

Approved April 11, 1986

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

12:30 ~~xxx~~/p.m. on March 31, 1986 in room 519-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 Hack, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Torrence, Revisor of Statutes

Conferees appearing before the committee:

House Bill 2661 - Medical malpractice and health care provider regulation.
Re Proposal No. 47.

Senator Steineger made a conceptual motion to amend the bill to impose only a cap of \$350,000 on pain and suffering. Senator Parrish seconded the motion. Senator Steineger explained this will not eliminate structured settlements. A cap on economic loss amendment is not supported by the medical association, the state chamber of commerce, and Fletcher Bell's citizens committee. A committee member pointed out the complexities of settlements. Senator Steineger said he feels the governor does approve this amendment. A committee member said this is getting away from the concept of allowing juries to decide what medical bills will be in the future. The committee voted on Senator Steineger's motion to amend the bill, and the motion failed. A copy of a balloon version of the bill indicating amendments proposed by Representative Knopp was passed out (See Attachment I). Following discussion of the amendments, Senator Talkington moved to adopt all of the amendments proposed by Representative Knopp and the technical amendments. Senator Gaines seconded the motion. Following committee discussion, the motion carried.

The meeting adjourned.

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

41
23

GUEST LIST

1230
S

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-31-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Byron Caloz	Pierceville, KS 67868	KANZ
Bill Henry	Topoka	KS Engineering Society
Shannon A. Pank, Jr.	Topoka	Ks Chiropractic Assn
T.C. Anderson	"	KSCPA
Buk Lubinski	"	KTLA
Ron Smith	"	KBA
Maria Lister Lumburg	Topoka	KMS
Veranda A. Schell	"	KID
Paul St...	"	KMS
Tom Bell	"	KHA
Art C. Kuyf	McDonnough #2	LEJ
John Glass	Topoka	KCOAS
Shel C. Rubin	"	KADM
Michael McDermott	AUGUSTA	Newspaper
William Seider	Topoka	ICTW
Marsha J. Hutchison	Topoka	KJ Medical Society
Lori Callahan	Topoka	Am. Ins. Assn
Marynie Van Buren	"	OSA
M. Hoover	"	Cap. Ins
B. Ketchum	"	"
P. Davis	Topoka	Gov's Office

3-31-86 48
12:30 pm

20 the appropriate medical care facility. In making its investigation,
21 the committee may also consider treatment rendered by the
22 health care provider outside the facility. The committee shall
23 have the duty to report to the appropriate state licensing agency
24 any finding by the committee that a health care provider acted
25 below the applicable standard of care so that the agency may take
26 appropriate disciplinary measures.

27 (3) If the health care provider involved in the reportable
28 incident is a medical care facility, the report shall be made to the
29 chief of the medical staff, chief administrative officer or risk
30 manager of the facility. The chief of the medical staff, chief
31 administrative officer or risk manager shall refer the report to the
32 appropriate executive committee which is duly constituted pur-
33 suant to the bylaws of the facility. The executive committee shall
34 investigate all such reports and take appropriate action. The
35 committee shall have the duty to report to the department of
36 health and environment any finding that the facility acted below
37 the applicable standard of care so that appropriate disciplinary
38 measures may be taken.

39 (b) If a reportable incident is reported to a state agency which
40 licenses health care providers, the agency may investigate the
41 report or may refer the report to a review or executive committee
42 to which the report could have been made under subsection (a)
43 for investigation by such committee.

44 (c) ~~When a report made under this section is investigated~~
45 ~~pursuant to the procedure set forth under this section, the re-~~
46 ~~porting entity shall not be liable for any penalty for failure to~~
47 ~~report as required under K.S.A. 65-2836, 65-28,121 or 65-28,122,~~
48 ~~and amendments thereto.~~

49 (e) (d) Each review and executive committee referred to in
50 subsection (a) shall submit to the appropriate state licensing
51 agency, at least once every three months, a report summarizing
52 the reports received by the committee pursuant to this section.
53 The report shall include the number of reportable incidents
54 reported, whether an investigation was conducted and any action
55

56 (e) If a state agency that licenses health care providers

When a report is made under this section, the person making the report shall not be required to report the reportable incident pursuant to K.S.A. 65-28,122 and amendments thereto. (k)

person or entity to which the report is made shall not be required to report the reportable incident pursuant to K.S.A. (k)

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3/31/86
Attch. I

0268 committee discussions or proceedings.

0269 New Sec. 6 7. Any person or entity which, in good faith,
0270 reports or provides information or investigates any health care
0271 provider as authorized by section 3 or 4 4 or 5 shall not be liable
0272 in a civil action for damages or other relief arising from the
0273 reporting, providing of information or investigation except upon
0274 clear and convincing evidence that the report or information was
0275 completely false, or that the investigation was based on false
0276 information, and that the falsity was actually known to the person
0277 making the report, providing the information or conducting the
0278 investigation at the time thereof. No claim arising from the
0279 making of such report; providing of such information or conduct
0280 of such investigation shall proceed to trial unless the court first
0281 determines that a substantial probability exists that the person
0282 making the claim will prevail.

