

Approved March 14, 1989

Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Dale Sprague at Chairperson

~~3:30~~ ~~am~~/p.m. on March 1, 1989 in room 531-n of the Capitol.

All members were present except:

Representative Michael Sawyer, absent

Committee staff present:

Chris Courtwright, Research Department
Emalene Correll, Research Department
Bill Edds, Revisor of Statutes
Patti Kruggel, Committee Secretary

Conferees appearing before the committee:

Others present: see attached list

The Chairman called the meeting to order at 3:45 p.m.

Bill Edds, Revisor of Statutes, provided the balloon draft of HB 2501 requested by the Committee (Attachment 1.)

HB 2501 -- An Act relating to medical malpractice claims; amending and supplementing the health care provider insurance availability act; providing for reduced levels of coverage by the health care stabilization fund and providing for eventual termination of malpractice actions; amending the Kansas tort claims act with respect to claims against governmental entities or employees thereof.

The Chairman asked the Committee if they had any problems with HB 2501 being the vehicle bill. There were none.

Representative Wells discussed problems with doctors leaving the state. She stated there needs to be a disincentive for those choosing to leave and that the Fund should not be required to provide free coverage to those doctors. Representative Wells moved to amend HB 2501, that physicians who choose to leave the state prior to 1989 and take up practice in another state, must purchase their tail coverage and the Fund should be authorized to sell that type of insurance. Representative Bryant seconded.

Representative Gross expressed his displeasure with pulling out of a commitment he felt the legislature had promised. He explained that the doctors were promised coverage and to change in mid stream and tell them that if they leave the state, we will now not provide them coverage, is not good government policy.

Representative Wells explained that it was at the physicians request that there be some legislative changes and that this change does not constitute pulling out of a commitment but rather correcting the policy to protect the majority of physicians that remain in our state.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance
room 531-N, Statehouse, at 3:30 XX a.m./p.m. on March 3, 19
89

Representative Wells made a motion to move the amendment. Eight voting yes, four voting no. The motion prevails.

Representative Delbert Gross and Representative Barbara Allen wished to be recorded as voting no.

A motion was made by Representative Brown to accept the balloon amendments of HB 2501. Representative Cribbs seconded. The motion carried.

Representative Gross made a motion that HB 2501 as drafted in the balloon be passed as amended. Representative Allen seconded. The motion carried.

The meeting was adjourned at 5:00 p.m.

HOUSE BILL No. 2501

By Committee on Insurance

2-22

15 AN ACT relating to medical malpractice claims; amending and sup-
 16 plementing the health care provider insurance availability act; pro-
 17 viding for reduced levels of coverage by the health care
 3 stabilization fund and providing for the eventual termination of
 19 the fund; repealing certain statutes limiting awards in medical
 20 malpractice actions; amending the Kansas tort claims act with re-
 21 spect to claims against governmental entities or employees thereof;
 22 amending K.S.A. 40-3402, 40-3415, 40-3416 and 75-6115, ~~K.S.A.~~
 23 ~~1987 Supp. 40-3413 as amended by section 124 of chapter 356 of~~
 24 ~~the laws of 1988,~~ and K.S.A. 1988 Supp. 40-3401, 40-3403, 40-
 25 3404, 40-3414 and 60-3410 and repealing the existing sections; also
 26 repealing K.S.A. 40-3405 and 40-3414 as amended by section 125
 27 of chapter 356 of the laws of 1988, K.S.A. 1987 Supp. 40-3403 as
 28 amended by section 123 of chapter 356 of the laws of 1988 and
 29 K.S.A. 1988 Supp. 60-3407, 60-3409 and 60-3411.
 30

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

32 Section 1. K.S.A. 1988 Supp. 40-3401 is hereby amended to read
 33 as follows: 40-3401. As used in this act the following terms shall
 34 have the meanings respectively ascribed to them herein.

35 (a) "Applicant" means any health care provider.

36 (b) "Basic coverage" means a policy of professional liability in-
 37 surance required to be maintained by each health care provider
 38 pursuant to the provisions of subsection (a) or (b) of K.S.A. 40-3402
 39 and amendments thereto.

40 (c) "Commissioner" means the commissioner of insurance.

41 (d) "Fiscal year" means the year commencing on the effective
 42 date of this act and each year, commencing on the first day of that
 43 month, thereafter.

44 (e) "Fund" means the health care stabilization fund established
 45 pursuant to subsection (a) of K.S.A. 40-3403 and amendments

46 thereto.

