

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~pm~~ on March 6, 1985 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Steineger, Talkington, Winter and Yost.

Committee staff present:

Mary Torrence, Office of Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Senate Bill 261 - Contract for attorney fees incurred in foreclosure of mortgage.

Committee discussion was held on the bill. Staff reviewed the previous action taken at the March 5 meeting.

Senator Talkington moved to report the bill favorably as amended. Senator Winter seconded the motion. The motion carried.

Senate Bill 264 - Powers of fiduciaries with regard to investments.

Senator Hoferer moved to report the bill favorably. Senator Burke seconded the motion. The motion carried.

Senate Bill 266 - Exemption from process of articles used in production of income.

The chairman reviewed the bill.

Senator Talkington moved to amend the bill in line 43 by striking "if". Senator Hoferer seconded the motion. The motion carried.

Senator Parrish made a substitute motion to report the bill adversely. Senator Winter seconded the motion. The motion carried.

Senate Bill 306 - Change in definitions of burglary and aggravated burglary.

Following committee discussion, Senator Steineger made a conceptual motion to have a fourth category to aggravated trespassing to make it a class A misdemeanor. Senator Burke seconded the motion.

Senator Gaines made a substitute motion to report the bill adversely and request it go to interim study. Senator Steineger seconded the motion. The motion carried.

Senate Bill 307 - Consideration of D.U.I. diversion to require report of insurer as to coverage.

Following committee discussion, Senator Gaines moved to report the bill adversely.

Senator Gaines withdrew his motion.

Senator Steineger moved to report the bill favorably. Senator Burke seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on March 6, 1985

Senate Bill 110 - Medical Malpractice procedures and limitations.

Senator Talkington explained his proposal which would change it to a substitute bill.

Senator Talkington moved to adopt his proposal and make it part of the substitute bill. Senator Winter seconded the motion. A copy of the proposed substitute for Senate Bill 110 is attached (See Attachment I).

Following considerable committee discussion, Senator Winter suggested the substitute bill include a cap on pain and suffering and the rest of the bill be recommended for interim study. Senator Talkington agreed to this amendment to his motion.

The meeting adjourned.

Copy of the guest list attached (See Attachment II).

Guest List

3-6-85
10:00 A.M

<u>NAME</u>	<u>Address</u>	<u>Organization</u>
Harold Ryan	TOPEKA	Ks. Assn. CHIROPATHIC MED
Gerald Goodell	Topeka	Ks League of Savings Inst.
Jim Turner	Topeka	KLST
Lee Wight	Mission	Farmers Ins Group
Ron Smith	Topeka	K. B. A
Bill Sneed	Topeka	K D A C
Jim Pearson	Topeka	Ks Med. Society
Osmond Holtz	Topeka	Ks. Hosp. Assoc
Ray, Phyllis	Topeka	K I H A / K M S
LARRY MAGILL	"	INDEP. INS. AGENTS OF Ks.
Mike Slotky	Lawrence	Interim Sun Parvial
PATRICIA HENSHALL	TOPEKA	OJA
Sherman A. Parks, Jr	Topeka	KANSAS CHIROPRACTIC ASSN.
Kathy Wade Apps	Topeka	Ks. Chiropractic Assn.
Tom Bell	Topeka	Ks. Hosp. Assn

3/6/85

Attch. II

3-6-85
10:00 a.m. Frey

Senate Bill 110 - Proposed Amendments

- Page 1. Basically cleans up language for the title, purposes, and definitions.
- Page 2. More clean-up on definitions, and striking language codifying case law on standard of care.
- Page 3. Leaves in section 4 which codifies existing case law on causation. Strikes language on use of expert witnesses. Leaves intact the collateral source rule change, and jury instructions on taxability of awards. Amends punitive damages section 6 to provide for: (1) bifurcated trial on the question of punitive damages; (2) the judge has the responsibility of assessing such damages; (3) 95% of damages recovered goes to Health Care Stabilization Fund, and 5% to the plaintiff; and (4) allows defendants to recover costs if punitive damages claim was not justified.
- Page 4. Strikes language which limits overall damages, but leaves limitation on pain & suffering awards at \$250,000. Also strikes language on future medical care and benefits.
- Page 5. Strikes all language on future medical care and benefits.
- Page 6. Strikes all language on future medical care, and strikes language limiting contingent fees.
- Page 7. Strikes final language on contingent fees, and leaves severability clause intact.
- Page 8. No changes
- Page 9. No changes, and leaves authority for Health Care Stabilization Fund to purchase annuities for the purpose of setting up structured settlements.
- Page 10. Adds language repealing existing law on collateral source rule, which will now be governed language on page 3, lines 99 - 109.