0283 New Sec. 7 8. (a) No person or entity shall be subject to
0284 liability in a civil action for failure to report as required by
0285 section 3 or 4 4 or 5.

0286 (b) The license of a person or entity licensed to practice as a
0287 health care provider required to report under subsection (a) of
0288 section 4 may be revoked, suspended or limited, or the licensee
0289 subjected to public or private censure, by the appropriate state
0290 licensing agency if the licensee is found, upon notice and an
0291 opportunity to be heard in accordance with pursuant to the
0292 Kansas administrative procedures act, to have willfully and
0293 knowingly failed to make any report as required by section 3 or 4
0294 4 or 5.

0295 (c) Willful and knowing failure to make a report required by
0296 section 3 or 4 4 or 5 is a class C misdemeanor.

0297 New Sec. 8 9. (a) No employer shall discharge or otherwise
0298 discriminate against any employee for making any report pursu-
0299 ant to section 3 or 4 4 or 5.

0300 (b) Any employer who violates the provisions of subsection
0301 (a) shall be liable to the aggrieved employee for damages for any
0302 wages or other benefits lost due to the discharge or discrimina-
0303 tion plus a civil penalty in an amount not exceeding the amount
0304 such damages. Such damages and civil penalty shall be re-

(d) In no event shall a medical care facility or a professional society or organization be liable in damages for the alleged failure to properly investigate or act upon any report made pursuant to section 4. (K)

Attach. I

0305 coverable in an individual action brought by the aggrieved
0306 employee. If the aggrieved employee substantially prevails on
0307 any of the allegations contained in the pleadings in an action
0308 allowed by this section, the court, in its discretion, may allow the
0309 employee reasonable attorney fees as part of the costs.

0310 New Sec. 9 10. (a) The legislature of the state of Kansas
0311 recognizes the importance and necessity of providing and regu-
0312 lating certain aspects of health care delivery in order to protect
0313 the public's general health, safety and welfare. Implementation
0314 of risk management plans and reporting systems as required by
0315 sections 2, 3 and 4 3, 4 and 5 and peer review pursuant to K.S.A.
0316 65-4915 and amendments thereto effectuate this policy.

0317 (b) Health care providers and review, executive or impaired
0318 provider committees performing their duties under sections 2, 3
0319 and 4 3, 4 and 5 and peer review pursuant to K.S.A. 65-4915 and
0320 amendments thereto for the purposes expressed in subsection (a)
0321 shall be agents of state agencies which license health care
0322 providers and all and 65-4915 and amendments thereto shall
0323 have the immunity of the state from federal and state antitrust
0324 laws shall be extended to such health care providers and com-
0325 mittees when carrying out such duties.

0326 (c) Nothing in this section shall be construed to require
0327 health care providers or review, executive or impaired provider
0328 committees to be subject to or comply with any other law relating
0329 to or regulating state agencies, officers or employees.

0330 New Sec. 10 11. The provisions of sections 4 through 9 2
0331 through 10 shall be supplemental to K.S.A. 65-28,121, 65-28,122
0332 and 65-4909, and amendments thereto, and shall not be con-
0333 strued to repeal or modify those sections.

0334 New Sec. 11 12. As used in sections 11 through 15 12
0335 through 16:

0336 (a) The words and phrases defined by K.S.A. 1985 Supp.
0337 60-3401 and amendments thereto shall have the meanings pro-
0338 vided by that section.

0339 (b) "Current economic loss" means costs of medical care and
related benefits, lost wages and other economic losses incurred
prior to the verdict.

~~all the immunity of state officers, including
immunity from federal and state antitrust laws (K)~~

be considered to be state officers
engaged in a discretionary function
and all immunity of the state shall be
extended to such health care providers
and committees, including that from the
federal and state antitrust laws.

0342 (c) "Future economic loss" means costs of medical care and
0343 related benefits, lost wages, loss of earning capacity or other
0344 economic losses to be incurred after the verdict.

0345 (d) "Medical care and related benefits" means all reasonable
0346 medical, surgical, hospitalization, physical rehabilitation and
0347 custodial services, including drugs, prosthetic devices and other
0348 similar materials reasonably necessary to provide medical ser-
0349 vices required due to the negligent rendering of or failure to
0350 render professional services by the liable health care provider,
0351 New Sec. 43 13. (a) In any medical malpractice liability

0352 action:

0353 (1) The total amount recoverable by each party from all
0354 defendants for all claims for noneconomic loss shall not exceed a
0355 sum total of \$250,000; and

0356 (2) subject to section 28 the total amount recoverable by each
0357 party from all defendants for all claims shall not exceed a sum
0358 total of \$1,000,000.

