.S.A. 2000 Supp. 65-2906 is hereby amended to read as
42 follows: 65-2906. (a) It shall be the duty of the state board of healing arts,
43 with the advice and assistance of the state examining committee, to pass

1 upon the qualifications of all applicants for examination and ~~registration~~
2 *licensure* or certification, provide for and conduct all examinations, de-
3 termine the applicants who successfully pass the examination, duly reg-
4 ister *license* or certify such persons and adopt rules and regulations for
5 professional conduct of the ~~registered~~ *licensed* or certified persons.

6 (b) An applicant applying for ~~registration~~ *licensure* as a physical ther-
7 apist or for a certificate as a physical therapist assistant shall file a written
8 application on forms provided by the state board of healing arts, showing
9 to the satisfaction of the board that the applicant meets the following
10 requirements:

11 (1) The applicant is of legal age;

12 (2) the applicant has successfully completed the academic require-
13 ments of an educational program in physical therapy approved by the
14 board which is appropriate for the certification or registration of the
15 applicant;

16 (3) the applicant has passed an examination required by the board
17 which is appropriate for the certification or ~~registration~~ *licensure* of the
18 applicant to test the applicant's knowledge of the basic and clinical sci-
19 ences relating to physical therapy theory and practice; and

20 (4) the applicant has paid to the board all applicable fees established
21 under K.S.A. 65-2911 and amendments thereto.

22 (c) The board shall adopt rules and regulations establishing the cri-
23 teria which a school shall satisfy in order to be approved by the board for
24 purposes of subsection (b). The board may send a questionnaire devel-
25 oped by the board to any school for which the board does not have suf-
26 ficient information to determine whether the school meets the require-
27 ments of the board for approval and rules and regulations adopted under
28 this section. The questionnaire providing the necessary information shall
29 be completed and returned to the board in order for the school to be
30 considered for approval. The board may contract with investigative agen-
31 cies, commissions or consultants to assist the board in obtaining infor-
32 mation about schools. In entering such contracts the authority to approve
33 schools shall remain solely with the board.

34 ~~(d) All registrations or certificates issued prior to July 1, 1994, which~~
35 ~~are in effect on the effective date of this act shall be and continue in full~~
36 ~~force and effect and be eligible for renewal and reinstatement under~~
37 ~~K.S.A. 65-2910 and amendments thereto.~~

38 Sec. 5. K.S.A. 65-2907 is hereby amended to read as follows: 65-
39 2907. An applicant may be ~~registered~~ *licensed* as a physical therapist or
40 certified as a physical therapist assistant without a certificate of profi-
41 ciency in the basic sciences from the state board of healing arts if the
42 applicant fulfills the provisions of this act.

43 Sec. 6. K.S.A. 65-2908 is hereby amended to read as follows: 65-

1 2908. The board shall ~~register~~ *license* as a physical therapist or certify as
2 a physical therapist assistant each applicant who successfully meets the
3 requirements provided for in this act for ~~registration~~ *licensure* as a phys-
4 ical therapist or certification as a physical therapist assistant and who is
5 otherwise qualified as required herein. The board shall issue a ~~certificate~~
6 ~~of registration~~ *license* to each person ~~registered~~ *licensed* under this act
7 and a certificate to each person certified under this act.

8 Sec. 7. K.S.A. 65-2909 is hereby amended to read as follows: 65-
9 2909. (a) The board may issue a ~~certificate of registration~~ *license* in phys-
10 ical therapy without examination therein to an applicant who presents
11 evidence satisfactory to the board of having passed the examination in
12 physical therapy of the American registry of physical therapists, or an
13 examination before a similar, lawfully authorized examining board in
14 physical therapy of another state, District of Columbia, territory or foreign
15 country, if the standards for ~~registration~~ *licensure* in physical therapy in
16 such other state, district, territory or foreign country are determined by
17 the board to be as high as those of this state. At the time of making such
18 application, the applicant shall pay to the board a fee as prescribed, no
19 part of which shall be returned.

20 (b) The board may issue a certificate as a physical therapist assistant
21 without examination therein to an applicant who presents evidence sat-
22 isfactory to the board of having passed an examination as a physical ther-
23 apist assistant as approved by the state board of healing arts or an ex-
24 amination before a similar, lawfully authorized examining board in
25 physical therapy of another state, District of Columbia, territory or foreign
26 country, if the standards for certification in physical therapy in such other
27 state, District of Columbia, territory or foreign country are determined
28 by the board to be as high as those of this state. At the time of making
29 such application, the applicant shall pay to the board a fee as prescribed,
30 no part of which shall be returned.

31 Sec. 8. K.S.A. 65-2910 is hereby amended to read as follows: 65-
32 2910. (a) The ~~registration~~ *licensure* of every ~~registered~~ *licensed* physical
33 therapist and the certification of every certified physical therapist assistant
34 shall expire on the date established by rules and regulations of the state
35 board of healing arts which may provide renewal throughout the year on
36 a continuing basis. In each case in which a ~~registration~~ *license* or certifi-
37 cate is renewed for a period of time of less than one year, the board may
38 prorate the amount of the fee established under K.S.A. 65-2911 and
39 amendments thereto. The request for renewal shall be on a form provided
40 by the board and shall be accompanied by the renewal fee established
41 under to K.S.A. 65-2911 and amendments thereto which shall be paid
42 not later than the expiration date of the ~~registration~~ *licensure* or
43 certificate.

1 (b) The state board of healing arts shall require every ~~registered li-~~
2 ~~icensed~~ physical therapist or certified physical therapist assistant as a con-
3 dition of renewal to submit with the application for a renewal evidence
4 of satisfactory completion of a program of continuing education required
5 by the board. The board shall establish the requirements for each such
6 program of continuing education by rules and regulations. In establishing
7 such requirements the board shall consider any existing programs of con-
8 tinuing education currently being offered to ~~registered licensed~~ physical
9 therapists or certified physical therapist assistants.

10 (c) The state board of healing arts prior to renewal of the ~~registration~~
11 ~~license~~ of a physical therapist, shall require the ~~registrant licensee~~, if in
12 the active practice of physical therapy within Kansas, to submit to the
13 board evidence satisfactory to the board that the ~~registrant licensee~~ is
14 maintaining a policy of professional liability insurance as required by
15 K.S.A. 40-3402 and amendments thereto and has paid the annual pre-
16 mium surcharge as required by K.S.A. 40-3404 and amendments thereto.

17 (d) At least 30 days before the expiration of the ~~registration license~~
18 of a physical therapist or the certificate of a physical therapist assistant,
19 the state board of healing arts shall notify the ~~registrant licensee~~ or cer-
20 tificate holder of the expiration by mail addressed to the ~~registrant's li-~~
21 ~~icensee's~~ last mailing address as noted upon the office records. If the ~~reg-~~
22 ~~istrant licensee~~ or certificate holder fails to pay the renewal fee by the
23 date of expiration, the ~~registrant licensee~~ or certificate holder shall be
24 given a second notice that the ~~registration license~~ or certificate has expired
25 and the ~~registration license~~ or certificate may be renewed only if the
26 renewal fee and the late renewal fee are received by the board within the
27 thirty-day period following the date of expiration and that, if both fees
28 are not received within the thirty-day period, the ~~registration license~~ or
29 certificate shall be considered to have lapsed for failure to renew and
30 shall be reissued only after the physical therapist or physical therapist
31 assistant has been reinstated under subsection (e).

32 (e) Any ~~registrant licensee~~ or certificate holder who allows the ~~reg-~~
33 ~~istration license~~ or certificate to lapse by failing to renew may be rein-
34 stated upon recommendation of the state board of healing arts and upon
35 payment of the renewal fee and the reinstatement fee and upon submit-
36 ting evidence of satisfactory completion of any applicable reeducation and
37 continuing education requirements established by the board. The board
38 shall adopt rules and regulations establishing appropriate reeducation and
39 continuing education requirements for reinstatement of persons whose
40 ~~registrations licenses~~ or certificates have lapsed for failure to renew.

41 Sec. 9. K.S.A. 65-2912 is hereby amended to read as follows: 65-
42 2912. (a) The board may refuse to grant a ~~certificate of registration license~~
43 to any physical therapist or a certificate to any physical therapist assistant,

1 or may suspend or revoke the ~~registration~~ *license* of any ~~registered li-~~
2 *censed* physical therapist or certificate of any certified physical therapist
3 assistant for any of the following grounds:

4 (1) Addiction to or distribution of intoxicating liquors or drugs for
5 other than lawful purposes;

6 (2) conviction of a felony if the board determines, after investigation,
7 that the physical therapist or physical therapist assistant has not been
8 sufficiently rehabilitated to warrant the public trust;

9 (3) obtaining or attempting to obtain ~~registration~~ *licensure* or certi-
10 fication by fraud or deception;

11 (4) finding by a court of competent jurisdiction that the physical ther-
12 apist or physical therapist assistant is a disabled person and has not there-
13 after been restored to legal capacity;

14 (5) unprofessional conduct;

15 (6) the treatment or attempt to treat ailments or other health con-
16 ditions of human beings other than by physical therapy and as authorized
17 by this act;

18 (7) failure to refer patients to other health care providers if symptoms
19 are present for which physical therapy treatment is inadvisable or if symp-
20 toms indicate conditions for which treatment is outside the scope of
21 knowledge of the registered physical therapist;

22 ~~(8) initiating treatment without prior consultation and approval by a~~
23 ~~physician licensed to practice medicine and surgery, by a licensed podi-~~
24 ~~atrist or by a licensed dentist; and~~

25 ~~(9)~~ (8) knowingly submitting any misleading, deceptive, untrue or
26 fraudulent misrepresentation on a claim form, bill or statement.