AM 3/6/85
Attach. I

SENATE BILL No. 110

By Committee on Judiciary

1-29

Attch. I

0017 AN ACT concerning health care providers; relating to actions for
0018 damages based on professional liability; providing for certain
0019 procedures and limitations relating thereto; amending K.S.A.
0020 1984 Supp. 40-3403 and repealing the existing section. repealing K.S.A. 1984 Supp. 60-471;

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 New Section 1. *Purposes.* New measures are required to
0023 assure that affordable professional liability insurance will con-
0024 tinue to be available to health care providers. The availability of and the financial security of the Health
0025 reasonable and adequate insurance coverage Care Stabilization Fund
0026 is essential to as-
0027 sure the continued availability of health care services to the

0028 citizens of Kansas at a reasonable cost. ~~A redefinition of the~~
0029 ~~potential liability of such providers based upon any error, omis-~~
0030 ~~sion, neglect or other wrongdoing in the rendering of or in the~~
0031 ~~failure to render professional services shall be as codified in this~~
0032 ~~act.~~ In no event shall the provisions of this act be construed to
0033 repeal K.S.A. 60-1901 and amendments thereto. This act shall be
0034 liberally construed and applied to promote the foregoing pur-
0035 poses.

0035 New Sec. 2. *Definitions.* In this act, unless the context oth-
0036 erwise requires:

0037 (a) "Basic coverage," "commissioner," "fund," "health care
0038 provider," "insurer" and "professional liability insurance" have
0039 the meanings provided by K.S.A. 40-3401 and amendments
0040 thereto.

0041 (b) "Claimant" means any person asserting a claim for dam-
0042 ages for medical malpractice.

0043 ~~(c) "Future medical care and related benefits" means all~~
0044 ~~reasonable medical, surgical, hospitalization, physical rehabili-~~
0045 ~~tation and custodial services, including drugs, prosthetic devices~~

0016 ~~and other similar materials reasonably necessary in the provision--~~
 0017 ~~of medical services caused by the medical malpractice of the--~~
 0018 ~~liable health care provider. "Future medical care and related--~~
 0019 ~~benefits" does not mean nonessential specialty items or devices--~~
 0050 ~~of convenience.--~~

0051 (c) ~~44~~ "Medical malpractice" means the negligent rendering or
 0052 failure to render professional services by a health care provider
 0053 in a manner which causes injury to a patient.

0054 New Sec. 3. *Standard of care.* In determining negligence in
 0055 a medical malpractice liability action, the fact finder shall be
 0056 instructed on and make its assessment of liability according to
 0057 the following:

0058 (a) A health care provider is required to exercise such rea-
 0059 sonable care, diligence and skill as a health care provider in the
 0060 same general geographic location and in the same school of
 0061 medicine ordinarily exercises in a similar situation.

0062 (b) The law does not require that treatments given by a
 0063 health care provider to a patient shall attain nearly perfect
 0064 results. A health care provider is not responsible in damages for
 0065 lack of success or honest mistakes or errors of judgment unless it
 0066 is shown that the health care provider did not exercise that
 0067 degree of care, diligence and skill used by health care providers
 0068 generally in the community or similar communities in the same
 0069 general geographic location. A health care provider is presumed
 0070 to have exercised the required degree of care, skill and dili-
 0071 gence, and negligence may not be presumed from the mere fact
 0072 of injury or adverse result.

0073 (c) No health care provider shall be held liable for failure to
 0074 disclose or accurately describe facts, opinions or other informa-
 0075 tion relating to a patient's condition, or to a proposed treatment
 0076 and its consequences, except upon proof that the disclosure
 0077 would have been made by a reasonable medical practitioner
 0078 under the same or similar circumstances and that adequate
 0079 disclosure could reasonably have been expected to cause the
 0080 patient to decline the treatment or procedure because of knowl-
 0081 edge of the risk or danger that actually resulted in harm to the
 0082 patient.

(d) "Willful conduct" means an act performed with a
 designed purpose or intent on the part of a person
 to do wrong or to cause an injury to another.

(e) "Fraud" means an intentional misrepresentation,
deceit or concealment of material fact known to the
 defendant to deprive a person of property or legal
 rights or otherwise causing injury.

(f) "Malice" means a state of mind characterized by
 an intent to do a harmful act without a reasonable
 justification or excuse.