47 (f) "Health care provider" means a person licensed to practice
48 any branch of the healing arts by the state board of healing arts, a
49 person who holds a temporary permit to practice any branch of the
50 healing arts issued by the state board of healing arts, a person
51 engaged in a postgraduate training program approved by the state
52 board of healing arts, a medical care facility licensed by the de-
53 partment of health and environment, a health maintenance organi-
54 zation issued a certificate of authority by the commissioner of
55 insurance, an optometrist licensed by the board of examiners in
56 optometry, a podiatrist licensed by the state board of healing arts,
57 a pharmacist licensed by the state board of pharmacy, a licensed
58 professional nurse who is authorized to practice as a registered nurse
59 anesthetist, a licensed professional nurse who has been granted a
60 temporary authorization to practice nurse anesthesia under K.S.A.
61 ~~1987~~ 1988 Supp. 65-1153 and amendments thereto, a professional
62 corporation organized pursuant to the professional corporation law
63 of Kansas by persons who are authorized by such law to form such
64 a corporation and who are health care providers as defined by this
65 subsection, a partnership of persons who are health care providers
66 under this subsection, a Kansas not-for-profit corporation organized
67 for the purpose of rendering professional services by persons who
68 are health care providers as defined by this subsection, a dentist
69 certified by the state board of healing arts to administer anesthetics
70 under K.S.A. 65-2899 and amendments thereto, a physical therapist
71 registered by the state board of healing arts, a psychiatric hospital
72 licensed under K.S.A. 75-3307b and amendments thereto, or a men-
73 tal health center or mental health clinic licensed by the secretary
74 of social and rehabilitation services, except that health care provider
75 does not include (1) any state institution for the mentally retarded,
76 (2) any state psychiatric hospital or (3) any person holding an exempt
77 license issued by the state board of healing arts.

78 (g) "Inactive health care provider" means: (1) A person or other
79 entity who purchased basic coverage or qualified as a self-insurer on
80 or subsequent to the effective date of this act but who, at the time
81 a claim is made for personal injury or death arising out of the
82 rendering of or the failure to render professional services by such

July 1, 1976, and before July 1, 1989,

83 health care provider, does not have basic coverage or self-insurance
84 in effect solely because such person is no longer engaged in rendering
85 professional service as a health care provider; or (2) a person or
86 other entity who purchased basic coverage or qualified as a self-
87 insurer on or subsequent to ~~the effective date of the health care~~
88 ~~provider insurance availability act~~ and was so qualified on June 30,
89 1994.

July 1, 1989,

90 (h) "Insurer" means any corporation, association, reciprocal ex-
91 change, inter-insurer and any other legal entity authorized to write
92 bodily injury or property damage liability insurance in this state,
93 including workmen's compensation and automobile liability insur-
94 ance, pursuant to the provisions of the acts contained in article 9,
95 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

96 (i) "Plan" means the operating and administrative rules and pro-
97 cedures developed by insurers and rating organizations or the com-
98 missioner to make professional liability insurance available to health
99 care providers.

100 (j) "Professional liability insurance" means insurance providing
101 coverage for legal liability arising out of the performance of profes-
102 sional services rendered or which should have been rendered by a
103 health care provider.

104 (k) "Rating organization" means a corporation, an unincorporated
105 association, a partnership or an individual licensed pursuant to K.S.A.
106 40-930 or 40-1114, or both, and amendments thereto, to make rates
107 for professional liability insurance.

108 (l) "Self-insurer" means a health care provider who qualifies as
109 a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

110 (m) "Medical care facility" means the same when used in the
111 health care provider insurance availability act as the meaning ascribed
112 to that term in K.S.A. 65-425 and amendments thereto, except that
113 as used in the health care provider insurance availability act such
114 term, as it relates to insurance coverage under the health care prov-
115 ider insurance availability act, also includes any director, trustee,
116 officer or administrator of a medical care facility.

117 (n) "Mental health center" means a mental health center licensed
118 by the secretary of social and rehabilitation services under K.S.A.
119 75-3307b and amendments thereto, except that as used in the health

120 care provider insurance availability act such term, as it relates to
121 insurance coverage under the health care provider insurance avail-
122 ability act, also includes any director, trustee, officer or administrator
123 of a mental health center.

124 (o) "Mental health clinic" means a mental health clinic licensed
125 by the secretary of social and rehabilitation services under K.S.A.
126 75-3307b and amendments thereto, except that as used in the health
127 care provider insurance availability act such term, as it relates to
128 insurance coverage under the health care provider insurance avail-
129 ability act, also includes any director, trustee, officer or administrator
130 of a mental health clinic.