27 (b) All proceedings pursuant to this section shall be conducted in
28 accordance with the provisions of the Kansas administrative procedure
29 act and shall be reviewable in accordance with the act for judicial review
30 and civil enforcement of agency actions.

31 Sec. 10. K.S.A. 2000 Supp. 65-2913 is hereby amended to read as
32 follows: 65-2913. (a) ~~Any person who, in any manner, represents oneself~~
33 ~~as a physical therapist, or who uses in connection with such person's name~~
34 ~~the words or letters physical therapist, physiotherapist, registered physical~~
35 ~~therapist, It shall be unlawful for any person who is not licensed under~~
36 ~~this act as a physical therapist or whose license has been suspended or~~
37 ~~revoked to hold themselves out to the public as a licensed physical ther-~~
38 ~~apist or use the abbreviation P.T., Ph. T. or R.P.T. L.P.T., or any other~~
39 ~~letters, words, abbreviations or insignia, indicating or implying that such~~
40 ~~person is a physical therapist, without a valid existing certificate of reg-~~
41 ~~istration as a physical therapist issued to such person under the provisions~~
42 ~~of this act, shall be guilty of a class B nonperson misdemeanor or to~~
43 *practice the art and science of physical therapy as herein defined. A vi-*

1 *olation of this subsection shall constitute a class B misdemeanor.*

2 (b) Any person who, in any manner, represents oneself as a physical
3 therapist assistant, or who uses in connection with such person's name
4 the words or letters physical therapist assistant, certified physical therapist
5 assistant, P.T.A., C.P.T.A. or P.T. Asst., or any other letters, words, ab-
6 breviations or insignia, indicating or implying that such person is a phys-
7 ical therapist assistant, without a valid existing certificate as a physical
8 therapist assistant issued to such person pursuant to the provisions of this
9 act, shall be guilty of a class B nonperson misdemeanor.

10 (c) ~~Nothing in this act shall prohibit any person not holding oneself~~
11 ~~out as a physical therapist or physical therapist assistant from carrying out~~
12 ~~as an independent practitioner, without prescription or supervision, the~~
13 ~~therapy or practice for which the person is qualified, and shall not prohibit~~
14 ~~the person from using corrective therapy. Nothing in this act shall prohibit~~
15 ~~any person who assists the physical therapist or physical therapist assistant~~
16 ~~from being designated as a physical therapy aide. Nothing in this act is~~
17 *intended to limit, preclude or otherwise interfere with the practices of*
18 *other health care providers formally trained and licensed, registered, cre-*
19 *dentialed or certified by appropriate agencies of the state of Kansas. The*
20 *practice of physical therapy shall not be construed to include the following*
21 *individuals:*

- 22 (1) *Persons rendering assistance in the case of an emergency;*
23 (2) *members of any church practicing their religious tenets;*
24 (3) *persons whose services are performed pursuant to the delegation*
25 *of and under the supervision of a physical therapist who is licensed under*
26 *this act;*
27 (4) *health care providers in the United States armed forces, public*
28 *health services, federal facilities and coast guard or other military service*
29 *when acting in the line of duty in this state;*
30 (5) *licensees under the healing arts act, and practicing their profes-*
31 *sions, when licensed and practicing in accordance with the provisions of*
32 *law or persons performing services pursuant to the delegation of a licensed*
33 *physician under subsection (g) of K.S.A. 65-2872 and amendments*
34 *thereto;*
35 (6) *dentists practicing their professions, when licensed and practicing*
36 *in accordance with the provisions of law;*
37 (7) *nurses practicing their professions, when licensed and practicing*
38 *in accordance with the provisions of law or persons performing services*
39 *pursuant to the delegation of a licensed nurse under subsection (m) of*
40 *K.S.A. 65-1124 and amendments thereto;*
41 (8) *health care providers who have been formally trained and are*
42 *practicing in accordance with their training or have received specific*
43 *training in one or more functions included in this act pursuant to estab-*

1 *lished educational protocols or both;*

2 *(9) students while in actual attendance in an accredited health care*
3 *occupational educational program and under the supervision of a quali-*
4 *fied instructor;*

5 *(10) self-care by a patient or gratuitous care by a fiend or family*
6 *member who does not represent or hold oneself out to the public to be a*
7 *physician therapist;*

8 *(11) optometrists practicing their profession when licensed and prac-*
9 *ticing in accordance with the provisions of article 15 of chapter 65 of the*
10 *Kansas Statutes Annotated and amendments thereto;*

11 *(12) podiatrists practicing their profession when licensed and prac-*
12 *ticing in accordance with the provisions article 20 of chapter 65 of the*
13 *Kansas Statutes Annotated and amendments thereto;*

14 *(13) occupational therapists practicing their profession when regis-*
15 *tered and practicing in accordance with the occupational therapy practice*
16 *act;*

17 *(14) physicians assistants practicing their profession when licensed*
18 *and practicing in accordance with K.S.A. 65-2896 et seq. and amendments*
19 *thereto; and*

20 *(15) athletic trainers practicing their profession when registered and*
21 *practicing in accordance with the athletic trainers registration act.*

22 *(d) Any patient monitoring, assessment or other procedures designed*
23 *to evaluate the effectiveness of prescribed physical therapy must be per-*
24 *formed by or pursuant to the delegation of a licensed physical therapist*
25 *or other health care provider.*

26 *(e) Nothing in this act shall be construed to permit the practice of*
27 *medicine and surgery. No statute granting authority to licensees of the*
28 *state board of healing arts shall be construed to confer authority upon*
29 *physical therapists to engage in any activity not conferred by this act.*

30 *Sec. 11. K.S.A. 65-2914 is hereby amended to read as follows: 65-*
31 *2914. (a) No person shall employ fraud or deception in applying for or*
32 *securing a ~~certificate of registration~~ licensure as a physical therapist.*

33 *(b) A person ~~registered~~ licensed under this act as a physical therapist*
34 *shall not treat ailments or other health conditions of human beings other*
35 *than by physical therapy unless duly licensed ~~or registered~~ to provide such*
36 *treatment under the laws of this state.*

37 *(c) A person certified under this act as a physical therapist assistant*
38 *shall not treat ailments or other health conditions of human beings except*
39 *under the direction of a physical therapist duly ~~registered~~ licensed under*
40 *this act. The word "direction" as used in this subsection (c) shall mean*
41 *that the physical therapist shall see all patients initially and evaluate them*
42 *periodically ~~except in those cases in a hospital setting when the physical~~*
43 *therapist is not immediately available, the physical therapist assistant may*

1 ~~initiate patient care after telephone contact with the physical therapist for~~
2 ~~documented instruction. The physical therapist must then evaluate the~~
3 ~~patient and establish a plan of treatment as soon as possible with a min-~~
4 ~~imum weekly review.~~

5 (d) Any person violating the provisions of this section shall be guilty
6 of a class B misdemeanor.

7 Sec. 12. K.S.A. 65-2915 is hereby amended to read as follows: 65-
8 2915. In the prosecution of any person for violation of this act, as specified
9 in K.S.A. 65-2914 and amendments thereto, it shall not be necessary to
10 allege or prove want of a valid ~~certificate of registration~~ *license* or certifi-
11 cate in physical therapy, but such matters shall be a matter of defense
12 to be established by the accused.

13 Sec. 13. K.S.A. 65-2918 is hereby amended to read as follows: 65-
14 2918. Physical therapists practicing their profession, when ~~registered~~ *li-*
15 *censed* and practicing under and in accordance with the provisions of
16 article 29 of chapter 65 of the Kansas Statutes Annotated, and acts amen-
17 datory of the provisions thereof or supplemental thereto, shall not be
18 construed to be practicing the healing arts or be subject to the healing
19 arts act.

20 New Sec. 14. Any person holding a valid registration as a physical
21 therapist immediately prior to the effective date of this act which has
22 been issued by the state board of healing arts shall be deemed to be a
23 licensed physical therapist and shall be subject to the provisions of this
24 act and the provisions of article 29 of chapter 65 of the Kansas Statutes
25 Annotated.

26 Sec. 15. K.S.A. 2000 Supp. 7-121b is hereby amended to read as
27 follows: 7-121b. (a) Subject to subsection (b) of K.S.A. 40-3411 and
28 amendments thereto, whenever a civil action is commenced by filing a
29 petition or whenever a pleading states a claim in a district court for dam-
30 ages for personal injuries or death arising out of the rendering of or the
31 failure to render professional services by any health care provider, com-
32 pensation for reasonable attorney fees to be paid by each litigant in the
33 action shall be approved by the judge after an evidentiary hearing and
34 prior to final disposition of the case by the district court. Compensation
35 for reasonable attorney fees for services performed in an appeal of a
36 judgment in any such action to the court of appeals shall be approved
37 after an evidentiary hearing by the chief judge or by the presiding judge
38 of the panel hearing the case. Compensation for reasonable attorney fees
39 for services performed in an appeal of a judgment in any such action to
40 the supreme court shall be approved after an evidentiary hearing by the
41 departmental justice for the department in which the appeal originated.
42 In determining the reasonableness of such compensation, the judge or
43 justice shall consider the following:

1 (1) The time and labor required, the novelty and difficulty of the
2 questions involved and the skill requisite to perform the legal service
3 properly.