0359 (b) If a medical malpractice liability action is tried to a jury,
0360 the court shall not instruct the jury on the limitations imposed by
0361 this section or on the ability of the claimant to obtain supple-
0362 mental benefits under section 28.

0363 (c) In a medical malpractice liability action, after deduction
0364 of amounts subject to apportionment of fault pursuant to K.S.A.
0365 60-258a and amendments thereto:

0366 (1) If the verdict results in an award for noneconomic loss
0367 which exceeds \$250,000, the court shall enter judgment for
0368 \$250,000 for all the party's claims for noneconomic loss and shall
0369 apportion that amount among the claimants.

0370 (2) If the verdict results in an award for current economic loss
0371 which exceeds the difference between \$1,000,000 and the awarded by the court (K)
0372 amount of the judgment entered for damages for noneconomic
0373 loss, the court shall enter judgment for an amount equal to such
0374 difference for all the party's claims for current economic loss and
0375 shall apportion that amount among the claimants.

0376 (3) If the sum of the judgments entered ~~verdicts rendered~~ for amounts awarded by the court (K)
0377 noneconomic loss and for current economic loss is \$1,000,000 or
0378 more, no judgment shall be entered for future economic loss. If

0379 the sum of such judgments ~~and verdicts~~ is less than \$1,000,000 and
 0380 the verdict results in an award for future economic loss which
 0381 exceeds the difference between \$1,000,000 and the sum of such
 0383 judgments ~~and verdicts~~, the court shall enter judgment for an annuity
 0383 contract which: (A) Has a present value equal to such difference
 0384 or; if there is more than one claimant; for annuity contracts
 0385 apportioned among the claimants which have an aggregate pres-
 0386 ent value equal to such difference; and (B) which, to the greatest
 0387 extent possible, will provide for the payment of benefits over the
 0388 period of time specified in the verdict in the amount awarded by
 0389 the verdict for future economic loss, the cost of such annuity not
 0390 to exceed the difference between \$1,000,000 and the sum of the
 0391 ~~verdicts~~ for noneconomic loss and current economic loss.

amounts (K)

amounts (K)

amounts awarded by the court (K)

0392 (d) The limitations on the amount of damages recoverable for
 0393 noneconomic loss under this section shall be adjusted annually
 0394 on July 1 by rule of the supreme court in proportion to the net
 0395 change in the United States city average consumer price index
 0396 for all urban consumers during the preceding 12 months.

0397 (d)(e) The provisions of this section shall not be construed to
 0398 repeal or modify the limitation provided by K.S.A. 60-1903 and
 0399 amendments thereto in wrongful death actions.

0400 (f) The provisions of this section shall expire on July 1, 1993.
 0401 New Sec. 43 14. (a) In every medical malpractice liability
 0402 action in which the verdict awards compensatory damages, the
 0403 verdict shall be itemized to reflect the amounts awarded for
 0404 economic loss and noneconomic loss. The amount awarded for
 0405 economic loss shall be further itemized to show current eco-
 0406 nomic losses and future economic losses.

0407 (b) In every medical malpractice liability action in which the
 0408 verdict awards damages for future economic losses, the verdict
 0409 shall specify the period of time over which payment for such
 0410 losses will be needed.

0411 New Sec. 44 15. (a) In any medical malpractice liability
 0412 action in which the verdict awards damages for future economic
 0413 loss, the verdict shall not reduce such damages to their present
 0414 value and the jury shall be instructed to that effect. The court
 0415 shall reduce such damages to their present value and, except as

The amount awarded for future economic losses shall be further itemized to show amounts found necessary for future medical care and related benefits.

0116 provided by section 13 13, the court shall enter judgment, with
 0117 respect to such damages, for an annuity contract [which has a
 0118 present value equal to the present value of such damages and
 0119 which,] to the greatest extent possible, will provide for the pay-
 0120 ment of benefits over the period of time specified in the verdict
 0121 in the amount awarded by the verdict for future economic loss.
 0122 The judgment shall incorporate the intervals of the annuity
 0123 payments, which shall be fixed and determinable as to amounts
 0124 and dates of payments, and shall be in such form as necessary to
 0125 assure that periodic payments through the annuity will be ex-
 0126 cluded from the beneficiary's taxable income under section
 0127 104(a)(2) of the federal internal revenue code.

— strike (K)

0138 (b) In a medical malpractice liability action, that portion of
 0139 the attorney fees which relates to an award for future economic
 0140 loss shall be calculated on the present value of the annuity
 0141 contract.