131 (p) "State institution for the mentally retarded" means Norton
132 state hospital, Winfield state hospital and training center, Parsons
133 state hospital and training center and the Kansas neurological
134 institute.

135 (q) "State psychiatric hospital" means Larned state hospital, Os-
136 awatomie state hospital, Rainbow mental health facility and Topeka
137 state hospital.

138 (r) "Person engaged in residency training" means a person en-
139 gaged in a postgraduate training program approved by the state board
140 of healing arts who is employed by and is studying at the university
141 of Kansas medical center only when such person is engaged in med-
142 ical activities which do not include extracurricular, extra-institutional
143 medical service for which such person receives extra compensation
144 and which have not been approved by the dean of the school of
145 medicine and the executive vice-chancellor of the university of Kan-
146 sas medical center. Persons engaged in residency training shall be
147 considered resident health care providers for purposes of K.S.A. 40-
148 3401 *et seq.*, and amendments thereto.

149 Section 2. K.S.A. 40-3402 is hereby amended to read as follows:
150 40-3402. (a) A policy of professional liability insurance approved by
151 the commissioner and issued by an insurer duly authorized to transact
152 business in this state in which the limit of the insurer's liability is
153 not less than \$200,000 per occurrence, subject to not less than a
154 \$600,000 annual aggregate for all claims made during the policy
155 period, shall be maintained in effect by each resident health care
156 provider as a condition to rendering professional service as a health

157 care provider in this state, unless such health care provider is a self-
158 insurer. Such policy shall provide as a minimum coverage for claims
159 made during the term of the policy which were incurred during the
160 term of such policy or during the prior term of a similar policy. Any
161 insurer offering such policy of professional liability insurance to any
162 health care provider may offer to such health care provider a policy
163 as prescribed in this section with deductible options. Such deductible
164 shall be within such policy limits.

165 *(1) Policies of professional liability insurance maintained by*
166 *health care providers in accordance with subsection (a), which are*
167 *issued to be effective or renewed to be effective on or after July 1,*
168 *1993, shall have an expiration date of June 30, 1994.*

169 ~~(1)~~ (2) Each insurer providing basic coverage shall within 30 days
170 after the premium for the basic coverage is received by the insurer
171 or within 30 days from the effective date of this act, whichever is
172 later, notify the commissioner that such coverage is or will be in
173 effect. Such notification shall be on a form approved by the com-
174 missioner and shall include information identifying the professional
175 liability policy issued or to be issued, the name and address of all
176 health care providers covered by the policy, the amount of the annual
177 premium, the inception and expiration dates of the coverage and
178 such other information as the commissioner shall require. A copy of
179 the notice required by this subsection shall be furnished the named
180 insured.

181 ~~(2)~~ (3) In the event of termination of basic coverage by cancel-
182 lation, nonrenewal, expiration or otherwise by either the insurer or
183 named insured, notice of such termination shall be furnished by the
184 insurer to the commissioner, the state agency which licenses, reg-
185 isters or certifies the named insured and the named insured. Such
186 notice shall be provided no less than 30 days prior to the effective
187 date of any termination initiated by the insurer or within 10 days
188 after the date coverage is terminated at the request of the named
189 insured and shall include the name and address of the health care
190 provider or providers for whom basic coverage is terminated and
191 the date basic coverage will cease to be in effect. No basic coverage
192 shall be terminated by cancellation or failure to renew by the insurer
193 unless such insurer provides a notice of termination as required by

194 this subsection.

195 ~~(3)~~ (4) Any professional liability insurance policy issued, deliv-
196 ered or in effect in this state on and after the effective date of this
197 act shall contain or be endorsed to provide basic coverage as required
198 by subsection (a) of this section. Notwithstanding any omitted or
199 inconsistent language, any contract of professional liability insurance
200 shall be construed to obligate the insurer to meet all the mandatory
201 requirements and obligations of this act. The liability of an insurer
202 for claims made prior to July 1, 1984, shall not exceed those limits
203 of insurance provided by such policy prior to July 1, 1984.

204 (b) Unless a nonresident health care provider is a self-insurer,
205 such provider shall not render professional service as a health care
206 provider in this state unless such provider maintains coverage in
207 effect as prescribed by subsection (a), except such coverage may be
208 provided by a nonadmitted insurer who has filed the form required
209 by subsection (b)(1).

210 (1) Every insurance company authorized to transact business in
211 this state, that is authorized to issue professional liability insurance
212 in any jurisdiction, shall file with the commissioner, as a condition
213 of its continued transaction of business within this state, a form
214 prescribed by the commissioner declaring that its professional liability
215 insurance policies, wherever issued, shall be deemed to provide at
216 least the insurance required by this subsection when the insured is
217 rendering professional services as a nonresident health care provider
218 in this state. Any nonadmitted insurer may file such a form.