4 (2) The likelihood, if apparent to the client, that the acceptance of
5 the particular employment will preclude other employment by the
6 attorney.

7 (3) The fee customarily charged in the locality for similar legal
8 services.

9 (4) The amount involved and the results obtained.

10 (5) The time limitations imposed by the client or by the
11 circumstances.

12 (6) The nature and length of the professional relationship with the
13 client.

14 (7) The experience, reputation and ability of the attorney or attorneys
15 performing the services.

16 (8) Whether the fee is fixed or contingent.

17 (b) As used in this section:

18 (1) "Health care provider" means a person licensed to practice any
19 branch of the healing arts, a person who holds a temporary permit to
20 practice any branch of the healing arts, a person engaged in a postgrad-
21 uate training program approved by the state board of healing arts, a li-
22 censed medical care facility, a health maintenance organization, a licensed
23 dentist, a licensed professional nurse, a licensed practical nurse, a licensed
24 optometrist, a licensed podiatrist, a licensed pharmacist, a professional
25 corporation organized pursuant to the professional corporation law of
26 Kansas by persons who are authorized by such law to form such a cor-
27 poration and who are health care providers as defined by this subsection,
28 a ~~registered~~ *licensed* physical therapist or an officer, employee or agent
29 thereof acting in the course and scope of such person's employment or
30 agency; and

31 (2) "professional services" means those services which require licen-
32 sure, registration or certification by agencies of the state for the perform-
33 ance thereof.

34 Sec. 16. K.S.A. 2000 Supp. 17-2707 is hereby amended to read as
35 follows: 17-2707. As used in this act, unless the context clearly indicates
36 that a different meaning is intended, the following words mean:

37 (a) "Professional corporation," a corporation organized under this act.

38 (b) "Professional service," the type of personal service rendered by a
39 person duly licensed by this state as a member of any of the following
40 professions, each paragraph constituting one type:

41 (1) A certified public accountant;

42 (2) an architect;

43 (3) an attorney-at-law;

- 1 (4) a chiropractor;
2 (5) a dentist;
3 (6) an engineer;
4 (7) an optometrist;
5 (8) an osteopathic physician or surgeon;
6 (9) a physician, surgeon or doctor of medicine;
7 (10) a veterinarian;
8 (11) a podiatrist;
9 (12) a pharmacist;
10 (13) a land surveyor;
11 (14) a licensed psychologist;
12 (15) a specialist in clinical social work;
13 (16) a ~~registered~~ *licensed* physical therapist;
14 (17) a landscape architect;
15 (18) a registered professional nurse; *and*
16 (19) a real estate broker or salesperson.
- 17 (c) "Regulating board," the board or state agency which is charged
18 with the licensing and regulation of the practice of the profession which
19 the professional corporation is organized to render.
- 20 (d) "Qualified person":
21 (1) Any natural person licensed to practice the same type of profes-
22 sion which any professional corporation is authorized to practice;
23 (2) the trustee of a trust which is a qualified trust under subsection
24 (a) of section 401 of the internal revenue code of 1954, as amended, or
25 of a contribution plan which is a qualified employee stock ownership plan
26 under subsection (a) of section 409A of the internal revenue code of 1954,
27 as amended; or
28 (3) the trustee of a revocable living trust established by a natural
29 person who is licensed to practice the type of profession which any pro-
30 fessional corporation is authorized to practice, if the terms of such trust
31 provide that such natural person is the principal beneficiary and sole
32 trustee of such trust and such trust does not continue to hold title to
33 professional corporation stock following such natural person's death for
34 more than a reasonable period of time necessary to dispose of such stock.
- 35 Sec. 17. K.S.A. 2000 Supp. 21-3721 is hereby amended to read as
36 follows: 21-3721. (a) Criminal trespass is:
37 (1) Entering or remaining upon or in any land, nonnavigable body of
38 water, structure, vehicle, aircraft or watercraft other than railroad prop-
39 erty as defined in K.S.A. 2000 Supp. 21-3761 and amendments thereto
40 by a person who knows such person is not authorized or privileged to do
41 so, and:
42 (A) Such person enters or remains therein in defiance of an order
43 not to enter or to leave such premises or property personally communi-

1 cated to such person by the owner thereof or other authorized person;
2 or

3 (B) such premises or property are posted in a manner reasonably
4 likely to come to the attention of intruders, or are locked or fenced or
5 otherwise enclosed, or shut or secured against passage or entry; or

6 (C) such person enters or remains therein in defiance of a restraining
7 order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or
8 K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the
9 restraining order has been personally served upon the person so re-
10 strained; or

11 (2) entering or remaining upon or in any public or private land or
12 structure in a manner that interferes with access to or from any health
13 care facility by a person who knows such person is not authorized or
14 privileged to do so and such person enters or remains thereon or therein
15 in defiance of an order not to enter or to leave such land or structure
16 personally communicated to such person by the owner of the health care
17 facility or other authorized person.

18 (b) As used in this section:

19 (1) "Health care facility" means any licensed medical care facility,
20 certificated health maintenance organization, licensed mental health cen-
21 ter, or mental health clinic, licensed psychiatric hospital or other facility
22 or office where services of a health care provider are provided directly to
23 patients.

24 (2) "Health care provider" means any person: (A) Licensed to prac-
25 tice a branch of the healing arts; (B) licensed to practice psychology; (C)
26 licensed to practice professional or practical nursing; (D) licensed to prac-
27 tice dentistry; (E) licensed to practice optometry; (F) licensed to practice
28 pharmacy; (G) registered to practice podiatry; (H) licensed as a social
29 worker; or (I) ~~registered~~ *licensed* to practice physical therapy.

30 (c) (1) Criminal trespass is a class B nonperson misdemeanor.

31 (2) Upon a conviction of a violation of subsection (a)(1)(C), a person
32 shall be sentenced to not less than 48 consecutive hours of imprisonment
33 which must be served either before or as a condition of any grant of
34 probation or suspension, reduction of sentence or parole.

35 Sec. 18. K.S.A. 40-2,111 is hereby amended to read as follows: 40-
36 2,111. As used in K.S.A. 40-2,111 through 40-2,113, and amendments
37 thereto: (a) "Adverse underwriting decision" means: Any of the following
38 actions with respect to insurance transactions involving insurance cover-
39 age which is individually underwritten:

40 (1) A declination of insurance coverage;

41 (2) a termination of insurance coverage;

42 (3) an offer to insure at higher than standard rates, with respect to
43 life, health or disability insurance coverage; or

1 (4) the charging of a higher rate on the basis of information which
2 differs from that which the applicant or policyholder furnished, with re-
3 spect to property or casualty insurance coverage.

4 (b) “Declination of insurance coverage” means a denial, in whole or
5 in part, by an insurance company or agent of requested insurance
6 coverage.

7 (c) “Health care institution” means any medical care facility, adult
8 care home, drug abuse and alcoholic treatment facility, home-health
9 agency certified for federal reimbursement, mental health center or men-
10 tal health clinic licensed by the secretary of social and rehabilitation serv-
11 ices, kidney disease treatment center, county, city-county or multicounty
12 health departments and health-maintenance organization.

13 (d) “Health care provider” means any person licensed to practice any
14 branch of the healing arts, licensed dentist, licensed professional nurse,
15 licensed practical nurse, advanced registered nurse practitioner, licensed
16 optometrist, ~~registered~~ *licensed* physical therapist, licensed social worker,
17 licensed physician assistant, licensed podiatrist or licensed psychologist.

18 (e) “Institutional source” means any natural person, corporation, as-
19 sociation, partnership or governmental or other legal entity that provides
20 information about an individual to an agent or insurance company, other
21 than:

- 22 (1) An agent;
- 23 (2) the individual who is the subject of the information; or
- 24 (3) a natural person acting in a personal capacity rather than a busi-
25 ness or professional capacity.

26 (f) “Insurance transaction” means any transaction involving insur-
27 ance, but not including group insurance coverage, primarily for personal,
28 family or household needs rather than business or professional needs.

29 (g) “Medical-record information” means personal information which:

- 30 (1) Relates to an individual’s physical or mental condition, medical
31 history or medical treatment; and
- 32 (2) is obtained from a health care provider or health care institution,
33 from the individual, or from the individual’s spouse, parent or legal
34 guardian.

35 (h) “Termination of insurance coverage” or “termination of an insur-
36 ance policy” means either a cancellation, nonrenewal or lapse of an in-
37 surance policy, in whole or in part, for any reason other than:

- 38 (1) The failure to pay a premium as required by the policy; or
- 39 (2) at the request or direction of the insured.

40 Sec. 19. K.S.A. 40-3401 is hereby amended to read as follows: 40-
41 3401. As used in this act the following terms shall have the meanings
42 respectively ascribed to them herein.

43 (a) “Applicant” means any health care provider.

1 (b) "Basic coverage" means a policy of professional liability insurance
2 required to be maintained by each health care provider pursuant to the
3 provisions of subsection (a) or (b) of K.S.A. 40-3402 and amendments
4 thereto.