— strike (K)

0432 (b) The health care stabilization fund or insurer shall pur-
 0433 chase the annuity provided for in section 13 or this section upon
 0434 approval of the court and, upon payment by the fund or insurer of
 0435 the cost of such annuity, the judgment will be satisfied as to such
 0436 annuity.

0437 (c) If an annuity is purchased pursuant to section 13 or this
 0438 section, the beneficiary shall not own, receive by assignment or
 0439 otherwise have any interest in the ownership or purchase of the
 0440 annuity and periodic payments made through such annuity shall
 0441 not be accelerated, deferred, increased or decreased by the
 0442 beneficiary. If the fund or insurer assigns the annuity, the as-
 0443 signee shall not provide to the beneficiary rights against the
 0444 assignee which are greater than those of a general creditor and
 0445 the assignee's obligation shall be no greater than the obligation
 0446 of the assignor.

annuitant (K)

0447 (e) (d) Benefits paid under an annuity contract awarded pur-
 0448 suant to this section or section 13 13 shall not be assignable or
 0449 subject to levy, execution, attachment, garnishment or any other
 0450 remedy or procedure for the recovery or collection of a debt, and
 0451 is exemption cannot be waived.

0452 New Sec. 15 16. The provisions of sections 14 through 14 12

shall deposit the entire amount in the state treasury and credit it to the state general fund.

0566 (c) Any insurer which, in good faith, reports or provides any
0567 information pursuant to this act shall not be liable in a civil
0568 action for damages or other relief arising from the reporting or
0569 providing of such information.

0570 (l) As used in this section, "insurer" means insurer or self-
0571 insurer, as defined by K.S.A. 40-3401 and amendments thereto,
0572 or joint underwriting association operating pursuant to K.S.A.
0573 40-3413 and amendments thereto.

0574 New Sec. 10 20. (a) The state board of healing arts, in addi-
0575 tion to any other penalty prescribed under the Kansas healing
0576 arts act, may assess a civil fine, after proper notice and an
0577 opportunity to be heard, against a licensee for a violation of the
0578 Kansas healing arts act in an amount not to exceed \$5,000 for the
0579 first violation, \$10,000 for the second violation and \$15,000 for
0580 the third violation and for each subsequent violation. All fines
0581 assessed and collected under this section shall be remitted
0582 promptly to the state treasurer. Upon receipt thereof, the state
0583 treasurer shall deposit the entire amount in the state treasury and
0584 credit it to the state general fund.

0585 (b) This section shall be part of and supplemental to the
0586 Kansas healing arts act.

0587 New Sec. 20 21. Any resident or nonresident inactive health
0588 care provider who does not qualify for fund coverage under
0589 K.S.A. 40-3403 and amendments thereto shall submit to the
0590 commissioner of insurance satisfactory proof of equivalent pro-
0591 fessional liability insurance coverage health care provider whose
0592 fund coverage has been terminated under subsection (i) of K.S.A.
0593 40-3403 and amendments thereto shall, as a condition of licen-
0594 sure, submit to the commissioner of insurance satisfactory proof
0595 of professional liability insurance coverage equivalent to that
0596 provided by the fund.

0597 Sec. 31 22. K.S.A. 7-121b is hereby amended to read as
follows: 7-121b. (a) Whenever a civil action is commenced by
filing a petition or whenever a pleading shall state *states* a claim
0600 in a district court for damages for personal injuries or death

maintain (k)

and shall submit to the commissioner of insurance
satisfactory proof of such coverage, as required
by the commissioner (k)

Attach. I

0749 qualified as a self-insurer pursuant to K.S.A. 40-3-114 and
 0750 amendments thereto or the university of Kansas medical center
 0751 or persons who are engaged, under the supervision of the
 0752 clinical faculty member of the university of Kansas school of
 0753 medicine, in a postgraduate training program approved by the
 0754 state board of healing arts and operated by the university of
 0755 Kansas medical center;

0756 (m) "Medical care facility" means the same when used in the
 0757 health care provider insurance availability act as the meaning
 0758 ascribed to that term in K.S.A. 65-425 and amendments thereto,
 0759 except that as used in the health care provider insurance availa-
 0760 bility act such term, as it relates to insurance coverage under the
 0761 health care provider insurance availability act, also includes any
 0762 director, trustee, officer or administrator of a medical care facil-
 0763 ity;

0764 (n) "Mental health center" means a mental health center
 0765 licensed by the secretary of social and rehabilitation services
 0766 under K.S.A. 75-3307b and amendments thereto, except that as
 0767 used in the health care provider insurance availability act such
 0768 term, as it relates to insurance coverage under the health care
 0769 provider insurance availability act, also includes any director,
 0770 trustee, officer or administrator of a mental health center;

0771 (o) "Mental health clinic" means a mental health clinic li-
 0772 censed by the secretary of social and rehabilitation services
 0773 under K.S.A. 75-3307b and amendments thereto, except that as
 0774 used in the health care provider insurance availability act such
 0775 term, as it relates to insurance coverage under the health care
 0776 provider insurance availability act, also includes any director,
 0777 trustee, officer or administrator of a mental health clinic;

0778 (p) "State institution for the mentally retarded" means Nor-
 0779 ton state hospital, Winfield state hospital and training center,
 0780 Parsons state hospital and training center and the Kansas neuro-
 0781 logical institute;

0782 (q) "State psychiatric hospital" means Larned state hospital,
 0783 Osawatomic state hospital, Rainbow mental health facility and
 0784 Topeka state hospital.