219 (2) Every nonresident health care provider who is required to
220 maintain basic coverage pursuant to this subsection shall pay the
221 surcharge levied by the commissioner pursuant to subsection (a) of
222 K.S.A. 40-3404 and amendments thereto directly to the commis-
223 sioner and shall furnish to the commissioner the information required
224 in subsection (a)(1).

225 (c) Every health care provider that is a self-insurer, the university
226 of Kansas medical center for persons engaged in residency training
227 or a medical care facility or mental health center for self-insurers
228 under subsection (e) of K.S.A. 40-3414 and amendments thereto shall
229 pay the surcharge levied by the commissioner pursuant to subsection
230 (a) of K.S.A. 40-3404 and amendments thereto directly to the com-

231 commissioner and shall furnish to the commissioner the information re-
232 quired in subsection (a)(1).

233 (d) In lieu of a claims made policy otherwise required under this
234 section, a person engaged in a postgraduate training program op-
235 erated by the university of Kansas medical center who is providing
236 services as a health care provider but while providing such services
237 is not covered by the self-insurance provisions of subsection (d) of
238 K.S.A. 40-3414 and amendments thereto may obtain basic coverage
239 under an occurrence form policy if such policy provides professional
240 liability insurance coverage and limits which are substantially the
241 same as the professional liability insurance coverage and limits re-
242 quired by subsection (a) of K.S.A. 40-3402 and amendments thereto.
243 Where such occurrence form policy is in effect, the provisions of
244 the health care provider insurance availability act referring to claims
245 made policies shall be construed to mean occurrence form policies.

246 (e) *The provisions of this section shall expire on July 1, 1994.*

247 Sec. 3. K.S.A. 1988 Supp. 40-3403 is hereby amended to read
248 as follows: 40-3403. (a) For the purpose of paying damages for per-
249 sonal injury or death arising out of the rendering of or the failure
250 to render professional services by a health care provider, self-insurer
251 or inactive health care provider subsequent to the time that such
252 health care provider or self-insurer has qualified for coverage under
253 the provisions of this act, there is hereby established the health care
254 stabilization fund. The fund shall be held in trust in a segregated
255 fund in the state treasury. The commissioner shall administer the
256 fund or contract for the administration of the fund with an insurance
257 company authorized to do business in this state.

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

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

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

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

267 (D) prepare and publish, on or before October 1 of each year,

305 erage liability of all liable nonresident health care providers or non-
306 resident self-insurers for any such injury or death arising out of the
307 rendering or the failure to render professional services within this
308 state but in no event shall the fund be obligated for claims against
309 nonresident health care providers or nonresident self-insurers who
310 have not complied with this act or for claims against nonresident
311 health care providers or nonresident self-insurers that arose outside
312 of this state; (3) any amount due from a judgment or settlement
313 against a resident inactive health care provider for any such injury
314 or death arising out of the rendering of or failure to render profes-
315 sional services; (4) any amount due from a judgment or settlement
316 against a nonresident inactive health care provider for any injury or
317 death arising out of the rendering or failure to render professional
318 services within this state, but in no event shall the fund be obligated
319 for claims against: (A) Nonresident inactive health care providers
320 who have not complied with this act; or (B) nonresident inactive
321 health care providers for claims that arose outside of this state, unless
322 such health care provider was a resident health care provider or
323 resident self-insurer at the time such act occurred; (5) reasonable
324 and necessary expenses for attorney fees incurred in defending the
325 fund against claims; (6) any amounts expended for reinsurance ob-
326 tained to protect the best interests of the fund purchased by the
327 commissioner, which purchase shall be subject to the provisions of
328 K.S.A. 75-3738 through 75-3744, and amendments thereto, but shall
329 not be subject to the provisions of K.S.A. 75-4101 and amendments
330 thereto; (7) reasonable and necessary actuarial expenses incurred in
331 administering the act, which expenditures shall not be subject to
332 the provisions of K.S.A. 75-3738 through 75-3744, and amendments
333 thereto; (8) annually to the plan or plans, any amount due pursuant
334 to subsection (a)(3) of K.S.A. 40-3413 and amendments thereto; (9)
335 reasonable and necessary expenses incurred by the insurance de-
336 partment and the board of governors in the administration of the
337 fund; (10) return of any unearned surcharge; (11) reasonable and
338 necessary expenses for attorney fees and other costs incurred in
339 defending a person engaged or who was engaged in residency training
340 from claims for personal injury or death arising out of the rendering
341 of or the failure to render professional services by such health care

342 provider; (12) any amount due from a judgment or settlement for
 343 an injury or death arising out of the rendering of or failure to render
 344 professional services by a person engaged or who was engaged in
 345 residency training; ~~and~~ (13) amounts authorized by the court pur-
 346 suant to K.S.A. 1986 Supp. 60-3411 and amendments thereto;
 347 and (14) reasonable and necessary expenses for the development
 348 and promotion of risk management education programs.