5 (c) "Commissioner" means the commissioner of insurance.

6 (d) "Fiscal year" means the year commencing on the effective date
7 of this act and each year, commencing on the first day of that month,
8 thereafter.

9 (e) "Fund" means the health care stabilization fund established pur-
10 suant to subsection (a) of K.S.A. 40-3403 and amendments thereto.

11 (f) "Health care provider" means a person licensed to practice any
12 branch of the healing arts by the state board of healing arts with the
13 exception of physician assistants, a person who holds a temporary permit
14 to practice any branch of the healing arts issued by the state board of
15 healing arts, a person engaged in a postgraduate training program ap-
16 proved by the state board of healing arts, a medical care facility licensed
17 by the department of health and environment, a health maintenance or-
18 ganization issued a certificate of authority by the commissioner of insur-
19 ance, a podiatrist licensed by the state board of healing arts, an optom-
20 etrist licensed by the board of examiners in optometry, a pharmacist
21 licensed by the state board of pharmacy, a licensed professional nurse
22 who is authorized to practice as a registered nurse anesthetist, a licensed
23 professional nurse who has been granted a temporary authorization to
24 practice nurse anesthesia under K.S.A. 65-1153 and amendments thereto,
25 a professional corporation organized pursuant to the professional corpo-
26 ration law of Kansas by persons who are authorized by such law to form
27 such a corporation and who are health care providers as defined by this
28 subsection, a Kansas limited liability company organized for the purpose
29 of rendering professional services by its members who are health care
30 providers as defined by this subsection and who are legally authorized to
31 render the professional services for which the limited liability company
32 is organized, a partnership of persons who are health care providers under
33 this subsection, a Kansas not-for-profit corporation organized for the pur-
34 pose of rendering professional services by persons who are health care
35 providers as defined by this subsection, a dentist certified by the state
36 board of healing arts to administer anesthetics under K.S.A. 65-2899 and
37 amendments thereto, a physical therapist ~~registered~~ *licensed* by the state
38 board of healing arts, a psychiatric hospital licensed under K.S.A. 75-
39 3307b and amendments thereto, or a mental health center or mental
40 health clinic licensed by the secretary of social and rehabilitation services,
41 except that health care provider does not include (1) any state institution
42 for the mentally retarded, (2) any state psychiatric hospital, (3) any person
43 holding an exempt license issued by the state board of healing arts or (4)

1 any person holding a visiting clinical professor license from the state board
2 of healing arts.

3 (g) “Inactive health care provider” means a person or other entity
4 who purchased basic coverage or qualified as a self-insurer on or subse-
5 quent to the effective date of this act but who, at the time a claim is made
6 for personal injury or death arising out of the rendering of or the failure
7 to render professional services by such health care provider, does not
8 have basic coverage or self-insurance in effect solely because such person
9 is no longer engaged in rendering professional service as a health care
10 provider.

11 (h) “Insurer” means any corporation, association, reciprocal
12 exchange, inter-insurer and any other legal entity authorized to write bod-
13 ily injury or property damage liability insurance in this state, including
14 workers compensation and automobile liability insurance, pursuant to the
15 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
16 Kansas Statutes Annotated.

17 (i) “Plan” means the operating and administrative rules and proce-
18 dures developed by insurers and rating organizations or the commissioner
19 to make professional liability insurance available to health care providers.

20 (j) “Professional liability insurance” means insurance providing cov-
21 erage for legal liability arising out of the performance of professional
22 services rendered or which should have been rendered by a health care
23 provider.

24 (k) “Rating organization” means a corporation, an ~~unincorporated~~ as-
25 sociation, a partnership or an individual licensed pursuant to K.S.A. ~~40-~~
26 ~~930 or 40-1114, or both, 40-956~~ and amendments thereto, to make rates
27 for professional liability insurance.

28 (l) “Self-insurer” means a health care provider who qualifies as a self-
29 insurer pursuant to K.S.A. 40-3414 and amendments thereto.

30 (m) “Medical care facility” means the same when used in the health
31 care provider insurance availability act as the meaning ascribed to that
32 term in K.S.A. 65-425 and amendments thereto, except that as used in
33 the health care provider insurance availability act such term, as it relates
34 to insurance coverage under the health care provider insurance availa-
35 bility act, also includes any director, trustee, officer or administrator of a
36 medical care facility.

37 (n) “Mental health center” means a mental health center licensed by
38 the secretary of social and rehabilitation services under K.S.A. 75-3307b
39 and amendments thereto, except that as used in the health care provider
40 insurance availability act such term, as it relates to insurance coverage
41 under the health care provider insurance availability act, also includes any
42 director, trustee, officer or administrator of a mental health center.

43 (o) “Mental health clinic” means a mental health clinic licensed by

1 the secretary of social and rehabilitation services under K.S.A. 75-3307b
2 and amendments thereto, except that as used in the health care provider
3 insurance availability act such term, as it relates to insurance coverage
4 under the health care provider insurance availability act, also includes any
5 director, trustee, officer or administrator of a mental health clinic.

6 (p) "State institution for the mentally retarded" means Winfield state
7 hospital and training center, Parsons state hospital and training center
8 and the Kansas neurological institute.

9 (q) "State psychiatric hospital" means Larned state hospital, Osawa-
10 tomie state hospital; *and* Rainbow mental health facility ~~and Topeka state~~
11 ~~hospital.~~

12 (r) "Person engaged in residency training" means:

13 (1) A person engaged in a postgraduate training program approved
14 by the state board of healing arts who is employed by and is studying at
15 the university of Kansas medical center only when such person is engaged
16 in medical activities which do not include extracurricular, extra-institu-
17 tional medical service for which such person receives extra compensation
18 and which have not been approved by the dean of the school of medicine
19 and the executive vice-chancellor of the university of Kansas medical cen-
20 ter. Persons engaged in residency training shall be considered resident
21 health care providers for purposes of K.S.A. 40-3401 *et seq.*, and amend-
22 ments thereto; and

23 (2) a person engaged in a postgraduate training program approved by
24 the state board of healing arts who is employed by a nonprofit corporation
25 organized to administer the graduate medical education programs of com-
26 munity hospitals or medical care facilities affiliated with the university of
27 Kansas school of medicine or who is employed by an affiliate of the uni-
28 versity of Kansas school of medicine as defined in K.S.A. 76-367 and
29 amendments thereto only when such person is engaged in medical activ-
30 ities which do not include extracurricular, extra-institutional medical serv-
31 ice for which such person receives extra compensation and which have
32 not been approved by the chief operating officer of the nonprofit cor-
33 poration or the chief operating officer of the affiliate and the executive
34 vice-chancellor of the university of Kansas medical center.

35 (s) "Full-time physician faculty employed by the university of Kansas
36 medical center" means a person licensed to practice medicine and surgery
37 who holds a full-time appointment at the university of Kansas medical
38 center when such person is providing health care.

39 (t) "Sexual act" or "sexual activity" means that sexual conduct which
40 constitutes a criminal or tortious act under the laws of the state of Kansas.

41 Sec. 20. K.S.A. 40-3403 is hereby amended to read as follows: 40-
42 3403. (a) For the purpose of paying damages for personal injury or death
43 arising out of the rendering of or the failure to render professional serv-

1 ices by a health care provider, self-insurer or inactive health care provider
2 subsequent to the time that such health care provider or self-insurer has
3 qualified for coverage under the provisions of this act, there is hereby
4 established the health care stabilization fund. The fund shall be held in
5 trust in the state treasury and accounted for separately from other state
6 funds. The board of governors shall administer the fund or contract for
7 the administration of the fund with an insurance company authorized to
8 do business in this state.

9 (b) (1) There is hereby created a board of governors which shall be
10 composed of such members and shall have such powers, duties and func-
11 tions as are prescribed by this act. The board of governors shall:

12 (A) Administer the fund and exercise and perform other powers, du-
13 ties and functions required of the board under the health care provider
14 insurance availability act;

15 (B) provide advice, information and testimony to the appropriate li-
16 censing or disciplinary authority regarding the qualifications of a health
17 care provider;

18 (C) prepare and publish, on or before October 1 of each year, a sum-
19 mary of the fund's activity during the preceding fiscal year, including but
20 not limited to the amount collected from surcharges, the highest and
21 lowest surcharges assessed, the amount paid from the fund, the number
22 of judgments paid from the fund, the number of settlements paid from
23 the fund and the amount in the fund at the end of the fiscal year; and

24 (D) have the authority to grant exemptions from the provisions of
25 subsection (m) of this section when a health care provider temporarily
26 leaves the state for the purpose of obtaining additional education or train-
27 ing or to participate in religious, humanitarian or government service
28 programs. Whenever a health care provider has previously left the state
29 for one of the reasons specified in this paragraph and returns to the state
30 and recommences practice, the board of governors may refund any
31 amount paid by the health care provider pursuant to subsection (m) of
32 this section if no claims have been filed against such health care provider
33 during the provider's temporary absence from the state.