0785 New Sec. 25. ~~[(a)]~~The commissioner shall establish by rules

strike (k)

Attch. I

0786 and regulations an experience rating system to become effective
0787 on July 1, 1987, for determining rates to be charged for basic
0788 coverage and surcharges assessed for coverage by the fund. In
0789 implementing such system, the commissioner shall provide for differ-
0790 ences between different health care professions, different
0791 branches of the healing arts and different specialties with those
0792 professions or branches but shall otherwise determine appro-
0793 priate means for determining premiums and surcharges based
0794 upon the actual loss experience of each health care provider with
0795 respect to professional liability actions.

0796 (b) As used in this section, the terms defined by K.S.A.
0797 40-3401 and amendments thereto shall have the meanings pro-
0798 vided by that statute.

0799 Sec. 26. K.S.A. 1985 Supp. 40-3402 is hereby amended to
0800 read as follows: 40-3402. (a) A policy of professional liability
0801 insurance approved by the commissioner and issued by an in-
0802 surer duly authorized to transact business in this state in which
0803 the limit of the insurer's liability is not less than \$200,000 per
0804 occurrence, subject to not less than a \$600,000 annual aggregate
0805 for all claims made during the policy period, shall be maintained
0806 in effect by each resident health care provider as a condition to
0807 rendering professional service as a health care provider in this
0808 state, unless such health care provider is a self-insurer or is a
0809 person who is engaged under the supervision of the clinical
0810 faculty member of the university of Kansas school of medicine,
0811 in a postgraduate training program approved by the state board of
0812 healing arts and operated by the university of Kansas medical
0813 center and is insured pursuant to K.S.A. 40-3414; and amend-
0814 ments thereto. Such policy shall provide as a minimum coverage
0815 for claims made during the term of the policy which were
0816 incurred during the term of such policy or during the prior term
0817 of a similar policy.

0818 (1) Each insurer providing basic coverage shall within 30
0819 days after the premium for the basic coverage is received by the
0820 insurer or within 30 days from the effective date of this act,
0821 whichever is later, notify the commissioner that such coverage is
0822 or will be in effect. Such notification shall be on a form approved

that requires a higher surcharge from health care providers based upon past claims paid from the fund on behalf of such providers. In establishing such rating system, the commissioner shall give consideration to the number, size and frequency of the claims paid, and the classification of the health care provider, from the date the fund was established (k)

time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust in a segregated fund in the state treasury. The commissioner shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

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

(A) Provide technical assistance with respect to administration of the fund;

(B) provide such expertise as the commissioner may reasonably request with respect to evaluation of claims or potential claims;

(C) provide advice, information and testimony to the appropriate licensing or disciplinary authority regarding the qualifications of a health care provider;

~~(D) approve the rating schedule formulated by the commissioner to impose the higher surcharge required by subsection (c)(3) of K.S.A. 40-3104 and amendments thereto experience rating system established by the commissioner pursuant to section 25 prior to the establishment of such system; and~~

~~(F) review and determine claims for supplemental benefits under section 28.~~

(2) The board shall consist of 13 persons appointed by the commissioner of insurance, as follows: (A) The commissioner of insurance, or the designee of the commissioner, who shall act as chairperson; (B) one member appointed from the public at large who is not affiliated with any health care provider; (C) three members licensed to practice medicine and surgery in Kansas who are doctors of medicine; (D) three members who are representatives of Kansas hospitals; (E) two members licensed to practice medicine and surgery in Kansas who are doctors of osteopathic medicine; (F) one member licensed to practice chiropractic in Kansas; and (G) two members of other categories of health care providers. Meetings shall be called by the chair-

and (K) (T)

(D) (K)

14 (K)

two members (K)

are (K)

~~For each claim submitted for review under section 28, the commissioner shall appoint a review committee for the purpose of reviewing such claim and making recommendations to the board. The review committee shall consist of three members, two of whom shall be members of the board of governors and one of whom, as chairperson, shall not be a member of the board and shall be admitted to practice law in Kansas.~~

Take out bracketed language (T)

0017 liable is \$300,000 or more, it shall be paid by installment pay-
0018 ments of \$300,000 or 10% of the amount of the judgment includ-
0019 ing interest thereon, whichever is greater, per fiscal year, the

0020 first installment to be paid within 60 days after the fund becomes
0021 liable and each subsequent installment to be paid annually on
0022 the same date of the year the first installment was paid, until the
0023 claim has been paid in full; and any attorney's attorney fees
0024 payable from such installment shall be similarly prorated.