349 (d) All amounts for which the fund is liable pursuant to subsection
 350 (c) shall be paid promptly and in full except that, in any case arising
 351 out of a cause of action which accrued before July 1, 1986, if
 352 the amount for which the fund is liable is \$300,000 or more, it shall
 353 be paid, by installment payments of \$300,000 or 10% of the amount
 354 of the judgment including interest thereon, whichever is greater,
 355 per fiscal year, the first installment to be paid within 60 days after
 356 the fund becomes liable and each subsequent installment to be paid
 357 annually on the same date of the year the first installment was paid,
 358 until the claim has been paid in full. Any attorney fees payable from
 359 such installment shall be similarly prorated.

360 (e) In no event shall the fund be liable to pay in excess of
 361 \$3,000,000 pursuant to any one judgment or settlement against any
 362 one health care provider relating to any injury or death arising out
 363 of the rendering of or the failure to render professional services on
 364 and after July 1, 1984, and before July 1, 1986 1989, subject to an
 365 aggregate limitation for all judgments or settlements arising from all
 366 claims made in any one fiscal year in the amount of \$6,000,000 for
 367 each provider.

368 (f) ~~Except as provided by K.S.A. 1986 Supp. 60-3411 and~~
 369 ~~amendments thereto, The fund shall not be liable to pay in excess~~
 370 ~~of \$1,000,000 pursuant to any one judgment or settlement for any~~
 371 ~~party against any one health care provider relating to any injury or~~
 372 ~~death arising out of the rendering of or the failure to render profes-~~
 373 ~~sional services on and after July 1, 1986 1989, and before July 1,~~
 374 ~~1990, subject to an aggregate limitation for all judgments or settle-~~
 375 ~~ments arising from all claims made in any one fiscal year in the~~
 376 ~~amount of \$3,000,000 for each provider.~~

377 (g) ~~The fund shall not be liable to pay in excess of \$500,00~~
 378 ~~pursuant to any one judgment or settlement for any party against~~

; and (14) any amount due from a judgment or settlement
 against an individual described in subsection (m) who has paid
 for past acts coverage for any injury or death arising out of the
 rendering of or failure to render professional services

*language added
 10/1/89
 10/1/89*

change to 1989

The fund shall not be liable to pay in excess of the amount
 specified in the option selected by the health care provider
 pursuant to subsection (l) for all judgments or settlements from
 all claims in any one fiscal year relating to injury or death
 arising out of the rendering of or failure to render professional
 services by such health care provider on or after July 1, 1989.

379 ~~any one health care provider relating to any injury or death arising~~
 380 ~~out of the rendering of or the failure to render professional services~~
 381 ~~on and after July 1, 1990, and before July 1, 1991, subject to an~~
 382 ~~aggregate limitation for all judgments or settlements arising from all~~
 383 ~~claims made in one fiscal year in the amount of \$1,500,000 for each~~
 384 ~~provider.~~

385 ~~(h) The fund shall not be liable to pay in excess of \$300,000~~
 386 ~~pursuant to any one judgment or settlement for any party against~~
 387 ~~any one health care provider relating to any injury or death arising~~
 388 ~~out of the rendering of or the failure to render professional services~~
 389 ~~on and after July 1, 1991, and before July 1, 1994, subject to an~~
 390 ~~aggregate limitation for all judgments or settlements arising from all~~
 391 ~~claims made in one fiscal year in the amount of \$900,000 for each~~
 392 ~~provider.~~

393 ~~(g)~~ (i) A health care provider shall be deemed to have qualified
 394 for coverage under the fund: (1) On and after the effective date of
 395 this act if basic coverage is then in effect; (2) subsequent to the
 396 effective date of this act, at such time as basic coverage becomes
 397 effective; or (3) upon qualifying as a self-insurer pursuant to K.S.A.
 398 40-3414 and amendments thereto.

(g)

399 ~~(h)~~ (j) A health care provider who is qualified for coverage under
 400 the fund shall have no vicarious liability or responsibility for any
 401 injury or death arising out of the rendering of or the failure to render
 402 professional services inside or outside this state by any other health
 403 care provider who is also qualified for coverage under the fund. The
 404 provisions of this subsection shall apply to all claims filed on or after
 405 the effective date of this act.