34 (2) The board shall consist of 10 persons appointed by the commis-
35 sioner of insurance, as provided by this subsection (b) and as follows:

36 (A) Three members who are licensed to practice medicine and sur-
37 gery in Kansas who are doctors of medicine and who are on a list of
38 nominees submitted to the commissioner by the Kansas medical society;

39 (B) three members who are representatives of Kansas hospitals and
40 who are on a list of nominees submitted to the commissioner by the
41 Kansas hospital association;

42 (C) two members who are licensed to practice medicine and surgery
43 in Kansas who are doctors of osteopathic medicine and who are on a list

1 of nominees submitted to the commissioner by the Kansas association of
2 osteopathic medicine;

3 (D) one member who is licensed to practice chiropractic in Kansas
4 and who is on a list of nominees submitted to the commissioner by the
5 Kansas chiropractic association;

6 (E) one member who is a licensed professional nurse authorized to
7 practice as a registered nurse anesthetist who is on a list of nominees
8 submitted to the commissioner by the Kansas association of nurse
9 anesthetists.

10 (3) When a vacancy occurs in the membership of the board of gov-
11 ernors created by this act, the commissioner shall appoint a successor of
12 like qualifications from a list of three nominees submitted to the com-
13 missioner by the professional society or association prescribed by this
14 section for the category of health care provider required for the vacant
15 position on the board of governors. All appointments made shall be for a
16 term of office of four years, but no member shall be appointed for more
17 than two successive four-year terms. Each member shall serve until a
18 successor is appointed and qualified. Whenever a vacancy occurs in the
19 membership of the board of governors created by this act for any reason
20 other than the expiration of a member's term of office, the commissioner
21 shall appoint a successor of like qualifications to fill the unexpired term.
22 In each case of a vacancy occurring in the membership of the board of
23 governors, the commissioner shall notify the professional society or as-
24 sociation which represents the category of health care provider required
25 for the vacant position and request a list of three nominations of health
26 care providers from which to make the appointment.

27 (4) The board of governors shall organize on July 1 of each year and
28 shall elect a chairperson and vice-chairperson from among its member-
29 ship. Meetings shall be called by the chairperson or by a written notice
30 signed by three members of the board.

31 (5) The board of governors, in addition to other duties imposed by
32 this act, shall study and evaluate the operation of the fund and make such
33 recommendations to the legislature as may be appropriate to ensure the
34 viability of the fund.

35 (6) (A) The board shall appoint an executive director who shall be in
36 the unclassified service under the Kansas civil service act and may appoint
37 such attorneys, legal assistants, claims managers and compliance auditors
38 who shall also be in the unclassified service under the Kansas civil service
39 act. Such executive director, attorneys, legal assistants, claims managers
40 and compliance auditors shall receive compensation fixed by the board,
41 in accordance with appropriation acts of the legislature, not subject to
42 approval of the governor.

43 (B) The board may appoint such additional employees, and provide

1 all office space, services, equipment, materials and supplies, and all budg-
2 eting, personnel, purchasing and related management functions required
3 by the board in the exercise of the powers, duties and functions imposed
4 or authorized by the health care provider insurance availability act or may
5 enter into a contract with the commissioner of insurance for the provision,
6 by the commissioner, of all or any part thereof.

7 (7) The commissioner shall:

8 (A) Provide technical and administrative assistance to the board of
9 governors with respect to administration of the fund upon request of the
10 board;

11 (B) provide such expertise as the board may reasonably request with
12 respect to evaluation of claims or potential claims.

13 (c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), (p) and
14 (q), the fund shall be liable to pay: (1) Any amount due from a judgment
15 or settlement which is in excess of the basic coverage liability of all liable
16 resident health care providers or resident self-insurers for any personal
17 injury or death arising out of the rendering of or the failure to render
18 professional services within or without this state;

19 (2) subject to the provisions of subsection (m), any amount due from
20 a judgment or settlement which is in excess of the basic coverage liability
21 of all liable nonresident health care providers or nonresident self-insurers
22 for any such injury or death arising out of the rendering or the failure to
23 render professional services within this state but in no event shall the
24 fund be obligated for claims against nonresident health care providers or
25 nonresident self-insurers who have not complied with this act or for
26 claims against nonresident health care providers or nonresident self-in-
27 surers that arose outside of this state;

28 (3) subject to the provisions of subsection (m), any amount due from
29 a judgment or settlement against a resident inactive health care provider,
30 an optometrist or pharmacist who purchased coverage pursuant to sub-
31 section (n) or a physical therapist who purchased coverage pursuant to
32 subsection (o), for any such injury or death arising out of the rendering
33 of or failure to render professional services;

34 (4) subject to the provisions of subsection (m), any amount due from
35 a judgment or settlement against a nonresident inactive health care pro-
36 vider, an optometrist or pharmacist who purchased coverage pursuant to
37 subsection (n) or a physical therapist who purchased coverage pursuant
38 to subsection (o), for any injury or death arising out of the rendering or
39 failure to render professional services within this state, but in no event
40 shall the fund be obligated for claims against: (A) Nonresident inactive
41 health care providers who have not complied with this act; or (B) non-
42 resident inactive health care providers for claims that arose outside of this
43 state, unless such health care provider was a resident health care provider

- 1 or resident self-insurer at the time such act occurred;
- 2 (5) subject to subsection (b) of K.S.A. 40-3411, and amendments
3 thereto, reasonable and necessary expenses for attorney fees incurred in
4 defending the fund against claims;
- 5 (6) any amounts expended for reinsurance obtained to protect the
6 best interests of the fund purchased by the board of governors, which
7 purchase shall be subject to the provisions of K.S.A. 75-3738 through 75-
8 3744, and amendments thereto, but shall not be subject to the provisions
9 of K.S.A. 75-4101 and amendments thereto;
- 10 (7) reasonable and necessary actuarial expenses incurred in admin-
11 istering the act, including expenses for any actuarial studies contracted
12 for by the legislative coordinating council, which expenditures shall not
13 be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
14 amendments thereto;
- 15 (8) periodically to the plan or plans, any amount due pursuant to
16 subsection (a)(3) of K.S.A. 40-3413 and amendments thereto;
- 17 (9) reasonable and necessary expenses incurred by the board of gov-
18 ernors in the administration of the fund or in the performance of other
19 powers, duties or functions of the board under the health care provider
20 insurance availability act;
- 21 (10) return of any unearned surcharge;
- 22 (11) subject to subsection (b) of K.S.A. 40-3411, and amendments
23 thereto, reasonable and necessary expenses for attorney fees and other
24 costs incurred in defending a person engaged or who was engaged in
25 residency training or the private practice corporations or foundations and
26 their full-time physician faculty employed by the university of Kansas
27 medical center from claims for personal injury or death arising out of the
28 rendering of or the failure to render professional services by such health
29 care provider;
- 30 (12) notwithstanding the provisions of subsection (m), any amount
31 due from a judgment or settlement for an injury or death arising out of
32 the rendering of or failure to render professional services by a person
33 engaged or who was engaged in residency training or the private practice
34 corporations or foundations and their full-time physician faculty em-
35 ployed by the university of Kansas medical center;
- 36 (13) subject to the provisions of K.S.A. 65-429 and amendments
37 thereto, reasonable and necessary expenses for the development and pro-
38 motion of risk management education programs and for the medical care
39 facility licensure and risk management survey functions carried out under
40 K.S.A. 65-429 and amendments thereto;
- 41 (14) notwithstanding the provisions of subsection (m), any amount,
42 but not less than the required basic coverage limits, owed pursuant to a
43 judgment or settlement for any injury or death arising out of the rendering

1 of or failure to render professional services by a person, other than a
2 person described in clause (12) of this subsection (c), who was engaged
3 in a postgraduate program of residency training approved by the state
4 board of healing arts but who, at the time the claim was made, was no
5 longer engaged in such residency program;

6 (15) subject to subsection (b) of K.S.A. 40-3411, and amendments
7 thereto, reasonable and necessary expenses for attorney fees and other
8 costs incurred in defending a person described in clause (14) of this sub-
9 section (c);

10 (16) expenses incurred by the commissioner in the performance of
11 duties and functions imposed upon the commissioner by the health care
12 provider insurance availability act, and expenses incurred by the com-
13 missioner in the performance of duties and functions under contracts
14 entered into between the board and the commissioner as authorized by
15 this section; and

16 (17) periodically to the state general fund reimbursements of
17 amounts paid to members of the health care stabilization fund oversight
18 committee for compensation, travel expenses and subsistence expenses
19 pursuant to subsection (e) of K.S.A. 40-3403b, and amendments thereto.

20 (d) All amounts for which the fund is liable pursuant to subsection
21 (c) shall be paid promptly and in full except that, if the amount for which
22 the fund is liable is \$300,000 or more, it shall be paid, by installment
23 payments of \$300,000 or 10% of the amount of the judgment including
24 interest thereon, whichever is greater, per fiscal year, the first installment
25 to be paid within 60 days after the fund becomes liable and each subse-
26 quent installment to be paid annually on the same date of the year the
27 first installment was paid, until the claim has been paid in full. Any at-
28 torney fees payable from such installment shall be similarly prorated.

29 (e) In no event shall the fund be liable to pay in excess of \$3,000,000
30 pursuant to any one judgment or settlement against any one health care
31 provider relating to any injury or death arising out of the rendering of or
32 the failure to render professional services on and after July 1, 1984, and
33 before July 1, 1989, subject to an aggregate limitation for all judgments
34 or settlements arising from all claims made in any one fiscal year in the
35 amount of \$6,000,000 for each health care provider.