0025 (c) In no event shall the fund be liable to pay in excess of
0026 \$3,000,000 pursuant to any one judgment or settlement against
0027 any one health care provider relating to any injury or death
0028 arising out of the rendering of or the failure to render profes-
0029 sional services from on and after July 1, 1984, and before July 1,
0030 1986, subject to an aggregate limitation for all judgments or
0031 settlements arising from all claims made in any one fiscal year in
0032 the amount of \$6,000,000 for each provider.

0033 (d) In no event shall the fund Except as provided by section
0034 28, the fund shall not be liable to pay in excess of \$1,000,000
0035 pursuant to any one judgment or settlement against any one

0036 health care provider relating to any injury or death arising out
0037 of the rendering of or the failure to render professional services
0038 on and after July 1, 1986, subject to an aggregate limitation for
0039 all judgments or settlements arising from all claims made in any
0040 one fiscal year in the amount of \$3,000,000 for each provider.

0041 (g) A health care provider shall be deemed to have qualified
0042 for coverage under the fund: (1) On and after the effective date of
0043 this act if basic coverage is then in effect; (2) subsequent to the
0044 effective date of this act, at such time as basic coverage becomes
0045 effective; or (3) upon qualifying as a self-insurer pursuant to
0046 K.S.A. 40-3-114 and amendments thereto.

0047 (g) (h) A health care provider who is qualified for coverage
0048 under the fund shall have no vicarious liability or responsibility
0049 for any injury or death arising out of the rendering of or the
0050 failure to render professional services inside or outside this
0051 state by any other health care provider who is also qualified for
0052 coverage under the fund. The provisions of this subsection shall
0053 apply to all claims filed on or after the effective date of this act.

(i) Notwithstanding the provisions of K.S.A. 40-3-102 and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider and or the outcome of those claims that an individual health care provider presents a material risk of significant future liability to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection (g), shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

New Sec. 28. (a) As used in this section, "medical care and related benefits" and "medical malpractice liability action" have the meanings provided by section 12.

(b) If a claimant in a medical malpractice liability action has been awarded the maximum amount allowable under section 13 and the amount so awarded has been exhausted in the payment of medical care and related benefits, and is substantially insufficient to pay for future medical care and related benefits, the board of governors of the health care stabilization fund may, in its discretion, grant the claimant supplemental benefits to pay for future medical care and related benefits. Any application for supplemental benefits shall be on a form prescribed by the commissioner.

(c) The claimant has the burden of showing the board of governors that all amounts awarded for medical care and related benefits pursuant to section 13 have been actually used to pay for medical care and related benefits and that the amounts awarded are insufficient to pay for future medical care and related benefits.

(d) In reaching its decision on whether to grant supplemental

recovered pursuant to a settlement agreement which has been itemized to show the amounts settled upon for non-economic losses, current economic losses, future economic losses and future medical care and related benefits, or judgement, ~~(K+T)~~
 or will be (r) is insufficient to pay for necessary medical care and related benefits (k)

claimant may petition the court which heard the original action for (r)

Any award for supplemental benefits shall be paid from the health care stabilization fund (r)

recovered (k)
 the settlement agreement or judgement (x)
 such amounts (k)

0121 benefits, the board of governors shall consider: (1) The needs of judge (T)
0122 the claimant; (2) the availability of payments from collateral land (T)
0123 sources or governmental benefits to the claimant; and (3) the
0124 ability of the health care stabilization fund to pay supplemental
0125 benefits.

0126 (c) In no event shall the supplementary grant, when added to
0127 the amount previously received by the claimant, exceed the
0128 amount specified in the jury verdict for medical care and related
0129 benefits or the amount actually necessary to pay for medical care
0130 and related benefits.

If the claimant recovered damages pursuant to a judgment, (k)
shall not (k)
(a)
(b)
(c) three million dollars

0131 (f) Any grant pursuant to this section may be in the form of an
0132 annuity contract.