(h)

8 ~~(i)~~ (k) Notwithstanding the provisions of K.S.A. 40-3402 and
 9 amendments thereto, if the board of governors determines due to
 10 the number of claims filed against a health care provider or the
 11 outcome of those claims that an individual health care provider pre-
 12 sents a material risk of significant future liability to the fund, the
 13 board of governors is authorized by a vote of a majority of the
 14 members thereof, after notice and an opportunity for hearing in
 15 accordance with the provisions of the Kansas administrative pro-
 16 cedure act, to terminate the liability of the fund for all claims against
 17 the health care provider for damages for death or personal injury

(i)

18 arising out of the rendering of or the failure to render professional
19 services after the date of termination. The date of termination shall
20 be 30 days after the date of the determination by the board of
21 governors. The board of governors, upon termination of the liability
22 of the fund under this subsection, shall notify the licensing or other
23 disciplinary board having jurisdiction over the health care provider
24 involved of the name of the health care provider and the reasons
25 for the termination.

26 (j) ~~(l)~~ (1) Upon the payment of moneys from the health care
27 stabilization fund pursuant to subsection (c)(11), the commissioner
28 shall certify to the director of accounts and reports the amount of
29 such payment, and the director of accounts and reports shall transfer
30 an amount equal to the amount certified from the state general fund
31 to the health care stabilization fund.

32 (2) Upon the payment of moneys from the health care stabili-
33 zation fund pursuant to subsection (c)(12), the commissioner shall
34 certify to the director of accounts and reports the amount of such
35 payment which is equal to the basic coverage liability of self-insurers,
36 and the director of accounts and reports shall transfer an amount
37 equal to the amount certified from the state general fund to the
38 health care stabilization fund.

39 (k) ~~(m)~~ Notwithstanding any other provision of the health care
40 provider insurance availability act, no psychiatric hospital licensed
41 under K.S.A. 75-3307b and amendments thereto shall be assessed
42 a premium surcharge or be entitled to coverage under the fund if
43 such hospital has not paid any premium surcharge pursuant to K.S.A.
44 40-3404 and amendments thereto prior to January 1, 1988.

45 Sec. 4. K.S.A. 1988 Supp. 40-3404 is hereby amended to read
46 as follows: 40-3404. (a) Except for any health care provider whose
47 participation in the fund has been terminated pursuant to subsection
48 (i) of K.S.A. 40-3403 and amendments thereto, the commissioner
49 shall levy an annual premium surcharge on each health care provider
50 who has obtained basic coverage and upon each self-insurer for each
51 fiscal year commencing before July 1, 1994. Such premium surcharge
52 shall be an amount equal to a percentage of the annual premium
53 paid by the health care provider for the basic coverage required to
54 be maintained as a condition to coverage by the fund by subsection

(j) (1)

(k)

(1) As of July 1, 1989, every health care provider shall make an irrevocable election to be covered by one of the following options provided in this subsection which shall limit the liability of the fund for all judgments or settlements from all claims against such health care provider in any one fiscal year relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such options shall be as follows: (A) OPTION 1. The fund shall not be liable to pay in excess of \$100,000 pursuant to such judgments or settlements;

(B) OPTION 2. The fund shall not be liable to pay in excess of \$300,000 pursuant to such judgments or settlements; and

(C) OPTION 3. The fund shall not be liable to pay in excess of \$800,000 pursuant to any such judgments or settlements.

(m) The fund shall not be liable, with respect to any individual who commenced rendering professional services as a health care provider in this state and participating in the fund on or after July 1, 1989, to pay any amount prescribed in subsection (c) if such individual has discontinued rendering professional services as a health care provider in this state and participating in such fund before July 1, 1994, unless such individual makes payment for coverage by the fund in an amount determined by the commissioner to be sufficient to fund anticipated claims based upon reasonably prudent actuarial principles.

55 (a) of K.S.A. 40-3402 and amendments thereto. The annual premium
56 surcharge upon each self-insurer, except for the university of Kansas
57 medical center for persons engaged in residency training, shall be
58 an amount equal to a percentage of the amount such self-insurer
59 would pay for basic coverage as calculated in accordance with rating
60 procedures approved by the commissioner pursuant to K.S.A. 40-
61 3413 and amendments thereto. The annual premium surcharge upon
62 the university of Kansas medical center for persons engaged in re-
63 sidency training shall be an amount equal to a percentage of an
64 assumed aggregate premium of \$600,000.