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0083 New Sec. 4. Evidence. (a) Causation and negligence. (1) In
0084 determining a health care provider's liability for any act of
0085 medical malpractice, the claimant shall establish causation by a
0086 preponderance of evidence disclosing facts and circumstances
0087 proving that the health care provider's negligence was more
0088 likely than not the cause of the injury. Except when negligence
0089 and harmful results are sufficiently obvious to lie within the fact
0090 finder's common knowledge, the claimant shall establish causa-
0091 tion by expert medical testimony.

0092 ~~(2) In an action for malpractice against a physician or hospi-
0093 tal, no person shall testify as a medical expert as to the standard
0094 of care unless that person is licensed to practice medicine and
0095 surgery in Kansas or a contiguous state, has current personal
0096 experience and practical familiarity with the medical subject
0097 forming the basis of the litigation and is actively engaged in
0098 direct patient care.~~

0099 (b) Collateral source reimbursement. (1) In determining
0100 damages in a medical malpractice liability action, evidence shall
0101 be admitted for consideration by the trier of fact to establish that
0102 any damages or expenses incurred or reasonably expected to be
0103 incurred by the claimant were indemnified or replaced, or may
0104 be indemnified or replaced, in part or whole, from any collateral
0105 source.

0106 (2) When evidence of a claimant's entitlement to collateral
0107 source benefits is introduced, the claimant may present evidence
0108 of any amounts paid to secure a right to such benefits, or that the
0109 right to recovery is subject to a lien or subrogation.

0110 New Sec. 5. Jury instruction, taxability of award. In any
0111 action for medical malpractice, the court, if requested by either
0112 party and if the tax laws so provide, shall instruct the jury that
0113 any damage award is not subject to state or federal income
0114 taxation.

0115 New Sec. 6. Limitation of recovery. (a) Punitive damages
0116 shall not be awarded in any action against a health care provider
0117 arising out of the rendering of or the failure to render profes-
0118 sional services,

0119 ~~(b) The total amount recoverable for all malpractice claims~~

by clear and convincing evidence
unless it be proven beyond a reasonable doubt that the health care provider acted toward the plaintiff with willful conduct, fraud or malice. In an action where a claim for punitive damages is included, the trial shall be bifurcated. In the trial's first phase, the trier of fact shall determine, concurrent with all issues presented, whether punitive damages may be assessed. If the trier of fact is a jury, the verdict must be unanimous on the issue of liability for punitive damages. If liability for punitive damages is found in the trial's first phase the judge shall then assess the sum of punitive damages in the trial's second phase. No evidence of the defendant's wealth or financial condition shall be admissible during the trial's first phase. No discovery of the defendant's financial condition shall occur unless liability for punitive damages is found by the trier of fact. Ninety-five percent of punitive damages recovered and collected shall be paid to the commissioner, who shall remit the entire amount to the health care stabilization fund. The remaining five percent of such damages of such recovery shall be awarded to the plaintiff. This established distribution scheme shall not be introduced as evidence and shall not be a proper subject matter on voire dire.

If, upon motion of the defendant and after a hearing, the court determines that a claim for punitive damages was (1) brought without knowledge of sufficient facts and evidence to reasonably entitle the plaintiff to a judgment for such damages or (2) maintained after it was reasonably evident that there were insufficient facts and evidence to reasonably entitle the plaintiff to such damages, the court may award to the defendant such costs, expenses and reasonable attorney fees as the court deems fair and equitable and may grant judgment therefore against the plaintiff or the plaintiff's attorney, or both.

If that was the case it wouldn't go to the jury

Attch. I

0120 ~~for injuries to or death of a patient, exclusive of future medical~~
0121 ~~care and related benefits, shall not exceed \$500,000.~~

0122 ~~(e) Notwithstanding the foregoing limitation, the total~~
0123 ~~amount of damages recoverable for pain and suffering by a~~
0124 ~~claimant for injury in a medical malpractice action shall not~~
0125 ~~exceed \$100,000.~~

_____ \$250,000

0126 (d) Payments for future medical care and related benefits
0127 shall be paid without regard to the \$500,000 limitation on recov-
0128 ery, but the total amount which may be recovered for all mal-
0129 practice claims for injuries to or death of a patient, inclusive of
0130 future medical care and related benefits, shall not exceed
0131 \$3,200,000.

0132 (e) If a health care provider has qualified for and paid the
0133 applicable premium surcharge levied pursuant to K.S.A. 40-3404
0134 and amendments thereto, the health care provider shall in no
0135 event be personally liable for an award in any amount.

