

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator August "Gus" Bogina at
Chairperson

11:00 a.m./p.m./ on April 24, 1986 in room 123-S of the Capitol.

All members were present except:
Senator Winter

Committee staff present:
Research Department: Ed Ahrens
Revisor's Office: Norman Furse
Committee Office: Judy Bromich, Doris Fager

Conferees appearing before the committee:
James Cobler, Director, Division of Accounts and Reports

SB 641 (also HB 2679) - Residence requirements for fee purposes

The Chairman reminded the committee that these two measures, along with others to be considered later, have been heard or discussed in committee meetings, and he would like the committee's comments about action on the bills.

There was discussion concerning changing the residence requirements at state universities to six months instead of one year. Senator Talkington recalled that it is now six months at community colleges and Washburn University. He also recalled that the committee had discussed the matter of consistency.

Senator Bogina noted that HB 2679 has amendments for specific people and circumstances. He said that, in his opinion, all should be treated alike if either bill were to pass. There was discussion concerning requirements for fee purposes in surrounding states. There was also discussion concerning the fiscal note for SB 641, which would be \$250,000.

Motion was made by Senator Johnston and seconded by Senator Feleciano to report SB 641 favorably for passage. The motion lost on a tie vote.

SB 734 - Postgraduate training programs, Health Care Provider Insurance Availability Act

Mr. Furse distributed a balloon of SB 734 on which he had noted some requested amendments, and also some policy questions. He then explained the notations on the balloon. (See attached balloon of SB 734)

It was decided that the occurrence policy option on page 6 of the balloon should be retained.

There was discussion concerning the policy questions noted on page 9 of the balloon. Following a brief discussion, the decision was made to approve the bill balloon for these policy questions.

Motion was made by Senator Talkington and seconded by Senator Johnston to adopt the amendments noted in the balloon and to approve any needed technical amendments to SB 734. The motion carried by voice vote.

Motion was made by Senator Talkington and seconded by Senator Feleciano to report SB 734 as amended favorably for passage. The motion carried by roll call vote.

SB 741 - Board of Regents; retirement annuities for faculty members, etc., increasing TIAA contribution of employer by 1%

(See next page)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,

room 123-S Statehouse, at 11:00 a.m./p.m./on April 24, 1986

SB 741 - Continued

Following a brief discussion concerning this bill, motion was made by Senator Winter and seconded by Senator Feleciano to report SB 741 favorably. The motion carried by roll call vote.

HB 3027 - State moneys; fee agency accounts

Mr. Cobler stated that the Department of Administration supports HB 3027. He explained that the measure places negotiations on the awarding of contracts with the Pooled Money Investment Board. There were several questions from committee members, asking for clarification of the bill.

Motion was made by Senator Talkington and seconded by Senator Kerr to report HB 3027 favorably for passage. The motion carried by roll call vote.

HB 2789 - Establishing the state progressive initiatives fund, etc

Senator Talkington explained that this measure concerns lottery revenue distribution. He indicated that he does not approve the idea of earmarking funds, but it is his opinion that this is important enough in the area of economic development that it should be passed. He further stated that he feels it is important to show local governments that the state is interested in setting aside funds for reappraisal purposes.

Motion was made by Senator Doyen and seconded by Senator Kerr to amend HB 2789 to reduce the percentage for economic development purposes to 55% and provide 5% for rehabilitation of chronic gamblers. There was extensive discussion concerning the motion before a vote was taken. The motion lost on a voice vote.

Motion was made by Senator Feleciano and seconded by Senator Werts to amend HB 2789 to reinsert the words "gaming revenues." The motion carried by voice vote.

Senator Feleciano stressed that a bad precedent is being set by passing the bill, because no hearings have been held in this committee. Senator Gaines suggested that this is an unusual year, and there will be more of them until the state's economic problems are solved. He noted that his impression of the lottery is that it may provide jobs for citizens of the state.

Senator Werts wondered if this formula would be the subject of attempts to change it, similar to that of the private club tax. He said it was his inclination to place all receipts in the State General Fund.

Senator Winter reminded the Committee that the House of Representatives was encouraged to vote for the economic development package partly because of this bill.

Motion was made by Senator Talkington and seconded by Senator Johnston to report HB 2789 as amended favorably for passage. The motion carried by roll call vote.

SB 686 - Percentage of Institutional Building Fund used for correctional institutions

There was a brief discussion concerning this measure. Motion was made by Senator Harder and seconded by Senator Gannon to report SB 686 favorably for passage. The motion carried by roll call vote.