65 (b) In the case of a resident health care provider who is not a
66 self-insurer, the premium surcharge shall be collected in addition to
67 the annual premium for the basic coverage by the insurer and shall
68 not be subject to the provisions of K.S.A. 40-252, 40-1113 and 40-
69 2801 *et seq.*, and amendments thereto. The amount of the premium
70 surcharge shall be shown separately on the policy or an endorsement
71 thereto and shall be specifically identified as such. Such premium
72 surcharge shall be due and payable by the insurer to the commis-
73 sioner within 30 days after the annual premium for the basic coverage
74 is received by the insurer, but in the event basic coverage is in
75 effect at the time this act becomes effective, such surcharge shall
76 be based upon the unearned premium until policy expiration and
77 annually thereafter. Within 15 days immediately following the ef-
78 fective date of this act, the commissioner shall send to each insurer
79 information necessary for their compliance with this subsection. The
80 certificate of authority of any insurer who fails to comply with the
81 provisions of this subsection shall be suspended pursuant to K.S.A.
82 40-222 and amendments thereto until such insurer shall pay the
83 annual premium surcharge due and payable to the commissioner.
84 In the case of a nonresident health care provider or a self-insurer,
85 the premium surcharge shall be collected in the manner prescribed
86 in K.S.A. 40-3402 and amendments thereto.

87 (c) The premium surcharge shall be an amount deemed sufficient
88 by the commissioner to fund anticipated claims based upon reason-
89 ably prudent actuarial principles. In setting the amount of such
90 surcharge, the commissioner: (1) May require any health care prov-
91 ider who has paid a surcharge for less than 24 months to pay a

92 higher surcharge than other health care providers; (2) shall require
93 that any health care provider who is insured by a policy of profes-
94 sional liability insurance with deductibles pay a surcharge based on
95 an amount equal to a percentage on the annual amount of premium
96 that would have been paid by the health care provider for basic
97 coverage required to be maintained by the fund as provided by
98 K.S.A. 40-3402 and amendments thereto without any deductibles;
99 ~~and~~ (3) shall amortize any anticipated deficiencies in the fund over
100 a reasonable period of time; *and (4) shall determine that the amount*
101 *is fixed at a rate estimated to be sufficient to achieve a fund balance*
102 *by July 1, 1994, equal to the fund's liabilities for claims filed or*
103 *which may be filed in the future.*

104 Sec. 5. K.S.A. 1987 Supp. 40-3413, as amended by section 124
105 of chapter 356 of the laws of 1988, is hereby amended to read as
106 follows: 40-3413. (a) Every insurer and every rating organization shall
107 cooperate in the preparation of a plan or plans for the equitable
108 apportionment among such insurers of applicants for professional
109 liability insurance and such other liability insurance as may be in-
110 cluded in or added to the plan, who are in good faith entitled to
111 such insurance but are unable to procure the same through ordinary
112 methods. Such plan or plans shall be prepared and filed with the
113 commissioner within a reasonable time but not exceeding 60 calendar
114 days from the effective date of this act. Such plan or plans shall
115 provide:

116 (1) Reasonable rules governing the equitable distribution of risks
117 by direct insurance, reinsurance or otherwise including the authority
118 to make assessments against the insurers participating in the plan
119 or plans;

120 (2) rates and rate modifications applicable to such risks which
121 shall be reasonable, adequate and not unfairly discriminatory;

122 (3) a method whereby annually the plan shall compare the pre-
123 miums earned to the losses and expenses sustained by the plan for
124 the preceding fiscal year. If there is any surplus of premiums over
125 losses and expenses received for that year such surplus shall be
126 transferred to the fund. If there is any excess of losses and expenses
127 over premiums earned such losses shall be transferred from the fund;

128 (4) the limits of liability which the plan shall be required to

129 provide, but in no event shall such limits be less than those limits
130 provided for in subsection (a) of K.S.A. 40-3402 and amendments
131 thereto;

132 (5) a method whereby applicants for insurance, insureds and in-
133 surers may have a hearing on grievances and the right of appeal to
134 the commissioner.

135 (b) The commissioner shall review the plan as soon as reasonably
136 possible after filing in order to determine whether it meets the
137 requirements set forth in subsection (a). As soon as reasonably possi-
138 ble after the plan has been filed the commissioner shall in writing
139 approve or disapprove the plan. Any plan shall be deemed approved
140 unless disapproved within 30 days. Subsequent to the waiting period
141 the commissioner may disapprove any plan on the ground that it
142 does not meet the requirements set forth in subsection (a), but only
143 after a hearing held upon not less than 10 days' written notice to
144 every insurer and rating organization affected specifying in what
145 respect the commissioner finds that such plan fails to meet such
146 requirements, and stating when within a reasonable period thereafter
147 such plan shall be deemed no longer effective. Such order shall not
148 affect any assignment made or policy issued or made prior to the
149 expiration of the period set forth in the order. Amendments to such
150 plan or plans shall be prepared, and filed and reviewed in the same
151 manner as herein provided with respect to the original plan or plans.

