

HOUSE BILL No. 2188

AN ACT concerning civil procedure; relating to medical and professional malpractice screening panels; amending K.S.A. 60-3502, 60-3503, 60-3505, 60-3508, 65-4901, 65-4902, 65-4904 and 65-4907 and repealing the existing sections.

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

Section 1. K.S.A. 60-3502 is hereby amended to read as follows: 60-3502. (a) If a professional malpractice liability action is filed in a district court of this state and one of the parties to the action requests, by filing a memorandum with the court, that a professional malpractice screening panel be convened, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a professional malpractice screening panel, hereafter referred to as the screening panel. If a claim for damages arising out of the rendering of or failure to render services by a professional licensee has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened and, if such request is made, the judge of the district court or the chief judge of such court shall convene a screening panel. *If a petition or claim is filed naming more than one defendant or more than one person against whom a claim is being made, each defendant or person is entitled to request a separate screening panel.*

(b) The membership of the screening panel shall be selected as follows: ~~(a)~~ (1) A person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the defendant or by the person against whom the claim is made if no petition has been filed; ~~(b)~~ (2) a person licensed in the same profession as the defendant or person against whom the claim is filed, designated by the plaintiff or by the claimant if no petition has been filed; ~~(c)~~ (3) a person licensed in the same profession as the defendant or person against whom the claim is filed, selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made, if no petition has been filed; and ~~(d)~~ (4) an attorney selected by the judge of the district court or the chief judge of such court from a list of attorneys maintained by the judge of the district court for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.

(c) The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of professional licensees shall maintain and make available to the parties to the proceeding a current list of professional licensees who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular professional malpractice claim to be heard.

Sec. 2. K.S.A. 60-3503 is hereby amended to read as follows: 60-3503. The district judge or the chief judge of such court shall notify the parties to the action that a screening panel has been convened ~~and that the members of such screening panel are to be appointed within 10 days of the receipt of such notice. If the plaintiff and the defendant or, if no petition has been filed, the claimant and the party against whom the claim is made. The plaintiff or claimant and the defendant or respondent shall each designate a person licensed in the same profession as the defendant or respondent within 20 days of such party's receipt of notice of the convening of the screening panel. The parties shall jointly designate a person licensed in the same profession as the defendant or respondent within 10 days after the individual designations have been made. If the parties are unable to jointly select a professional licensee within such 10 days after receipt of notice that a screening panel has been convened,~~ the judge of the district court or the chief judge of such court shall select such professional licensee.

Sec. 3. K.S.A. 60-3505 is hereby amended to read as follows: 60-3505. (a) Within ~~90~~ 180 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the professional licensee departed from the standard of conduct in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide

a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court or the chief judge of such court.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial.

Sec. 4. K.S.A. 60-3508 is hereby amended to read as follows: 60-3508. (a) Each professional licensee member of the screening panel shall be paid a total of ~~\$250~~ \$500 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court and, in addition thereto, reasonable travel expense. The chairperson of the panel shall be paid a total of ~~\$500~~ \$750 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court and, in addition thereto, reasonable travel expenses. The chairperson shall keep an accurate record of the time and expenses of all the members of the panel, and the record shall be submitted to the parties for payment with the panel's report.

(b) Costs of the panel including travel expenses and other expenses of the review shall be paid by the side in whose favor the majority opinion is written. If the panel is unable to make a recommendation, each side shall pay ½ the costs. Items which may be included in the taxation of costs shall be those items enumerated by K.S.A. 60-2003 and amendments thereto.

Sec. 5. K.S.A. 65-4901 is hereby amended to read as follows: 65-4901. (a) If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and one of the parties to the action requests, by filing a memorandum with the court, that a medical malpractice screening panel be convened, the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a medical malpractice screening panel, hereafter referred to as the "screening panel." If a petition is filed in a district court of this state claiming damages for personal injury or death on account of alleged medical malpractice of a health care provider and none of the parties to the action requests that a screening panel be convened, the judge may convene a screening panel upon the judge's own motion. If a claim for damages for personal injury or death on account of alleged medical malpractice of a health care provider has not been formalized by the filing of a petition, any party affected by such claim may request, by filing a memorandum with the court, that a screening panel be convened, and if such request is made the judge of the district court or, if the district court has more than one division, the chief judge of such court shall convene a screening panel. *If a petition or claim is filed naming more than one defendant or more than one person against whom a claim is being made, each defendant or person is entitled to request a screening panel.*