At this point, Senator Johnston said he would like to see a Post Audit study on the availability of scholarship funds for medical students. No decision was made on this suggestion.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS,
room 123-S, Statehouse, at 11:00 a.m./p/m./on April 24, 1986

INTRODUCTION OF BILLS

Motion was made by Senator Johnston and seconded by Senator Gannon to introduce Bill Draft RS 2949, reconciling provisions of bills previously passed during this session. The motion carried by voice vote.

Motion was made by Senator Johnston and seconded by Senator Werts to introduce a bill (Bill Draft RS 2940) transferring disciplinary counsel of the board of healing arts to the attorney general's office. The motion carried by voice vote.

The meeting was adjourned by the Chairman.

SENATE BILL No. 734

By Committee on Ways and Means

3-11

0017 AN ACT concerning the health care provider insurance availa-
0018 bility act; relating to certain persons engaged in postgraduate
0019 training programs; amending K.S.A. 1985 Supp. 40-3401, 40-
0020 3402, 40-3403, 40-3404 and 40-3414 and repealing the existing
0021 sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1985 Supp. 40-3401 is hereby amended to
0024 read as follows: 40-3401. As used in this act the following terms
0025 shall have the meanings respectively ascribed to them herein:

0026 (a) "Applicant" means any health care provider;

0027 (b) "basic coverage" means a policy of professional liability
0028 insurance required to be maintained by each health care pro-
0029 vider pursuant to the provisions of subsection (a) or (b) of K.S.A.
0030 40-3402 and amendments thereto;

0031 (c) "commissioner" means the commissioner of insurance;

0032 (d) "fiscal year" means the year commencing on the effective
0033 date of this act and each year, commencing on the first day of that
0034 month, thereafter;

0035 (e) "fund" means the health care stabilization fund estab-
0036 lished pursuant to subsection (a) of K.S.A. 40-3403 and amend-
0037 ments thereto;

0038 (f) "health care provider" means a person licensed to practice
0039 any branch of the healing arts by the state board of healing arts, a
0040 person who holds a temporary permit to practice any branch of
0041 the healing arts issued by the state board of healing arts, a person
0042 engaged in a postgraduate training program approved by the
0043 state board of healing arts, a medical care facility licensed by the
0044 department of health and environment, a health maintenance
0045 organization issued a certificate of authority by the commissioner

0046 of insurance, an optometrist licensed by the board of examiners
0047 in optometry, a podiatrist registered by the state board of healing
0048 arts, a pharmacist registered by the state board of pharmacy, a
0049 licensed professional nurse who is licensed by the board of
0050 nursing and certified as a nurse anesthetist by the American
0051 association of nurse anesthetists, a professional corporation or-
0052 ganized pursuant to the professional corporation law of Kansas
0053 by persons who are authorized by such law to form such a
0054 corporation and who are health care providers as defined by this
0055 subsection, a Kansas not-for-profit corporation organized for the
0056 purpose of rendering professional services by persons who are
0057 health care providers as defined by this subsection (l), a dentist
0058 certified by the state board of healing arts to administer anes-
0059 thetics under K.S.A. 65-2899 and amendments thereto, a physical
0060 therapist registered by the state board of healing arts, or a mental
0061 health center or mental health clinic licensed by the secretary of
0062 social and rehabilitation services, except that health care pro-
0063 vider does not include (1) any state institution for the mentally
0064 retarded or (2) any state psychiatric hospital;

0065 (g) "inactive health care provider" means a person or other
0066 entity who purchased basic coverage or qualified as a self-in-
0067 surer on or subsequent to the effective date of this act but who, at
0068 the time a claim is made for personal injury or death arising out
0069 of the rendering of or the failure to render professional services
0070 by such health care provider, does not have basic coverage or
0071 self-insurance in effect solely because such person is no longer
0072 engaged in rendering professional service as a health care pro-
0073 vider;

0074 (h) "insurer" means any corporation, association, reciprocal
0075 exchange, inter-insurer and any other legal entity authorized to
0076 write bodily injury or property damage liability insurance in this
0077 state, including workmen's compensation and automobile liabil-
0078 ity insurance, pursuant to the provisions of the acts contained in
0079 article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated;

0080 (i) "plan" means the operating and administrative rules and
0081 procedures developed by insurers and rating organizations or the
0082 commissioner to make professional liability insurance available

0083 to health care providers;

0084 (j) "professional liability insurance" means insurance pro-
0085 viding coverage for legal liability arising out of the performance
0086 of professional services rendered or which should have been
0087 rendered by a health care provider;