0136 New Sec. 7. *Future medical care and related benefits.* (a)
0137 The amount of future medical care and related benefits shall be
0138 reduced or apportioned pursuant to the provisions of K.S.A.
0139 60-258a and amendments thereto as they may be applied by the
0140 court or jury.

0141 (b) In arriving at the amount of future medical care and
0142 related benefits, the court or jury shall consider all other benefits
0143 available to the claimant from other sources to make the amount
0144 of future medical care and related benefits supplementary to any
0145 amounts of collateral source benefits and avoid duplication of
0146 such amounts.

0147 (c) In all medical malpractice claims proceeding to trial, the
0148 jury shall be given a special interrogatory asking if the claimant
0149 is in need of future medical care and related benefits and the
0150 current monthly amount of such care and benefits. In all medical
0151 malpractice claims tried to the court, the court's findings shall
0152 include a recitation whether the patient is in need of future
0153 medical care and related benefits and the current monthly
0154 amount thereof.

0155 (d) Subject to the limitations of section 6, the court shall enter
0156 judgment for the amount of the verdict, and the amount of the

0157 current monthly future medical care and related benefits found
0158 by the court or jury. The amount of monthly future medical care
0159 and related benefits shall automatically become a judgment each
0160 month thereafter until either modified by the court or abated, as
0161 provided by this section.

0162 (e) The court shall retain jurisdiction of the action and modify
0163 the amount of future medical care and related benefits from time
0164 to time as reasonably required by the needs of the patient. Any
0165 party may seek modification at any time by filing a motion for
0166 modification.

0167 (f) The claimant shall from time to time, but no more often
0168 than annually, submit to a physical examination requested by the
0169 health care provider, the expenses of which shall be paid by the
0170 health care provider. A copy of the report of such examination
0171 shall be furnished to the claimant. When requested, the claimant
0172 shall furnish authorizations permitting the health care provider
0173 to obtain copies of medical records of health care providers
0174 providing treatment to the claimant.

0175 (g) The obligation of a health care provider to reimburse the
0176 claimant for future medical care and related benefits shall abate
0177 upon the death of the claimant or at such time as the claimant no
0178 longer needs medical care and related benefits.

0179 (h) If the health care provider has obtained the basic limits of
0180 professional liability insurance required by K.S.A. 40-3402 and
0181 amendments thereto and paid the applicable premium surcharge
0182 levied pursuant to K.S.A. 40-3404 and amendments thereto for
0183 the period in which the claimant's claim is made, the insurer and
0184 the fund shall pay the amount of the judgment, to the extent of
0185 the limits of the applicable policy, this act and subsection (e) of
0186 K.S.A. 40-3403 and amendments thereto. After any such judg-
0187 ment becomes final, the insurer or the commissioner may be
0188 substituted for the judgment debtor upon motion of any party.
0189 The insurer or commissioner shall thereafter be the judgment
0190 debtor as to any judgments entered under subsection (d). Upon
0191 such substitution any judgment lien rendered against a health
0192 care provider pursuant to K.S.A. 60-2202 and amendments
0193 thereto shall be released.

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0194 (i) Any determination by a court or jury of the amount of
0195 future medical care and related benefits shall be subject to
0196 appellate review. In the event any insurer or the fund fails, for a
0197 period of 60 days, to pay the amount of future medical care and
0198 related benefits finally determined to be due, the court may
0199 award reasonable attorney fees to the claimant's attorney for
0200 services incurred in collecting such amount.

0201 (j) Notwithstanding any other provisions of this act, the in-
0202 surer of a health care provider or the fund may contract with the
0203 claimant or the claimant's representative to compromise and
0204 settle all or part of the claimant's claims. Any agreement which
0205 shall require payment by the fund shall not be effective until
0206 approved by the court after notice to the commissioner. Such
0207 agreement shall finally fix and determine the liability to the
0208 claimant and may fully or partially modify any obligation to
0209 provide future medical care and related benefits.

0210 New Sec. 8. *Attorney fees.* (a) With respect to any proceed-
0211 ings or claims against a health care provider, any claim of any
0212 attorney for service rendered in connection with the securing of
0213 compensation for any person shall be required to be reasonable
0214 and fair, considering the difficulty and effort required to estab-
0215 lish liability, the nature and difficulty of the issues involved in
0216 the case and the time reasonably necessary to prepare and
0217 present it.