36 (f) The fund shall not be liable to pay in excess of the amounts spec-
37 ified in the option selected by the health care provider pursuant to sub-
38 section (l) for judgments or settlements relating to injury or death arising
39 out of the rendering of or failure to render professional services by such
40 health care provider on or after July 1, 1989.

41 (g) A health care provider shall be deemed to have qualified for cov-
42 erage under the fund:

43 (1) On and after July 1, 1976, if basic coverage is then in effect;

1 (2) subsequent to July 1, 1976, at such time as basic coverage be-
2 comes effective; or

3 (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414 and
4 amendments thereto.

5 (h) A health care provider who is qualified for coverage under the
6 fund shall have no vicarious liability or responsibility for any injury or
7 death arising out of the rendering of or the failure to render professional
8 services inside or outside this state by any other health care provider who
9 is also qualified for coverage under the fund. The provisions of this sub-
10 section shall apply to all claims filed on or after July 1, 1986.

11 (i) Notwithstanding the provisions of K.S.A. 40-3402 and amend-
12 ments thereto, if the board of governors determines due to the number
13 of claims filed against a health care provider or the outcome of those
14 claims that an individual health care provider presents a material risk of
15 significant future liability to the fund, the board of governors is authorized
16 by a vote of a majority of the members thereof, after notice and an op-
17 portunity for hearing in accordance with the provisions of the Kansas
18 administrative procedure act, to terminate the liability of the fund for all
19 claims against the health care provider for damages for death or personal
20 injury arising out of the rendering of or the failure to render professional
21 services after the date of termination. The date of termination shall be
22 30 days after the date of the determination by the board of governors.
23 The board of governors, upon termination of the liability of the fund
24 under this subsection, shall notify the licensing or other disciplinary board
25 having jurisdiction over the health care provider involved of the name of
26 the health care provider and the reasons for the termination.

27 (j) (1) Upon the payment of moneys from the health care stabiliza-
28 tion fund pursuant to subsection (c)(11), the board of governors shall
29 certify to the director of accounts and reports the amount of such pay-
30 ment, and the director of accounts and reports shall transfer an amount
31 equal to the amount certified, reduced by any amount transferred pur-
32 suant to paragraph (3) of this subsection (j), from the state general fund
33 to the health care stabilization fund.

34 (2) Upon the payment of moneys from the health care stabilization
35 fund pursuant to subsection (c)(12), the board of governors shall certify
36 to the director of accounts and reports the amount of such payment which
37 is equal to the basic coverage liability of self-insurers, and the director of
38 accounts and reports shall transfer an amount equal to the amount cer-
39 tified, reduced by any amount transferred pursuant to paragraph (3) of
40 this subsection (j), from the state general fund to the health care stabili-
41 zation fund.

42 (3) The university of Kansas medical center private practice foun-
43 dation reserve fund is hereby established in the state treasury. If the

1 balance in such reserve fund is less than \$500,000 on July 1 of any year,
2 the private practice corporations or foundations referred to in subsection
3 (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount
4 necessary to increase such balance to \$500,000 to the state treasurer for
5 credit to such reserve fund as soon after such July 1 date as is practicable.
6 Upon receipt of each such remittance, the state treasurer shall credit the
7 same to such reserve fund. When compliance with the foregoing provi-
8 sions of this paragraph have been achieved on or after July 1 of any year
9 in which the same are applicable, the state treasurer shall certify to the
10 board of governors that such reserve fund has been funded for the year
11 in the manner required by law. Moneys in such reserve fund may be
12 invested or reinvested in accordance with the provisions of K.S.A. 40-
13 3406, and amendments thereto, and any income or interest earned by
14 such investments shall be credited to such reserve fund. Upon payment
15 of moneys from the health care stabilization fund pursuant to subsection
16 (c)(11) or (c)(12) with respect to any private practice corporation or foun-
17 dation or any of its full-time physician faculty employed by the university
18 of Kansas, the director of accounts and reports shall transfer an amount
19 equal to the amount paid from the university of Kansas medical center
20 private practice foundation reserve fund to the health care stabilization
21 fund or, if the balance in such reserve fund is less than the amount so
22 paid, an amount equal to the balance in such reserve fund.

23 (4) Upon payment of moneys from the health care stabilization fund
24 pursuant to subsection (c)(14) or (c)(15), the board of governors shall
25 certify to the director of accounts and reports the amount of such pay-
26 ment, and the director of accounts and reports shall transfer an amount
27 equal to the amount certified from the state general fund to the health
28 care stabilization fund.

29 (k) Notwithstanding any other provision of the health care provider
30 insurance availability act, no psychiatric hospital licensed under K.S.A.
31 75-3307b and amendments thereto shall be assessed a premium sur-
32 charge or be entitled to coverage under the fund if such hospital has not
33 paid any premium surcharge pursuant to K.S.A. 40-3404 and amend-
34 ments thereto prior to January 1, 1988.

35 (l) On or after July 1, 1989, every health care provider shall make an
36 election to be covered by one of the following options provided in this
37 subsection (l) which shall limit the liability of the fund with respect to
38 judgments or settlements relating to injury or death arising out of the
39 rendering of or failure to render professional services on or after July 1,
40 1989. Such election shall be made at the time the health care provider
41 renews the basic coverage in effect on July 1, 1989, or, if basic coverage
42 is not in effect, such election shall be made at the time such coverage is
43 acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice

1 of the election shall be provided by the insurer providing the basic cov-
2 erage in the manner and form prescribed by the board of governors and
3 shall continue to be effective from year to year unless modified by a
4 subsequent election made prior to the anniversary date of the policy. The
5 health care provider may at any subsequent election reduce the dollar
6 amount of the coverage for the next and subsequent fiscal years, but may
7 not increase the same, unless specifically authorized by the board of gov-
8 ernors. Any election of fund coverage limits, whenever made, shall be
9 with respect to judgments or settlements relating to injury or death arising
10 out of the rendering of or failure to render professional services on or
11 after the effective date of such election of fund coverage limits. Such
12 election shall be made for persons engaged in residency training and
13 persons engaged in other postgraduate training programs approved by
14 the state board of healing arts at medical care facilities or mental health
15 centers in this state by the agency or institution paying the surcharge
16 levied under K.S.A. 40-3404, and amendments thereto, for such persons.
17 Such options shall be as follows:

18 (1) *OPTION 1.* The fund shall not be liable to pay in excess of
19 \$100,000 pursuant to any one judgment or settlement for any party
20 against such health care provider, subject to an aggregate limitation for
21 all judgments or settlements arising from all claims made in the fiscal year
22 in an amount of \$300,000 for such provider.

23 (2) *OPTION 2.* The fund shall not be liable to pay in excess of
24 \$300,000 pursuant to any one judgment or settlement for any party
25 against such health care provider, subject to an aggregate limitation for
26 all judgments or settlements arising from all claims made in the fiscal year
27 in an amount of \$900,000 for such provider.

28 (3) *OPTION 3.* The fund shall not be liable to pay in excess of
29 \$800,000 pursuant to any one judgment or settlement for any party
30 against such health care provider, subject to an aggregate limitation for
31 all judgments or settlements arising from all claims made in the fiscal year
32 in an amount of \$2,400,000 for such health care provider.

33 (m) The fund shall not be liable for any amounts due from a judgment
34 or settlement against resident or nonresident inactive health care provid-
35 ers who first qualify as an inactive health care provider on or after July 1,
36 1989, unless such health care provider has been in compliance with K.S.A.
37 40-3402, and amendments thereto, for a period of not less than five years.
38 If a health care provider has not been in compliance for five years, such
39 health care provider may make application and payment for the coverage
40 for the period while they are nonresident health care providers, nonres-
41 ident self-insurers or resident or nonresident inactive health care provid-
42 ers to the fund. Such payment shall be made within 30 days after the
43 health care provider ceases being an active health care provider and shall

1 be made in an amount determined by the board of governors to be suf-
2 ficient to fund anticipated claims based upon reasonably prudent actuarial
3 principles. The provisions of this subsection shall not be applicable to any
4 health care provider which becomes inactive through death or retirement,
5 or through disability or circumstances beyond such health care provider's
6 control, if such health care provider notifies the board of governors and
7 receives approval for an exemption from the provisions of this subsection.
8 Any period spent in a postgraduate program of residency training ap-
9 proved by the state board of healing arts shall not be included in com-
10 putation of time spent in compliance with the provisions of K.S.A. 40-
11 3402, and amendments thereto.

12 (n) Notwithstanding the provisions of subsection (m) or any other
13 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
14 the contrary, the fund shall not be liable for any claim made on or after
15 July 1, 1991, against a licensed optometrist or pharmacist relating to any
16 injury or death arising out of the rendering of or failure to render pro-
17 fessional services by such optometrist or pharmacist prior to July 1, 1991,
18 unless such optometrist or pharmacist qualified as an inactive health care
19 provider prior to July 1, 1991.

20 (o) Notwithstanding the provisions of subsection (m) or any other
21 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
22 the contrary, the fund shall not be liable for any claim made on or after
23 July 1, 1995, against a physical therapist ~~registered~~ *licensed* by the state
24 board of healing arts relating to any injury or death arising out of the
25 rendering of or failure to render professional services by such physical
26 therapist prior to July 1, 1995, unless such physical therapist qualified as
27 an inactive health care provider prior to July 1, 1995.