0133 Sec. 25 29. K.S.A. 1985 Supp. 40-3404 is hereby amended to
0134 read as follows: 40-3404. (a) Except for any health care provider
0135 whose participation in the fund has been terminated pursuant to
0136 subsection (g) (i) of K.S.A. 40-3403 and amendments thereto, the
0137 commissioner shall levy an annual premium surcharge on each
0138 health care provider who has obtained basic coverage and upon
0139 each self-insurer for each fiscal year. Such premium surcharge
0140 shall be an amount equal to a percentage of the average annual
0141 premium paid by the all health care provider providers within
0142 the rate classification of the health care provider for the basic
0143 coverage required to be maintained as a condition to coverage by
0144 the fund by subsection (a) of K.S.A. 40-3402 and amendments
0145 thereto. The annual premium surcharge upon each self-insurer,
0146 except for the university of Kansas medical center, shall be an
0147 amount equal to a percentage of the average amount such self-
0148 insurer all self-insurers within the rate classification of the
0149 self-insurer would pay for basic coverage as calculated in ac-
0150 cordance with rating procedures approved by the commissioner
0151 pursuant to K.S.A. 40-3413 and amendments thereto. The annual
0152 premium surcharge upon the university of Kansas medical center
0153 for persons who are engaged, under the supervision of the
0154 clinical faculty member of the university of Kansas school of
0155 medicine, in a postgraduate training program approved by the
state board of healing arts and operated by the university of
Kansas medical center shall be an amount equal to a percentage

0306 other insurer participating in the plan or to any insurer partici-
0307 ing in the plan. Such commission shall be reasonably equiv-
0308 ant to the usual customary commission paid on similar types of
0309 policies issued in the voluntary market.

0310 (g) The provisions of this section shall expire on July 1, 1987,
0311 but any plan created hereunder shall continue to exist for the
0312 purpose of allowing policies then in effect to expire, transferring
0313 surplus to the fund, completing the payment of claims and
0314 receiving reimbursement therefor.

0315 ~~New Sec. 32. The health care stabilization fund shall not be~~
0316 ~~required to purchase a cash appeal bond.~~

0317 New Sec. 33. The health care stabilization fund may own or
0318 assign any annuity purchased by the fund pursuant to section 13,
0319 15 or 28 or pursuant to K.S.A. 40-3410 and amendments thereto
0320 in settlements of the liability of the fund.

0321 Sec. 27 34. K.S.A. 65-430 is hereby amended to read as
0322 follows: 65-430. The licensing agency may deny, suspend or
0323 revoke a license in any case in which it finds that there has been
0324 a substantial failure to comply with the requirements established
0325 under this law, *a failure to report any information required to be*
0326 *reported by K.S.A. 65-28,121 and amendments thereto or a*
0327 *failure to maintain a risk management program as required by*
0328 *section 3 3, after notice and an opportunity for hearing to the*
0329 applicant or licensee in accordance with the provisions of the
0330 Kansas administrative procedure act.

0331 Sec. 28 35. K.S.A. 65-2809 is hereby amended to read as
0332 follows: 65-2809. (a) The license shall expire on June 30 each
0333 year and may be renewed annually upon request of the licensee.
0334 The request for renewal shall be on a form provided by the board
0335 and shall be accompanied by the prescribed fee, which shall be
0336 paid not later than the expiration date of the license.

0337 (b) Except as otherwise provided in this section, from and
0338 after July 1, 1978, the board shall require every licensee in the
0339 active practice of the healing arts within the state to submit
0340 evidence of satisfactory completion of a program of continuing
education required by the board. The requirements for continu-
g education for licensees of each branch of the healing arts

New Sec. 32. In any medical malpractice liability
action, as defined by K.S.A. 1985 Supp. 60-3401 and
amendments thereto, the proceedings shall be stayed on
appeal by the filing of a supersedeas bond in the full
amount of the judgment against the health care
provider signed by the commissioner of insurance as
administrator of the health care stabilization fund
without surety or other security. (K)

0713 or conduct which would constitute grounds for disciplinary action
0714 under this section.

0715 (w) The licensee has surrendered a license or authorization
0716 to practice the healing arts in another state or jurisdiction or
0717 has surrendered the licensee's membership on any professional
0718 staff or in any professional association or society while under
0719 investigation for acts or conduct similar to acts or conduct
0720 which would constitute grounds for disciplinary action under
0721 this section.

0722 (x) The licensee has failed to report to the board surrender of
0723 the licensee's license or authorization to practice the healing
0724 arts in another state or jurisdiction or surrender of the licensee's
0725 membership on any professional staff or in any professional
0726 association or society while under investigation for acts or
0727 conduct similar to acts or conduct which would constitute
0728 grounds for disciplinary action under this section.

0729 (y) The licensee has an adverse judgment, award or settle-
0730 ment against the licensee resulting from a medical liability
0731 claim related to acts or conduct similar to acts or conduct which
0732 would constitute grounds for disciplinary action under this
0733 section.

0734 (z) The licensee has failed to report to the board any adverse
0735 judgment, settlement or award against the licensee resulting
0736 from a medical malpractice liability claim related to acts or
0737 conduct similar to acts or conduct which would constitute
0738 grounds for disciplinary action under this section.

0739 (aa) The licensee has failed to maintain a policy of profes-
0740 sional liability insurance as required by K.S.A. 40-3402 and
0741 amendments thereto.