0088 (k) "rating organization" means a corporation, an unincorpo-
0089 rated association, a partnership or an individual licensed pursu-
0090 ant to K.S.A. 40-930 or 40-1114, or both sections, and amend-
0091 ments to those sections, to make rates for professional liability
0092 insurance;

0093 (l) "self-insurer" means a health care provider who has qual-
0094 ified as a self-insurer pursuant to K.S.A. 40-3414 and amend-
0095 ments thereto or the university of Kansas medical center for
0096 ~~persons who are engaged, under the supervision of the clinical~~
0097 ~~faculty member of the university of Kansas school of medicine, in~~
0098 ~~a postgraduate training program approved by the state board of~~
0099 ~~healing arts and operated by the university of Kansas medical~~
0100 ~~center persons engaged in residency training~~;

qualifies

0101 (m) "medical care facility" means the same when used in the
0102 health care provider insurance availability act as the meaning
0103 ascribed to that term in K.S.A. 65-425 and amendments thereto,
0104 except that as used in the health care provider insurance availa-
0105 bility act such term, as it relates to insurance coverage under the
0106 health care provider insurance availability act, also includes any
0107 director, trustee, officer or administrator of a medical care facil-
0108 ity;

0109 (n) "mental health center" means a mental health center
0110 licensed by the secretary of social and rehabilitation services
0111 under K.S.A. 75-3307b and amendments thereto, except that as
0112 used in the health care provider insurance availability act such
0113 term, as it relates to insurance coverage under the health care
0114 provider insurance availability act, also includes any director,
0115 trustee, officer or administrator of a mental health center;

0116 (o) "mental health clinic" means a mental health clinic li-
0117 censed by the secretary of social and rehabilitation services
0118 under K.S.A. 75-3307b and amendments thereto, except that as
0119 used in the health care provider insurance availability act such

0120 term, as it relates to insurance coverage under the health care
0121 provider insurance availability act, also includes any director,
0122 trustee, officer or administrator of a mental health clinic;

0123 (p) "state institution for the mentally retarded" means Nor-
0124 ton state hospital, Winfield state hospital and training center,
0125 Parsons state hospital and training center and the Kansas neuro-
0126 logical institute;

0127 (q) "state psychiatric hospital" means Larned state hospital,
0128 Osawatomie state hospital, Rainbow mental health facility and
0129 Topeka state hospital;

0130 (r) "*person engaged in residency training*" means a person
0131 engaged in a postgraduate training program approved by the
0132 state board of healing arts who is employed by and is studying
0133 at the university of Kansas medical center only when such
0134 person is engaged in medical activities which do not include
0135 extracurricular, extra-institutional medical service for which
0136 such person receives extra compensation and which have not
0137 been approved by the dean of the school of medicine and the
0138 executive vice-chancellor of the university of Kansas medical
0139 center.

0140 Sec. 2. K.S.A. 1985 Supp. 40-3402 is hereby amended to read
0141 as follows: 40-3402. (a) A policy of professional liability insur-
0142 ance approved by the commissioner and issued by an insurer
0143 duly authorized to transact business in this state in which the
0144 limit of the insurer's liability is not less than \$200,000 per
0145 occurrence, subject to not less than a \$600,000 annual aggregate
0146 for all claims made during the policy period, shall be maintained
0147 in effect by each resident health care provider as a condition to
0148 rendering professional service as a health care provider in this
0149 state, unless such health care provider is a self-insurer ~~or is a~~
0150 person who is engaged under the supervision of the clinical
0151 faculty member of the university of Kansas school of medicine, in
0152 a postgraduate training program approved by the state board of
0153 healing arts and operated by the university of Kansas medical
0154 center and is insured pursuant to K.S.A. 40-3414; and amend-
0155 ments thereto. Such policy shall provide as a minimum coverage
0156 for claims made during the term of the policy which were

0157 incurred during the term of such policy or during the prior term
0158 of a similar policy.

0159 (1) Each insurer providing basic coverage shall within 30
0160 days after the premium for the basic coverage is received by the
0161 insurer or within 30 days from the effective date of this act,
0162 whichever is later, notify the commissioner that such coverage is
0163 or will be in effect. Such notification shall be on a form approved
0164 by the commissioner and shall include information identifying
0165 the professional liability policy issued or to be issued, the name
0166 and address of all health care providers covered by the policy,
0167 the amount of the annual premium, the inception and expiration
0168 dates of the coverage and such other information as the commis-
0169 sioner shall require. A copy of the notice required by this
0170 subsection shall be furnished the named insured.