28 (p) Notwithstanding the provisions of subsection (m) or any other
29 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to
30 the contrary, the fund shall not be liable for any claim made on or after
31 July 1, 1997, against a health maintenance organization relating to any
32 injury or death arising out of the rendering of or failure to render pro-
33 fessional services by such health maintenance organization prior to July
34 1, 1997, unless such health maintenance organization qualified as an in-
35 active health care provider prior to July 1, 1997, and obtained coverage
36 pursuant to subsection (m). Health maintenance organizations not qual-
37 ified as inactive health care providers prior to July 1, 1997, may purchase
38 coverage from the fund for periods of prior compliance by making ap-
39 plication prior to August 1, 1997, and payment within 30 days from notice
40 of the calculated amount as determined by the board of governors to be
41 sufficient to fund anticipated claims based on reasonably prudent actu-
42 arial principles.

43 (q) Notwithstanding anything in article 34 of chapter 40 of the Kansas

1 Statutes Annotated to the contrary, the fund shall in no event be liable
2 for any claims against any health care provider based upon or relating to
3 the health care provider's sexual acts or activity, but in such cases the
4 fund may pay reasonable and necessary expenses for attorney fees in-
5 curred in defending the fund against such claim. The fund may recover
6 all or a portion of such expenses for attorney fees if an adverse judgment
7 is returned against the health care provider for damages resulting from
8 the health care provider's sexual acts or activity.

9 Sec. 21. K.S.A. 60-513d is hereby amended to read as follows: 60-
10 513d. As used in K.S.A. 60-513 and 60-513b, and amendments to such
11 statutes, the term "health care provider" means a person licensed to prac-
12 tice any branch of the healing arts, a person who holds a temporary permit
13 to practice any branch of the healing arts, a person engaged in a post-
14 graduate training program approved by the state board of healing arts, a
15 licensed medical care facility, a health maintenance organization, a li-
16 censed dentist, a licensed professional nurse, a licensed practical nurse,
17 a licensed optometrist, a licensed podiatrist, a professional corporation
18 organized pursuant to the professional corporation law of Kansas by per-
19 sons who are authorized by such law to form such a corporation and who
20 are health care providers as defined by this section, a licensed pharmacist
21 or a ~~registered~~ *licensed* physical therapist.

22 Sec. 22. K.S.A. 60-2609 is hereby amended to read as follows: 60-
23 2609. (a) Whenever judgment is entered on a claim in any action for
24 recovery of damages for personal injury or death arising out of the ren-
25 dering of or the failure to render professional services by any health care
26 provider, the court may include in such judgment a requirement that the
27 damages awarded be paid in whole or in part by installment or periodic
28 payments, and any installment or periodic payment upon becoming due
29 and payable under the terms of any such judgment shall constitute a
30 separate judgment upon which execution may issue. Any judgment or-
31 dering any such payments shall specify the amount of each payment, the
32 interval between payments and the number of payments to be paid under
33 the judgment. For good cause shown, the court may modify such judg-
34 ment with respect to the amount of such payments and the number of
35 payments to be made or the interval between payments, but the total
36 amount of damages awarded by such judgment shall not be subject to
37 modification in any event.

38 (b) As used in this section, "health care provider" means a person
39 licensed to practice any branch of the healing arts, a person who holds a
40 temporary permit to practice any branch of the healing arts or a person
41 engaged in a postgraduate training program approved by the state board
42 of healing arts, a licensed medical care facility, a health maintenance
43 organization, a licensed dentist, a licensed professional nurse, a licensed

1 practical nurse, a licensed optometrist, a licensed podiatrist, a licensed
2 pharmacist, a professional corporation organized pursuant to the profes-
3 sional corporation law of Kansas by persons who are authorized by such
4 law to form such a corporation and who are health care providers as
5 defined by this subsection, a ~~registered~~ *licensed* physical therapist or an
6 officer, employee or agent thereof acting in the course and scope of em-
7 ployment or agency.

8 Sec. 23. K.S.A. 2000 Supp. 65-1501 is hereby amended to read as
9 follows: 65-1501. (a) The practice of optometry means:

10 (1) The examination of the human eye and its adnexae and the em-
11 ployment of objective or subjective means or methods (including the ad-
12 ministering, prescribing or dispensing, of topical pharmaceutical drugs)
13 for the purpose of diagnosing the refractive, muscular, or pathological
14 condition thereof;

15 (2) the prescribing or adapting of lenses (including any ophthalmic
16 lenses which are classified as drugs by any law of the United States or of
17 this state), prisms, low vision rehabilitation services, orthoptic exercises
18 and visual training therapy for the relief of any insufficiencies or abnormal
19 conditions of the human eye and its adnexae; and

20 (3) except as otherwise limited by this section, the prescribing, ad-
21 ministering or dispensing of topical pharmaceutical drugs and oral drugs
22 for the examination, diagnosis and treatment of any insufficiencies or
23 abnormal conditions of the human eye and its adnexae.

24 (b) The practice of optometry shall not include: (1) The management
25 and treatment of glaucoma, except as provided in subsection (d); (2) the
26 performance of surgery, including the use of lasers for surgical purposes,
27 except that therapeutic licensees may remove superficial foreign bodies
28 from the cornea and the conjunctiva; (3) the use of topical pharmaceutical
29 drugs by a person licensed to practice optometry unless such person suc-
30 cessfully meets the requirements of a diagnostic licensee or a therapeutic
31 licensee; and (4) the prescribing, administering and dispensing of oral
32 drugs for ocular conditions by a person licensed to practice optometry
33 unless such person successfully meets the requirements of a therapeutic
34 licensee, except that such therapeutic licensee may prescribe or admin-
35 ister oral steroids or oral antiglaucoma drugs for ocular conditions follow-
36 ing consultation with an ophthalmologist, which consultation shall be
37 noted in writing in the patient's file. No optometrist may prescribe or
38 administer oral drugs to persons less than six years of age.

39 (c) A therapeutic licensee certified to treat adult open-angle glau-
40 coma as provided herein shall be held to a standard of care in the use of
41 such agents in diagnosis and treatment commensurate to that of a person
42 licensed to practice medicine and surgery, who exercises that degree of
43 skill and proficiency commonly exercised by an ordinary, skillful, careful

1 and prudent person licensed to practice medicine and surgery.

2 (d) An optometrist may prescribe, administer and dispense topical
3 pharmaceutical drugs and oral drugs for the treatment of adult open-
4 angle glaucoma only following glaucoma licensure as provided in subsec-
5 tion (l) of K.S.A. 65-1501a and amendments thereto. After the initial
6 diagnosis of adult open-angle glaucoma, by an optometrist during the co-
7 management period described in subsection (s) of K.S.A. 65-1501a and
8 amendments thereto, the patient shall be notified that the diagnosis must
9 be confirmed by an ophthalmologist and that any subsequent treatment
10 requires a written co-management plan with an ophthalmologist of the
11 patient's choice.

12 (e) Under the direction and supervision of a therapeutic licensee, a
13 licensed professional nurse, licensed practical nurse, ~~registered~~ *licensed*
14 physical therapist and registered occupational therapist may assist in the
15 provision of low vision rehabilitation services in addition to such other
16 services which such licensed professional nurse, licensed practical nurse,
17 ~~registered~~ *licensed* physical therapist and registered occupational thera-
18 pist is authorized by law to provide under subsection (d) of K.S.A. 65-
19 1113, subsection (h) of K.S.A. 65-1124, subsection (b) of K.S.A. 65-2901
20 and subsection (b) of K.S.A. 65-5402, and amendments thereto.

21 Sec. 24. K.S.A. 2000 Supp. 65-1902 is hereby amended to read as
22 follows: 65-1902. (a) Except as provided in subsection (b), no person shall:

23 (1) Engage in practice of cosmetology, esthetics, nail technology or
24 electrology unless the person holds a valid license, issued by the board,
25 to engage in that practice;

26 (2) conduct a school for teaching cosmetology unless the person holds
27 a valid license, issued by the board, to conduct the school;

28 (3) teach cosmetology in a licensed school unless the person holds a
29 valid cosmetology instructor's license issued by the board;

30 (4) conduct a school for teaching nail technology unless the person
31 holds a valid license, issued by the board, to conduct the school;

32 (5) teach nail technology in a licensed school unless the person holds
33 a valid cosmetology or manicuring instructor's license issued by the board;

34 (6) conduct a school for teaching electrology unless the person holds
35 a valid license, issued by the board, to conduct the school;

36 (7) teach electrology in a licensed school or clinic unless the person
37 holds a valid electrology instructor's license issued by the board;

38 (8) conduct a school for teaching esthetics unless the person holds a
39 valid license, issued by the board, to conduct the school;

40 (9) teach esthetics in a licensed school unless the person holds a valid
41 cosmetology or esthetics instructor's license issued by the board;

42 (10) own or operate a school, salon or clinic where cosmetology, es-
43 thetics, nail technology or electrology is taught or practiced unless the

1 person holds a valid school, salon or clinic license issued by the board; or
2 (11) teach or practice cosmetology, esthetics, nail technology or elec-
3 trology in a school, salon or clinic unless the owner or operator of the
4 school, salon or clinic holds a valid school, salon or clinic license issued
5 by the board.