(b) The membership of the screening panel shall be selected as follows: ~~(a)~~ (1) A health care provider designated by the defendant or by the person against whom the claim is made if no petition has been filed; ~~(b)~~ (2) a health care provider designated by the plaintiff or by the claimant if no petition has been filed; ~~(c)~~ (3) a health care provider selected jointly by the plaintiff and the defendant or by the claimant and the person against whom the claim is made if no petition has been filed; and ~~(d)~~ (4) an attorney selected by the judge of the district court or, if the district court has more than one division, the chief judge of such court from a list of attorneys maintained by the judge of the district court or, if the district court has more than one division, the chief judge of such court for such purpose. Such attorney shall be a nonvoting member of the screening panel but shall act as chairperson of the screening panel.

(c) The state agency which licenses, registers, certifies or otherwise is responsible for the practice of any group of health care providers shall maintain and make available to the parties to the proceeding a current list of health care providers who are willing and available to serve on the screening panel. The persons appointed shall constitute the screening panel for the particular medical malpractice claim to be heard.

Sec. 6. K.S.A. 65-4902 is hereby amended to read as follows: 65-4902. The district judge or, if the district court has more than one division, the chief judge of such court shall notify the parties to the action that a screening panel has been convened ~~and that the members of such screening panel are to be appointed within 10 days of the receipt of such notice. If the plaintiff and the defendant or, if no petition has been filed, the claimant and the party against whom the claim is made.~~ *The plaintiff or claimant and the defendant or respondent shall each designate a health care provider licensed in the same profession as the defendant or respondent within 20 days of such party's receipt of notice of the convening of the screening panel. The parties shall jointly designate a health care provider licensed in the same profession as the defendant or respondent within 10 days after the individual designations have been made. If the parties are unable to jointly select a health care provider within such 10 days after receipt of notice that a screening panel has been convened,* the judge of the district court or, if the district court has more than one division, the chief judge of such court shall select such health care provider.

Sec. 7. K.S.A. 65-4904 is hereby amended to read as follows: 65-4904. (a) Within ~~90~~ 180 days after the screening panel is commenced, such panel shall make written recommendations on the issue of whether the health care provider departed from the standard of care in a way which caused the plaintiff or claimant damage. A concurring or dissenting member of the screening panel may file a written concurring or dissenting opinion. All written opinions shall be supported by corroborating references to published literature and other relevant documents.

(b) The screening panel shall notify all parties when its determination is to be handed down, and, within seven days of its decision, shall provide a copy of its opinion and any concurring or dissenting opinion to each party and each attorney of record and to the judge of the district court or, if the district court has more than one division, the chief judge of such court.

(c) The written report of the screening panel shall be admissible in any subsequent legal proceeding, and either party may subpoena any and all members of the panel as witnesses for examination relating to the issues at trial, *provided the panel member or members otherwise meet the qualifications of K.S.A. 60-3412, and amendments thereto.*

Sec. 8. K.S.A. 65-4907 is hereby amended to read as follows: 65-4907. (a) Each health care provider member of the screening panel shall be paid a total of ~~\$250~~ \$500 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court, and in addition thereto, reasonable travel expense. The chairperson of the panel shall be paid a total of ~~\$500~~ \$750 for all work performed as a member of the panel exclusive of time involved if called as a witness to testify in court, and in addition thereto reasonable travel expenses. The chairperson shall keep an accurate record of the time and expenses of all the members of the panel, and the record shall be submitted to the parties for payment with the panel's report.

(b) Costs of the panel including travel expenses and other expenses of the review shall be paid by the side in whose favor the majority opinion is written. If the panel is unable to make a recommendation, then each side shall pay ½ of the costs. Items which may be included in the taxation of costs shall be those items enumerated by K.S.A. 60-2003 and amendments thereto.

Sec. 9. K.S.A. 60-3502, 60-3503, 60-3505, 60-3508, 65-4901, 65-4902, 65-4904 and 65-4907 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*