0171 (2) In the event of termination of basic coverage by cancella-
0172 tion, nonrenewal, expiration or otherwise by either the insurer or
0173 named insured, notice of such termination shall be furnished by
0174 the insurer to the commissioner, the state agency which licenses,
0175 registers or certifies the named insured and the named insured.
0176 Such notice shall be provided no less than 30 days prior to the
0177 effective date of any termination initiated by the insurer or
0178 within 10 days after the date coverage is terminated at the
0179 request of the named insured and shall include the name and
0180 address of the health care provider or providers for whom basic
0181 coverage is terminated and the date basic coverage will cease to
0182 be in effect. No basic coverage shall be terminated by cancella-
0183 tion or failure to renew by the insurer unless such insurer
0184 provides a notice of termination as required by this subsection.

0185 (3) Any professional liability insurance policy issued, deliv-
0186 ered or in effect in this state on and after the effective date of this
0187 act shall contain or be endorsed to provide basic coverage as
0188 required by subsection (a) of this section. Notwithstanding any
0189 omitted or inconsistent language, any contract of professional
0190 liability insurance shall be construed to obligate the insurer to
0191 meet all the mandatory requirements and obligations of this act.
0192 The liability of an insurer for claims made prior to July 1, 1984,
0193 shall not exceed those limits of insurance provided by such

0194 policy prior to July 1, 1984.

0195 (b) Unless a nonresident health care provider is a self-in-
0196 surer, such provider shall not render professional service as a
0197 health care provider in this state unless such provider maintains
0198 coverage in effect as prescribed by subsection (a) of this section,
0199 except such coverage may be provided by a nonadmitted insurer
0200 who has filed the form required in paragraph (1) of *this* subsec-
0201 tion (b) of *this* section.

0202 (1) Every insurance company authorized to transact business
0203 in this state, that is authorized to issue professional liability
0204 insurance in any jurisdiction, shall file with the commissioner, as
0205 a condition of its continued transaction of business within this
0206 state, a form prescribed by the commissioner declaring that its
0207 professional liability insurance policies, wherever issued, shall
0208 be deemed to provide at least the insurance required by this
0209 subsection when the insured is rendering professional services
0210 as a nonresident health care provider in this state. Any nonad-
0211 mitted insurer may file such a form.

0212 (2) Every nonresident health care provider who is required
0213 to maintain basic coverage pursuant to this subsection shall pay
0214 the surcharge levied by the commissioner pursuant to subsection
0215 (a) of K.S.A. 40-3404 and amendments thereto directly to the
0216 commissioner and shall furnish to the commissioner the infor-
0217 mation required in paragraph (1) of subsection (a) of this section.

0218 (c) Every health care provider that is a self-insurer or the
0219 university of Kansas medical center for persons who are engaged
0220 under the supervision of the clinical faculty member of the
0221 university of Kansas school of medicine in a postgraduate train-
0222 ing center approved by the state board of healing arts and
0223 operated by the university of Kansas medical center engaged in
0224 residency training shall pay the surcharge levied by the com-
0225 missioner pursuant to subsection (a) of K.S.A. 40-3404 and
0226 amendments thereto directly to the commissioner and shall
0227 furnish to the commissioner the information required in para-
0228 graph (1) of subsection (a) of this section.

0229 (d) In lieu of a claims made policy otherwise required under
0230 this section, a person engaged in a postgraduate training pro-

or a medical care facility or mental health center for self-insurers under
subsection (e) of K.S.A. 40-3414 and amendments thereto

Delete or Retain Occurrence Policy Option?

0231 gram operated by the university of Kansas medical center who is
0232 providing services as a health care provider but while providing
0233 such services is not covered by the self-insurance provisions of
0234 subsection (d) of K.S.A. 40-3414 and amendments thereto may
0235 obtain basic coverage under an occurrence form policy if such
0236 policy provides professional liability insurance coverage and
0237 limits which are substantially the same as the professional
0238 liability insurance coverage and limits required by subsection
0239 (a) of K.S.A. 40-3402 and amendments thereto. Where such
0240 occurrence form policy is in effect, the provisions of the health
0241 care provider insurance availability act referring to claims
0242 made policies shall be construed to mean occurrence form
0243 policies.

0244 Sec. 3. K.S.A. 1985 Supp. 40-3403 is hereby amended to read
0245 as follows: 40-3403. (a) For the purpose of paying damages for
0246 personal injury or death arising out of the rendering of or the
0247 failure to render professional services by a health care provider,
0248 self-insurer or inactive health care provider subsequent to the
0249 time that such health care provider or self-insurer has qualified
0250 for coverage under the provisions of this act, there is hereby
0251 established the health care stabilization fund. The fund shall be
0252 held in trust in a segregated fund in the state treasury. The
0253 commissioner shall administer the fund or contract for the ad-
0254 ministration of the fund with an insurance company authorized
0255 to do business in this state.