6 (b) The provisions of this act shall not apply to:

7 (1) Any person licensed as a barber or apprentice barber;

8 (2) any person licensed to practice medicine and surgery, chiroprac-
9 tic, optometry, nursing or dentistry, while engaged in that practice;

10 (3) any person who is a ~~registered~~ *licensed* physical therapist or cer-
11 tified physical therapist assistant while engaged in that practice; or

12 (4) any teacher while engaged in instructing elementary or secondary
13 school students in the proper care of their own persons.

14 (c) A person holding a license as a cosmetology technician on the day
15 immediately preceding the effective date of this act shall continue to be
16 a licensed cosmetology technician and perform the functions of a cos-
17 metology technician, as such term was defined immediately prior to the
18 effective date of this act, and may renew such license subject to the pay-
19 ment of fees and other conditions and limitations on the renewal of li-
20 censes under article 19 of chapter 65 of the Kansas Statutes Annotated
21 and acts amendatory of the provisions thereof.

22 Sec. 25. K.S.A. 2000 Supp. 65-2891 is hereby amended to read as
23 follows: 65-2891. (a) Any health care provider who in good faith renders
24 emergency care or assistance at the scene of an emergency or accident
25 including treatment of a minor without first obtaining the consent of the
26 parent or guardian of such minor shall not be liable for any civil damages
27 for acts or omissions other than damages occasioned by gross negligence
28 or by willful or wanton acts or omissions by such person in rendering such
29 emergency care.

30 (b) Any health care provider may render in good faith emergency
31 care or assistance, without compensation, to any minor requiring such
32 care or assistance as a result of having engaged in competitive sports,
33 without first obtaining the consent of the parent or guardian of such
34 minor. Such health care provider shall not be liable for any civil damages
35 other than damages occasioned by gross negligence or by willful or wan-
36 ton acts or omissions by such person in rendering such emergency care.

37 (c) Any health care provider may in good faith render emergency care
38 or assistance during an emergency which occurs within a hospital or else-
39 where, with or without compensation, until such time as the physician
40 employed by the patient or by the patient's family or by guardian assumes
41 responsibility for such patient's professional care. The health care pro-
42 vider rendering such emergency care shall not be held liable for any civil
43 damages other than damages occasioned by negligence.

1 (d) Any provision herein contained notwithstanding, the ordinary
2 standards of care and rules of negligence shall apply in those cases
3 wherein emergency care and assistance is rendered in any physician's or
4 dentist's office, clinic, emergency room or hospital with or without
5 compensation.

6 (e) As used in this section the term "health care provider" means any
7 person licensed to practice any branch of the healing arts, licensed dentist,
8 licensed optometrist, licensed professional nurse, licensed practical nurse,
9 licensed podiatrist, licensed pharmacist, ~~registered~~ *licensed* physical ther-
10 apist, and any physician's assistant who has successfully completed an
11 American medical association approved training program and has suc-
12 cessfully completed the national board examination for physicians' assis-
13 tants of the American board of medical examiners, any registered athletic
14 trainer, any registered occupational therapist, any licensed respiratory
15 therapist, any person who holds a valid attendant's certificate under
16 K.S.A. 65-6129, and amendments thereto, any person who holds a valid
17 certificate for the successful completion of a course in first aid offered or
18 approved by the American red cross, by the American heart association,
19 by the mining enforcement and safety administration of the bureau of
20 mines of the department of interior, by the national safety council or by
21 any instructor-coordinator, as defined in K.S.A. 65-6112, and amend-
22 ments thereto, and any person engaged in a postgraduate training pro-
23 gram approved by the state board of healing arts.

24 Sec. 26. K.S.A. 65-4909 is hereby amended to read as follows: 65-
25 4909. (a) There shall be no liability on the part of and no action for
26 damages shall arise against any: (1) State, regional or local association of
27 health care providers; (2) state, regional or local association of licensed
28 adult care home administrators; (3) organization delegated review func-
29 tions by law, and the individual members of any committee thereof
30 (whether or not such individual members are health care providers or
31 licensed adult care home administrators); or (4) individual or entity acting
32 at the request of any committee, association or organization listed in sub-
33 sections (1) through (3), which in good faith investigates or communicates
34 information regarding the quality, quantity or cost of care being given
35 patients by health care providers or being furnished residents of adult
36 care homes for any act, statement or proceeding undertaken or performed
37 within the scope of the functions and within the course of the perform-
38 ance of the duties of any such association, organization or committee if
39 such association, organization or committee or such individual member
40 thereof acted in good faith and without malice.

41 (b) As used in this section, "health care provider" means a person
42 licensed to practice any branch of the healing arts or engaged in a post-
43 graduate training program approved by the state board of healing arts,

1 mid-level practitioner as defined under K.S.A. 65-468, and amendments
2 thereto, licensed dentist, licensed professional nurse, licensed practical
3 nurse, licensed optometrist, licensed podiatrist, licensed pharmacist, *li-*
4 *icensed* physical therapist or respiratory therapist.

5 Sec. 27. K.S.A. 2000 Supp. 65-5912 is hereby amended to read as
6 follows: 65-5912. (a) Nothing in this act shall be construed to require any
7 insurer or other entity regulated under chapter 40 of the Kansas Statutes
8 Annotated or any other law of this state to provide coverage for or in-
9 demnify for the services provided by a person licensed under this act.

10 (b) So long as the following persons do not hold themselves out to
11 the public to be dietitians or licensed dietitians or use these titles in
12 combination with other titles or use the abbreviation L.D., or any com-
13 bination thereof, nothing in this act shall be construed to apply:

14 (1) To any person licensed to practice the healing arts, a licensed
15 dentist, a licensed dental hygienist, a licensed professional nurse, a li-
16 censed practical nurse, a licensed psychologist, a licensed masters level
17 psychologist, a licensed pharmacist or an employee thereof, a physician's
18 assistant, a licensed professional counselor;

19 (2) to any unlicensed employee of a licensed adult care home or a
20 licensed medical care facility as long as such person is working under the
21 general direction of a licensee in the healing arts, nursing or a dietetic
22 services supervisor as defined in regulations adopted by the secretary of
23 health and environment or a consultant licensed under this act;

24 (3) to any dietetic technician or dietetic assistant;

25 (4) to any student enrolled in an approved academic program in di-
26 etetics, home economics, nutrition, education or other like curriculum,
27 while engaged in such academic program;

28 (5) to prevent any person, including persons employed in health food
29 stores, from furnishing nutrition information as to the use of food, food
30 materials or dietary supplements, nor to prevent in any way the free dis-
31 semination of information or of literature as long as no individual engaged
32 in such practices holds oneself out as being licensed under this act;

33 (6) to prohibit any individual from marketing or distributing food
34 products, including dietary supplements, or to prevent any such person
35 from providing information to customers regarding the use of such
36 products;

37 (7) to prevent any employee of the state or a political subdivision who
38 is employed in nutrition-related programs from engaging in activities in-
39 cluded within the definition of dietetics practice as a part of such person's
40 employment;

41 (8) to any person who performs the activities and services of a li-
42 censed dietitian or nutrition educator as an employee of the state or a
43 political subdivision, an elementary or secondary school, an educational

1 institution, a licensed institution, or a not-for-profit organization;

2 (9) to any person serving in the armed forces, the public health serv-
3 ice, the veterans administration or as an employee of the federal
4 government;

5 (10) to any person who has a degree in home economics insofar as
6 the activities of such person are within the scope of such person's edu-
7 cation and training;

8 (11) to any person who counsels or provides weight-control services
9 as a part of a franchised or recognized weight-control program or a
10 weight-control program that operates under the general direction of a
11 person licensed to practice the healing arts, nursing or a person licensed
12 under this act;

13 (12) to any person who is acting as a representative of a trade asso-
14 ciation and who engages in one or more activities included within the
15 practice of dietetics as a representative of such association;

16 (13) to a ~~registered~~ *licensed* physical therapist who makes a dietetic
17 or nutritional assessment or gives dietetic or nutritional advice in the
18 normal practice of such person's profession or as otherwise authorized by
19 law;

20 (14) to a dietitian licensed, registered or otherwise authorized to
21 practice dietetics in another state who is providing consultation in this
22 state;

23 (15) to any person conducting a teaching clinical demonstration
24 which is carried out in an educational institution or an affiliated clinical
25 facility or health care agency;

26 (16) to any person conducting classes or disseminating information
27 relating to nonmedical nutrition; or

28 (17) to any person permitted to practice under K.S.A. 65-2872a and
29 amendments thereto.

30 (c) Nothing in this act shall be construed to interfere with the relig-
31 ious practices or observances of a bona fide religious organization, nor to
32 prevent any person from caring for the sick in accordance with tenets and
33 practices of any church or religious denomination which teaches reliance
34 upon spiritual means through prayer for healing.

35 Sec. 28. K.S.A. 40-2,111, 40-3401, 40-3403, 60-513d, 60-2609, 65-
36 2901, 65-2904, 65-2905, 65-2907, 65-2908, 65-2909, 65-2910, 65-2912,
37 65-2914, 65-2915, 65-2918 and 65-4909 and K.S.A. 2000 Supp. 7-121b,
38 17-2707, 21-3721, 65-1501, 65-1902, 65-2891, 65-2906, 65-2913 and 65-
39 5912 are hereby repealed.

40 Sec. 29. This act shall take effect and be in force from and after its
41 publication in the statute book.

42

43