0218 (b) With respect to any and all proceedings in connection
0219 with any claim resulting in payment from the fund, no claim of
0220 any attorney for services rendered shall exceed 15% of the
0221 amount of payments made from the fund, in addition to actual
0222 expenses incurred.

0223 (c) All attorney fees shall be fixed pursuant to a written
0224 contract between the attorney and the party seeking compensa-
0225 tion or such party's representative. The attorney shall file the
0226 contract with the court in which the action is pending, which
0227 shall approve any payment of fees only if they are in accordance
0228 with provisions of this section. Any contracts for attorney fees not
0229 in excess of limits provided in this section and approved by the
0230 court shall be enforceable as a lien on the compensation due or to

0231 become due.

0232 (d) ~~The limitations upon payment of attorney fees from the~~
0233 ~~fund shall not be circumvented by contractual provisions per-~~
0234 ~~mitting an inordinate or unreasonable fee upon that portion of~~
0235 ~~the recovery payable from the basic limits of insurance.~~

0236 New Sec. 9. *Severability.* If any provision or clause of this
0237 act or application thereof to any person or circumstances is held
0238 invalid, the invalidity shall not affect other provisions or appli-
0239 cations of this act which can be given effect without the invalid
0240 provision or application. To this end the provisions of this act are
0241 declared to be severable.

0242 Sec. 10. K.S.A. 1984 Supp. 40-3403 is hereby amended to
0243 read as follows: 40-3403. (a) For the purpose of paying damages
0244 for personal injury or death arising out of the rendering of or the
0245 failure to render professional services by a health care provider,
0246 self-insurer or inactive health care provider subsequent to the
0247 time that such health care provider or self-insurer has qualified
0248 for coverage under the provisions of this act, there is hereby
0249 established the health care stabilization fund. The fund shall be
0250 held in trust in a segregated fund in the state treasury. The
0251 commissioner shall administer the fund or contract for the ad-
0252 ministration of the fund with an insurance company authorized
0253 to do business in this state.

0254 (b) (1) There is hereby created a board of governors. The
0255 board of governors shall provide:

0256 (A) Technical assistance with respect to administration of the
0257 fund;

0258 (B) such expertise as the commissioner may reasonably re-
0259 quest with respect to evaluation of claims or potential claims;

0260 (C) advice, information and testimony to the appropriate li-
0261 censing or disciplinary authority regarding the qualifications of a
0262 health care provider.

0263 (2) The board shall consist of 13 persons appointed by the
0264 commissioner of insurance, as follows: (A) The commissioner of
0265 insurance, or the designee of the commissioner, who shall act as
0266 chairperson; (B) one member appointed from the public at large
0267 who is not affiliated with any health care provider; (C) three

0268 members licensed to practice medicine and surgery in Kansas
0269 who are doctors of medicine; (D) three members who are repre-
0270 sentatives of Kansas hospitals; (E) two members licensed to
0271 practice medicine and surgery in Kansas who are doctors of
0272 osteopathic medicine; (F) one member licensed to practice
0273 chiropractic in Kansas; and (G) two members of other categories
0274 of health care providers. Meetings shall be called by the chair-
0275 person or by a written notice signed by three members of the
0276 board. The board, in addition to other duties imposed by this act,
0277 shall study and evaluate the operation of the fund and make such
0278 recommendations to the legislature as may be appropriate to
0279 ensure the viability of the fund.

0280 (3) The board shall be attached to the insurance department
0281 and shall be within the insurance department as a part thereof.
0282 All budgeting, purchasing and related management functions of
0283 the board shall be administered under the direction and super-
0284 vision of the commissioner of insurance. All vouchers for ex-
0285 penditures of the board shall be approved by the commissioner
0286 of insurance or a person designated by the commissioner.

0287 (c) Subject to subsections (d), (e) ~~and (g)~~, (f) and (h), the fund
0288 shall be liable to pay: (1) Any amount due from a judgment or
0289 settlement which is in excess of the basic coverage liability of all
0290 liable resident health care providers or resident self-insurers for
0291 any such injury or death arising out of the rendering of or the
0292 failure to render professional services within or without this
0293 state; (2) any amount due from a judgment or settlement which is
0294 in excess of the basic coverage liability of all liable nonresident
0295 health care providers or nonresident self-insurers for any such
0296 injury or death arising out of the rendering or the failure to
0297 render professional services within this state. In no event shall
0298 the fund be obligated for claims against nonresident health care
0299 providers or nonresident self-insurers who have not complied
0300 with this act or for claims against nonresident health care pro-
0301 viders or nonresident self-insurers that arose outside of this state;
0302 (3) any amount due from a judgment or settlement against a
0303 resident inactive health care provider for any such injury or
0304 death; (4) any amount due from a judgment or settlement against