0256 (b) (1) There is hereby created a board of governors. The
0257 board of governors shall provide:

0258 (A) Technical assistance with respect to administration of the
0259 fund;

0260 (B) such expertise as the commissioner may reasonably re-
0261 quest with respect to evaluation of claims or potential claims;

0262 (C) advice, information and testimony to the appropriate li-
0263 censing or disciplinary authority regarding the qualifications of a
0264 health care provider.

0265 (2) The board shall consist of 13 persons appointed by the
0266 commissioner of insurance, as follows: (A) The commissioner of
0267 insurance, or the designee of the commissioner, who shall act as

068 chairperson; (B) one member appointed from the public at large
069 who is not affiliated with any health care provider; (C) three
070 members licensed to practice medicine and surgery in Kansas
071 who are doctors of medicine; (D) three members who are repre-
072 sentatives of Kansas hospitals; (E) two members licensed to
073 practice medicine and surgery in Kansas who are doctors of
074 osteopathic medicine; (F) one member licensed to practice
075 chiropractic in Kansas; and (G) two members of other categories
076 of health care providers. Meetings shall be called by the chair-
077 person or by a written notice signed by three members of the
078 board. The board, in addition to other duties imposed by this act,
079 shall study and evaluate the operation of the fund and make such
080 recommendations to the legislature as may be appropriate to
081 ensure the viability of the fund.

082 (3) The board shall be attached to the insurance department
083 and shall be within the insurance department as a part thereof.
084 All budgeting, purchasing and related management functions of
085 the board shall be administered under the direction and super-
086 vision of the commissioner of insurance. All vouchers for ex-
087 penditures of the board shall be approved by the commissioner
088 of insurance or a person designated by the commissioner.

089 (c) Subject to subsections (d), (e) and (g), the fund shall be
090 liable to pay: (1) Any amount due from a judgment or settlement
091 which is in excess of the basic coverage liability of all liable
092 resident health care providers or resident self-insurers for any
093 such injury or death arising out of the rendering of or the failure
094 to render professional services within or without this state; (2)
095 any amount due from a judgment or settlement which is in excess
096 of the basic coverage liability of all liable nonresident health
097 care providers or nonresident self-insurers for any such injury or
098 death arising out of the rendering or the failure to render pro-
099 fessional services within this state. In no event shall the fund be
0300 obligated for claims against nonresident health care providers or
0301 nonresident self-insurers who have not complied with this act or
0302 for claims against nonresident health care providers or nonresi-
0303 dent self-insurers that arose outside of this state; (3) any amount
0304 due from a judgment or settlement against a resident inactive

0305 health care provider for any such injury or death; (4) any amount
 0306 due from a judgment or settlement against a nonresident inactive
 0307 health care provider for any injury or death arising out of the
 0308 rendering or failure to render professional services within this
 0309 state. In no event shall the fund be obligated for claims against:
 0310 (A) Nonresident inactive health care providers who have not
 0311 complied with this act; or (B) nonresident inactive health care
 0312 providers for claims that arose outside of this state, unless such
 0313 health care provider was a resident health care provider or
 0314 resident self-insurer at the time such act occurred; (5) reasonable
 0315 and necessary expenses for attorney fees incurred in defending
 0316 the fund against claims; (6) any amounts expended for reinsur-
 0317 ance obtained to protect the best interests of the fund purchased
 0318 by the commissioner, which purchase shall be subject to the
 0319 provisions of K.S.A. 75-3738 to 75-3744, inclusive, and amend-
 0320 ments thereto but shall not be subject to the provisions of K.S.A.
 0321 75-4101 and amendments thereto; (7) reasonable and necessary
 0322 actuarial expenses incurred in administering the act, which ex-
 0323 penditures shall not be subject to the provisions of K.S.A. 75-
 0324 3738 to 75-3744, inclusive, and amendments thereto; (8) an-
 0325 nually to the plan or plans, any amount due pursuant to
 0326 subsection (a)(3) of K.S.A. 40-3413, and amendments thereto; and
 0327 (9) reasonable and necessary expenses incurred by the insurance
 0328 department and the board of governors in the administration of
 0329 the fund; (10) *reasonable and necessary expenses for attorney*
 0330 *fees and other costs incurred in defending a person engaged in*
 0331 *residency training from claims for personal injury or death*
 0332 *arising out of the rendering of or the failure to render profes-*
 0333 *sional services by such health care provider, except that no such*
 0334 *attorney fees and other costs shall be paid except upon approval*
 0335 *of the state finance council acting on this matter which is*
 0336 *hereby characterized as a matter of legislative delegation and*
 0337 *subject to the guidelines prescribed in subsection (c) of K.S.A.*
 0338 *75-3711c and amendments thereto; and (11) any amount due*
 0339 *from a judgment or settlement for an injury or death arising out*
 0340 *of the rendering of or failure to render professional services by a*
 0341 *person engaged in residency training, except that no such set-*

(10) Finance Council Language - Retain or Delete?