0742 (bb) The licensee has failed to pay the annual premium
0743 surcharge as required by K.S.A. 40-3404 and amendments
0744 thereto.

0745 Sec. 35 43. K.S.A. 65-2837 is hereby amended to read as
0746 follows: 65-2837. As used in K.S.A. 65-2836 and amendments
0747 thereto and in this section:

(c) (a) "Professional incompetency" means:

0748 (1) One or more instances involving failure to adhere to the

by section 21 or (K)

0035 recommends that the practice privileges of any such person be
0036 terminated; suspended or restricted for reasons relating to such
0037 person's professional competence or finds that such person has
0038 committed an act which is a ground for the revocation, suspen-
0039 sion or limitation of such person's license; registration or certifi-
0040 cation under law; the chief of the medical staff shall immediately
0041 report the same; under oath; to the state board of healing arts. If
0042 the medical staff has not made such a recommendation or find-
0043 ing; but the governing board of any such firm; facility; corpora-
0044 tion; institution or association has made such recommendation or
0045 finding; the chief administrative officer thereof shall immedi-
0046 ately report the same; under oath; to the state board of healing
0047 arts.

0048 (b) Any report made pursuant to this section shall contain the
0049 name and business address of the chief of the medical staff or the
0050 chief administrative officer making the report and of the person
0051 named in the report; information regarding the report; and any
0052 other information which the chief of the medical staff or the chief
0053 administrative officer believes might be helpful in an investiga-

0054 tion of the case; (a) ~~A~~ *medical care facility licensed under K.S.A.*
0955 *65-125 et seq. and amendments thereto shall, and any person*
0956 *may, report under oath to the state board of healing arts any*
0957 *information such facility or person has which appears to show*
0958 *that a person licensed to practice the healing arts has committed*
0959 *an act which may be a ground for disciplinary action pursuant*
0960 *to K.S.A. 65-2836 and amendments thereto.*

0961 (b) *A medical care facility shall inform the state board of*
0962 *healing arts whenever the medical care facility recommends*
0963 *that the practice privileges of any person licensed to practice*
0964 *the healing arts be are terminated, suspended or restricted or*
0965 *whenever such privileges are voluntarily surrendered or limited*
0966 *for reasons relating to such person's professional competence.*

0967 (c) *Any medical care facility which fails to report within 30*
0968 *days after the receipt of information required to be reported by*
0969 *this section shall be reported by the state board of healing arts*
0970 *to the secretary of health and environment and shall be subject*
0971 *after proper notice and an opportunity to be heard, to a civil*

Subject to the provisions of subsection (c) of section 4,

(K)

072 fine assessed by the state board of healing arts in an amount not
 073 exceeding \$1,000 per day for each day thereafter that the in-
 074 [redacted] is not reported. All fines assessed and collected under this
 075 section shall be remitted promptly to the state treasurer. Upon
 076 receipt thereof, the state treasurer shall deposit the entire
 077 amount in the state treasury and credit it to the state general
 078 fund.

079 Sec. 40-48. K.S.A. 65-28,122 is hereby amended to read as
 080 follows: 65-28,122. (a) Any person licensed to practice the heal-
 081 ing arts who possesses knowledge not subject to the physician-
 082 patient privilege that another person so licensed has committed
 083 any act enumerated under K.S.A. 65-2836 and amendments
 084 thereto which is *may be* a ground for the revocation, suspension
 085 or limitation of a license *disciplinary action pursuant to K.S.A.*
 086 *65-2836 and amendments thereto* shall immediately report such
 087 knowledge, under oath, to the state board of healing arts. A
 088 person licensed to practice the healing arts who possesses *such*
 089 knowledge not subject to the physician-patient privilege con-
 090 cerning another person so licensed shall reveal fully such
 091 knowledge upon proper *official* request of the state board of
 092 healing arts.

093 (b) This section shall be part of and supplemental to the
 094 Kansas healing arts act.

095 Sec. 41-49. K.S.A. 65-4902 is hereby amended to read as
 096 follows: 65-4902. The district judge or, if the district court has
 097 more than one division, the administrative judge of such court
 098 shall notify the parties to the action that a screening panel has
 099 been convened and that the members of such screening panel
 100 are to be appointed within ten (10) 10 days of the receipt of such
 101 notice. If the plaintiff and the defendant or, if no petition has
 102 been filed, the claimant and the party against whom the claim is
 103 made are unable to jointly select a health care provider within
 104 ten (10) 10 days after receipt of notice that a screening panel has
 105 been convened, the judge of the district court or, if the district
 106 court has more than one division, the administrative judge of
 107 such court shall select such health care provider. Members of
 108 such screening panel shall receive compensation and expenses

Subject to the provisions of subsection (c) of
 section 4, (K)