

HOUSE BILL No. 2782

By Committee on Insurance and Financial Institutions

2-6

9 AN ACT enacting the Kansas medical liability reporting act.
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11 *Be it enacted by the Legislature of the State of Kansas:*
12 Section 1. Sections 1 through 6, and amendments thereto, shall be
13 known and may be cited as the Kansas medical liability reporting act.
14 Sec. 2. As used in sections 2 through 6, and amendments thereto:
15 (a) "Commissioner" means the commissioner of insurance;
16 (b) "department" means the Kansas insurance department;
17 (c) "direct claim expenses" means defense attorneys' fees and ex-
18 penses, expert witness' fees and expenses, deposition costs and other ex-
19 penses of handling claims;
20 (d) "health care provider" means those persons and entities defined
21 as a health care provider under K.S.A. 40-3401, and amendments thereto;
22 (e) "premiums" means the consideration paid for a contract of insur-
23 ance and surcharges imposed by the Kansas health care stabilization fund;
24 (f) "reporting entity" means any of the following:
25 (1) Every insurance company, self-insured entity, risk retention
26 group and excess or reinsurer, including, but not limited to, the Kansas
27 health care stabilization fund, which provides medical malpractice or pro-
28 fessional health care liability insurance, reinsurance, excess insurance,
29 coverage or risk retention services to or for the benefit of any health care
30 provider; and
31 (2) every health care provider which does not maintain or is not cov-
32 ered by malpractice or professional liability insurance coverage during
33 any part of a reporting year.
34 Sec. 3. (a) Every reporting entity shall submit to the department an
35 annual report relating to its operation and relating to claims for medical
36 malpractice and health care professional liability as set forth in this sec-
37 tion. The annual reports shall be signed and attested by the person re-
38 porting, if an individual, or by the chief financial or chief executive officer
39 of the reporting entity if other than an individual.
40 (b) The report shall be filed on or before April 1 of each year begin-
41 ning April 1, 2009, and shall cover the preceding calendar year.
42 (c) The initial report shall provide the following information regard-
43 ing all reporting entities and their Kansas medical malpractice and health

1 care professional liability claims:

2 (1) A list of all Kansas medical malpractice and health care profes-
3 sional liability claims pending which shall include the following infor-
4 mation for each claim: The claim number assigned by the reporting entity;
5 the names and social security numbers, if known, of all claimants; the
6 date of occurrence; the name, address and telephone number of the
7 claimant's attorney, if any; whether suit has been filed, and if so in what
8 court and jurisdiction; and the speciality of all health care providers
9 against whom the claim has been asserted. Reports submitted by excess
10 and reinsurers, including the Kansas health care stabilization fund, shall
11 also include the identity of the original or underlying insurer on each
12 claim and the claim number assigned by the original or underlying carrier;

13 (2) the total amounts paid, and the dates paid, to or for the benefit
14 of all claimants on each claim;

15 (3) the total amount paid for direct claim expenses on each claim;

16 (4) the total premiums earned by each reporting entity for the re-
17 porting period; the total reserves of each reporting entity on the last day
18 of the reporting period; the total amounts paid on all claims during the
19 reporting period; and the total of all reserves written down or written off,
20 if any, during the reporting period.

21 (d) The second and subsequent reports filed pursuant to this section
22 shall contain all of the information required by subsection (c) for the
23 previous calendar year and shall identify all claims which were closed
24 since the last report.

25 (e) The initial and all subsequent reports filed pursuant to this section
26 shall include the amounts required by subsections (c)(2) and (3) from the
27 inception date of each claim until the end of the preceding calendar year.
28 The intent of this subsection is to require complete payment information
29 over the entire time period of each claim's duration in each annual report.

30 Sec. 4. The department shall submit an annual report to the presi-
31 dent of the senate and to the speaker of the house of representatives
32 summarizing the information submitted pursuant to this act, which report
33 shall be released to the public. Such annual report shall be submitted on
34 or before November 1 of each year beginning November 1, 2009. Each
35 such annual report shall contain aggregate data only and shall not identify
36 any individual claimant, any person's social security number, or any in-
37 dividual health care provider, hospital or health care entity.

38 Sec. 5. (a) The information submitted to the department pursuant to
39 this act shall be used solely for the purpose of analyzing financial data,
40 premium data and trends in Kansas medical malpractice and health care
41 professional liability claims.

42 (b) Except for purposes of prosecuting any violation of this act pur-
43 suant to subsection (c) of section 6, and amendments thereto, the infor-

1 mation and data submitted to the department pursuant to this act shall
2 be confidential, shall not be subject to public inspection under any law,
3 shall not be subject to discovery, subpoena or legal compulsion for release
4 to any person or entity, and shall not be admissible in any criminal, civil
5 or administrative proceeding.

6 (c) Unless otherwise prohibited by law, nothing in this act shall be
7 construed to prevent parties to a medical malpractice or health care pro-
8 fessional liability claim from entering into a settlement of that claim on a
9 confidential basis, except that no settlement agreement may alter the
10 reporting requirements set forth in this act. Complying with the provi-
11 sions of this act shall not be considered a breach of any confidential set-
12 tlement agreement.

13 (d) The provisions of subsection (b) shall expire on July 1, 2013, un-
14 less the legislature acts to reenact such provisions. The provisions of sub-
15 section (b) shall be reviewed by the legislature prior to July 1, 2013.

16 Sec. 6. (a) The commissioner is authorized to promulgate rules and
17 regulations and forms to effectuate the purposes of this act.

18 (b) The commissioner is authorized to enforce the provisions of this
19 act against any reporting entity. Except as provided in subsection (c) of
20 this section, such enforcement power shall be to the same extent as the
21 commissioner may take against insurers required to report to the com-
22 missioner under existing law.

23 (c) In addition to any other enforcement action, the commissioner
24 shall levy a civil penalty of \$100 per day upon any reporting entity which
25 fails to comply with the provisions of this act. Further, any person or
26 entity which willfully violates any provision of this act shall be guilty of a
27 class B misdemeanor, and, upon conviction of a second or subsequent
28 violation, shall be guilty of a class A misdemeanor.

29 Sec. 7. This act shall take effect and be in force from and after its
30 publication in the statute book.