(11) Limit only to Settlement?

Retain or Delete Finance Council Language?

0342 tlement shall be approved except upon approval of the state
0343 finance council acting on this matter which is hereby charac-
0344 terized as a matter of legislative delegation and subject to the
0345 guidelines prescribed in subsection (c) of K.S.A. 75-3711c and
0346 amendments thereto.

0347 (d) All amounts for which the fund is liable pursuant to
0348 paragraphs (1), (2), (3) or (4) of subsection (c) of this section shall
0349 be paid promptly and in full if less than \$300,000, or if \$300,000
0350 or more, by installment payments of \$300,000 or 10% of the
0351 amount of the judgment including interest thereon, whichever is
0352 greater, per fiscal year, the first installment to be paid within 60
0353 days after the fund becomes liable and each subsequent install-
0354 ment to be paid annually on the same date of the year the first
0355 installment was paid, until the claim has been paid in full. Any
0356 attorney's attorney fees payable from such installment shall be
0357 similarly prorated.

0358 (e) In no event shall the fund be liable to pay in excess of
0359 \$3,000,000 pursuant to any one judgment or settlement against
0360 any one health care provider relating to any injury or death
0361 arising out of the rendering of or the failure to render profes-
0362 sional services from and after July 1, 1984, subject to an ag-
0363 gregate limitation for all judgments or settlements arising from
0364 all claims made in any one fiscal year in the amount of \$6,000,000
0365 for each provider.

0366 (f) A health care provider shall be deemed to have qualified
0367 for coverage under the fund: (1) On and after the effective date of
0368 this act if basic coverage is then in effect; (2) subsequent to the
0369 effective date of this act, at such time as basic coverage becomes
0370 effective; or (3) upon qualifying as a self-insurer pursuant to
0371 K.S.A. 40-3414 and amendments thereto.

0372 (g) Notwithstanding the provisions of K.S.A. 40-3402 and
0373 amendments thereto, if the board of governors determines that
0374 an individual health care provider presents a material risk of
0375 significant future liability to the fund, the board of governors is
0376 authorized by a vote of a majority of the members thereof, after
0377 notice and an opportunity for hearing, to terminate the liability of
0378 the fund for all claims against the health care provider for

0379 damages for death or personal injury arising out of the rendering
0380 of or the failure to render professional services after the date of
0381 termination. The date of termination shall be 30 days after the
0382 date of the determination by the board of governors. The board of
0383 governors, upon termination of the liability of the fund under
0384 this subsection (g), shall notify the licensing or other disciplinary
0385 board having jurisdiction over the health care provider involved
0386 of the name of the health care provider and the reasons for the
0387 termination.

0388 (h) (1) Upon the payment of moneys from the health care
0389 stabilization fund pursuant to item (10) of subsection (c) of this
0390 section, the commissioner shall certify to the director of ac-
0391 counts and reports the amount of such payment, and the direc-
0392 tor of accounts and reports shall transfer an amount equal to the
0393 amount certified from the state general fund to the health care
0394 stabilization fund.

0395 (2) Upon the payment of moneys from the health care stabi-
0396 lization fund pursuant to item (11) of subsection (c) of this
0397 section, the commissioner shall certify to the director of ac-
0398 counts and reports the amount of such payment which is equal
0399 to the basic coverage liability of self-insurers, and the director
0400 of accounts and reports shall transfer an amount equal to the
0401 amount certified from the state general fund to the health care
0402 stabilization fund.

0403 Sec. 4. K.S.A. 1985 Supp. 40-3404 is hereby amended to read
0404 as follows: 40-3404. (a) Except for any health care provider
0405 whose participation in the fund has been terminated pursuant to
0406 subsection (g) of K.S.A. 40-3403 and amendments thereto, the
0407 commissioner shall levy an annual premium surcharge on each
0408 health care provider who has obtained basic coverage and upon
0409 each self-insurer for each fiscal year. Such premium surcharge
0410 shall be an amount equal to a percentage of the annual premium
0411 paid by the health care provider for the basic coverage required
0412 to be maintained as a condition to coverage by the fund by
0413 subsection (a) of K.S.A. 40-3402 and amendments thereto. The
0414 annual premium surcharge upon each self-insurer, except for the
0415 university of Kansas medical center for persons engaged in

State General Fund Transfer?