0305 a nonresident inactive health care provider for any injury or
0306 death arising out of the rendering or failure to render profes-
0307 sional services within this state. In no event shall the fund be
0308 obligated for claims against: (A) Nonresident inactive health care
0309 providers who have not complied with this act; or (B) nonresi-
0310 dent inactive health care providers for claims that arose outside
0311 of this state, unless such health care provider was a resident
0312 health care provider or resident self-insurer at the time such act
0313 occurred; (5) reasonable and necessary expenses for attorney
0314 fees incurred in defending the fund against claims; (6) any
0315 amounts expended for reinsurance obtained to protect the best
0316 interests of the fund purchased by the commissioner, which
0317 purchase shall be subject to the provisions of K.S.A. 75-3738 ~~to~~
0318 ~~through 75-3744, inclusive,~~ and amendments thereto but shall
0319 not be subject to the provisions of K.S.A. 75-4101 and amend-
0320 ments thereto; (7) reasonable and necessary actuarial expenses
0321 incurred in administering the act, which expenditures shall not
0322 be subject to the provisions of K.S.A. 75-3738 ~~to~~ *through 75-3744,*
0323 ~~inclusive,~~ and amendments thereto; (8) annually to the plan or
0324 plans, any amount due pursuant to subsection (a)(3) of K.S.A.
0325 40-3413, and amendments thereto; and (9) reasonable and nec-
0326 essary expenses incurred by the insurance department and the
0327 board of governors in the administration of the fund.

0328 (d) All amounts for which the fund is liable pursuant to
0329 paragraphs (1), (2), (3) or (4) of subsection (c) of this section shall
0330 be paid promptly and in full if less than \$300,000, or if \$300,000
0331 or more, by installment payments of \$300,000 or 10% of the
0332 amount of the judgment including interest thereon, whichever is
0333 greater, per fiscal year, the first installment to be paid within 60
0334 days after the fund becomes liable and each subsequent install-
0335 ment to be paid annually on the same date of the year the first
0336 installment was paid, until the claim has been paid in full. Any
0337 attorney's fees payable from such installment shall be similarly
0338 prorated.

0339 (e) *Subject to approval by the board of governors, the com-*
0340 *missioner may purchase an annuity to pay any amounts for*
0341 *which the fund is liable pursuant to subsections (c)(1), (2), (3) or*

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0342 (4). Any annuity so purchased shall be exempt from the provi-
0343 sions of subsection (d).

0344 (f) In no event shall the fund be liable to pay in excess of
0345 \$3,000,000 pursuant to any one judgment or settlement against
0346 any one health care provider relating to any injury or death
0347 arising out of the rendering of or the failure to render profes-
0348 sional services from and after July 1, 1984, subject to an ag-
0349 gregate limitation for all judgments or settlements arising from
0350 all claims made in any one fiscal year in the amount of \$6,000,000
0351 for each provider.

0352 (g) A health care provider shall be deemed to have quali-
0353 fied for coverage under the fund: (1) On and after the effective
0354 date of this act if basic coverage is then in effect; (2) subsequent
0355 to the effective date of this act, at such time as basic coverage
0356 becomes effective; or (3) upon qualifying as a self-insurer pur-
0357 suant to K.S.A. 40-3414 and amendments thereto.

0358 (g) (h) Notwithstanding the provisions of K.S.A. 40-3402 and
0359 amendments thereto, if the board of governors determines that
0360 an individual health care provider presents a material risk of
0361 significant future liability to the fund, the board of governors is
0362 authorized by a vote of a majority of the members thereof, after
0363 notice and an opportunity for hearing, to terminate the liability of
0364 the fund for all claims against the health care provider for
0365 damages for death or personal injury arising out of the rendering
0366 of or the failure to render professional services after the date of
0367 termination. The date of termination shall be 30 days after the
0368 date of the determination by the board of governors. The board of
0369 governors, upon termination of the liability of the fund under
0370 this subsection (g), shall notify the licensing or other disciplinary
0371 board having jurisdiction over the health care provider involved
0372 of the name of the health care provider and the reasons for the
0373 termination.

0374 Sec. 11. K.S.A. 1984 Supp. 40-3403 ~~is~~ hereby repealed.

0375 Sec. 12. This act shall take effect and be in force from and
0376 after its publication in the Kansas register.

and K.S.A. 1984 Supp. 60-471 are

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