State General Fund Transfer?

0416 *residency training*, shall be an amount equal to a percentage of
0417 the amount such self-insurer would pay for basic coverage as
0418 calculated in accordance with rating procedures approved by the
0419 commissioner pursuant to K.S.A. 40-3413 and amendments
0420 thereto. The annual premium surcharge upon the university of
0421 Kansas medical center for persons who are engaged, under the
0422 supervision of the clinical faculty member of the university of
0423 Kansas school of medicine, in a postgraduate training program
0424 approved by the state board of healing arts and operated by the
0425 university of Kansas medical center engaged in residency train-
0426 ing shall be an amount equal to a percentage of an assumed
0427 aggregate premium of \$600,000.

0428 (b) In the case of a resident health care provider who is not a
0429 self-insurer, the premium surcharge shall be collected in addi-
0430 tion to the annual premium for the basic coverage by the insurer
0431 and shall not be subject to the provisions of K.S.A. 40-252,
0432 40-1113 and 40-2801 *et seq.*; and amendments to these sections.
0433 The amount of the premium surcharge shall be shown separately
0434 on the policy or an endorsement thereto and shall be specifically
0435 identified as such. Such premium surcharge shall be due and
0436 payable by the insurer to the commissioner within 30 days after
0437 the annual premium for the basic coverage is received by the
0438 insurer, but in the event basic coverage is in effect at the time
0439 this act becomes effective, such surcharge shall be based upon
0440 the unearned premium until policy expiration and annually
0441 thereafter. Within 15 days immediately following the effective
0442 date of this act, the commissioner shall send to each insurer
0443 information necessary for their compliance with this subsection.
0444 The certificate of authority of any insurer who fails to comply
0445 with the provisions of this subsection shall be suspended pursu-
0446 ant to K.S.A. 40-222 and amendments thereto until such insurer
0447 shall pay the annual premium surcharge due and payable to the
0448 commissioner. In the case of a nonresident health care provider
0449 or a self-insurer, the premium surcharge shall be collected in the
0450 manner prescribed in K.S.A. 40-3402 and amendments thereto.

0451 (c) The premium surcharge shall be an amount deemed suf-
0452 ficient by the commissioner to fund anticipated claims based

0453 upon reasonably prudent actuarial principles. In setting the
0454 amount of such surcharge, the commissioner: (1) May require
0455 any health care provider who has paid a surcharge for less than
0456 24 months to pay a higher surcharge than other health care
0457 providers; and (2) shall amortize any anticipated deficiencies in
0458 the fund over a reasonable period of time.

0459 Sec. 5. K.S.A. 1985 Supp. 40-3414 is hereby amended to read
0460 as follows: 40-3414. (a) Any health care provider whose annual
0461 insurance premium is or would be \$100,000 or more for basic
0462 coverage calculated in accordance with rating procedures ap-
0463 proved by the commissioner pursuant to K.S.A. 40-3413 and
0464 amendments thereto, may qualify as a self-insurer by obtaining a
0465 certificate of self-insurance from the commissioner. Upon appli-
0466 cation of any such health care provider, on a form prescribed by
0467 the commissioner, the commissioner may issue a certificate of
0468 self-insurance if the commissioner is satisfied that the applicant
0469 is possessed and will continue to be possessed of ability to pay
0470 any judgment for which liability exists equal to the amount of
0471 basic coverage required of a health care provider obtained
0472 against such applicant arising from the applicant's rendering of
0473 professional services as a health care provider. In making such
0474 determination the commissioner shall consider (1) the financial
0475 condition of the applicant, (2) the procedures adopted and fol-
0476 lowed by the applicant to process and handle claims and poten-
0477 tial claims, (3) the amount and liquidity of assets reserved for the
0478 settlement of claims or potential claims and (4) any other rele-
0479 vant factors. The certificate of self-insurance may contain rea-
0480 sonable conditions prescribed by the commissioner. Upon not
0481 less than five days' notice and a hearing pursuant to such notice,
0482 the commissioner may cancel a certificate of self-insurance upon
0483 reasonable grounds therefor. Failure to pay any judgment for
0484 which the self-insurer is liable arising from the self-insurer's
0485 rendering of professional services as a health care provider, the
0486 failure to comply with any provision of this act or the failure to
0487 comply with any conditions contained in the certificate of self-
0488 insurance shall be reasonable grounds for the cancellation of
0489 such certificate of self-insurance. The provisions of this subsec-

0490 tion shall not apply to the Kansas soldiers' home ~~or to the~~
 0491 university of Kansas medical center for persons ~~who are en-~~
 0492 ~~gaged, under the supervision of a clinical faculty member of the~~
 0493 ~~university of Kansas school of medicine, in a postgraduate train-~~
 0494 ~~ing program approved by the state board of healing arts and~~
 0495 ~~operated by the university of Kansas medical center~~ engaged in
 0496 residency training.

0497 (b) Any health care provider who holds a certificate of self-
 0498 insurance shall pay the applicable surcharge set forth in subsec-
 0499 tion (c) of K.S.A. 40-3402 and amendments thereto.

0500 (c) The Kansas soldiers' home shall be a self-insurer and shall
 0501 pay the applicable surcharge set forth in subsection (c) of K.S.A.
 0502 40-3402 and amendments thereto.

0503 (d) ~~The university of Kansas medical center for persons~~ who
 0504 ~~are engaged, under the supervision of a clinical faculty member~~
 0505 ~~of the university of Kansas school of medicine, in a postgraduate~~
 0506 ~~training program approved by the state board of healing arts and~~
 0507 ~~operated by the university of Kansas medical center~~ engaged in

0508 residency training shall be ~~a self-insurer and the~~ university of
 0509 Kansas medical center shall pay the applicable surcharge set
 0510 forth in subsection (c) of K.S.A. 40-3402 and amendments

0511 thereto. ~~Such self-insurance shall be applicable to a person~~
 0512 ~~engaged in residency training only when such person is engaged~~
 0513 ~~in medical activities which do not include extracurricular,~~
 0514 ~~extra-institutional medical service for which such person re-~~
 0515 ~~ceives extra compensation and which have not been approved~~
 0516 ~~by the dean of the school of medicine and the executive vice-~~
 0517 ~~chancellor of the university of Kansas medical center.~~

0518 Sec. 6. K.S.A. 1985 Supp. 40-3401, 40-3402, 40-3403, 40-3404
 0519 and 40-3414 are hereby repealed.

0520 Sec. 7. This act shall take effect and be in force from and
 0521 after its publication in the Kansas register.

, under subsection (c) to persons

under subsection (d) or to persons engaged in a postgraduate training program
 approved by the state board of healing arts under subsection (e)

A person

self-insured by the university of Kansas medical center, and such person shall
 be deemed

for purposes of the health care provider insurance availability act. The

on behalf of such person

→ (e) See attached.

(e) (1) A person engaged in a postgraduate training program approved by the state board of healing arts at a medical care facility or mental health center in this state may be self-insured by such medical care facility or mental health center in accordance with this subsection (e) and in accordance with such terms and conditions of eligibility therefor as may be specified by the medical care facility or mental health center and approved by the commissioner of insurance. A person self-insured under this subsection (e) by a medical care facility or mental health center shall be deemed a self-insurer for purposes of the health care provider insurance availability act. Upon application by a medical care facility or mental health center, on a form prescribed by the commissioner, the commissioner may authorize such medical care facility or mental health center to self-insure persons engaged in postgraduate training programs approved by the state board of healing arts at such medical care facility or mental health center if the commissioner is satisfied that the medical care facility or mental health center is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a health care provider obtained against a person engaged in such a postgraduate training program and arising from such person's rendering of professional services as a health care provider.

(2) In making such determination the commissioner shall consider (A) the financial condition of the medical care facility or mental health center, (B) the procedures adopted by the medical care facility or mental health center to process and handle claims and potential claims, (C) the amount and liquidity of assets reserved for the settlement of claims or potential claims by the medical care facility or mental health center and (D) any other factors the commissioner deems relevant. The commissioner may specify such conditions for the approval of an application as the commissioner deems necessary. Upon approval of an application, the commissioner shall issue a certificate of self-insurance to each person engaged in such postgraduate training program at the medical care facility or mental health center who is self-insured by such medical care facility or mental health center.

(3) Upon not less than five days' notice and a hearing pursuant to such notice, the commissioner may cancel, upon reasonable grounds therefor, a certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure persons engaged in such postgraduate training programs at the medical care facility or mental health center. Failure of a person engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such person, the failure to comply with any provisions of the health care provider insurance availability act or the failure to comply with any conditions for approval of the application or any conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such persons.

(4) A medical care facility or mental health center authorized to self-insure persons engaged in such postgraduate training programs shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto on behalf of such persons.