152 (c) If no plan meeting the standards set forth in subsection (a)
153 is submitted to the commissioner within 60 calendar days from the
154 effective date of this act or within the period stated in any order
155 disapproving an existing plan, the commissioner shall after a hearing,
156 if necessary to carry out the purpose of this act, prepare and pro-
157 mulgate a plan meeting such requirements.

158 (d) If, after a hearing conducted in accordance with the provisions
159 of the Kansas administrative procedure act, the commissioner finds
160 that any activity or practice of any insurer or rating organization in
161 connection with the operation of such plan or plans is unfair or
162 unreasonable or otherwise inconsistent with the provisions of this
163 act, the commissioner may issue a written order specifying in what
164 respects such activity or practice is unfair or unreasonable or oth-
165 erwise inconsistent with the provisions of this act and requiring

166 discontinuance of such activity or practice.

167 (e) For every such plan or plans, there shall be a governing
168 board which shall meet at least annually to review and prescribe
169 operating rules. Such board shall consist of nine members to be
170 appointed by the commissioner as follows: Three members shall be
171 representatives of foreign insurers, two members shall be represen-
172 tatives of domestic insurers, two members shall be representatives
173 of the general public, one member shall be a licensed insurance
174 agent actively engaged in the solicitation of casualty insurance and
175 one member shall be a health care provider. The members shall be
176 appointed for a term of two years.

177 (f) An insurer participating in the plan approved by the com-
178 missioner may pay a commission with respect to insurance written
179 under the plan to an insurance agent licensed for any other insurer
180 participating in the plan or to any insurer participating in the plan.
181 Such commission shall be reasonably equivalent to the usual cus-
182 tomary commission paid on similar types of policies issued in the
183 voluntary market.

184 (g) The provisions of this section shall expire on July 1, 1989
185 1994, but any plan created hereunder shall continue to exist for the
186 purpose of allowing policies then in effect to expire, transferring
187 surplus to the fund, completing the payment of claims and receiving
188 reimbursement therefor.

189 Sec. 6. K.S.A. 1988 Supp. 40-3414 is hereby amended to read
190 as follows: 40-3414. (a) Any health care provider, or any health care
191 system organized and existing under the laws of this state which
192 owns and operates two or more medical care facilities licensed by
193 the department of health and environment, whose aggregate annual
194 insurance premium is or would be \$100,000 or more for basic cov-
195 erage calculated in accordance with rating procedures approved by
196 the commissioner pursuant to K.S.A. 40-3413 and amendments
197 thereto, may qualify as a self-insurer by obtaining a certificate of
198 self-insurance from the commissioner. Upon application of any such
199 health care provider or health care system, on a form prescribed by
200 the commissioner, the commissioner may issue a certificate of self-
201 insurance if the commissioner is satisfied that the applicant is pos-
202 sessed and will continue to be possessed of ability to pay any judg-

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203 ment for which liability exists equal to the amount of basic coverage
204 required of a health care provider obtained against such applicant
205 arising from the applicant's rendering of professional services as a
206 health care provider. In making such determination the commissioner
207 shall consider (1) the financial condition of the applicant, (2) the
208 procedures adopted and followed by the applicant to process and
209 handle claims and potential claims, (3) the amount and liquidity of
210 assets reserved for the settlement of claims or potential claims and
211 (4) any other relevant factors. The certificate of self-insurance may
212 contain reasonable conditions prescribed by the commissioner. Upon
213 ~~not less than five days'~~ notice and a hearing ~~pursuant to such~~
214 ~~notice in accordance with the provisions of the Kansas administrative~~
215 ~~procedure act~~, the commissioner may cancel a certificate of self-
216 insurance upon reasonable grounds therefor. Failure to pay any judg-
217 ment for which the self-insurer is liable arising from the self-insurer's
218 rendering of professional services as a health care provider, the
219 failure to comply with any provision of this act or the failure to
220 comply with any conditions contained in the certificate of self-in-
221 surance shall be reasonable grounds for the cancellation of such
222 certificate of self-insurance. The provisions of this subsection shall
223 not apply to the Kansas soldiers' home or to any person who is a
224 self-insurer pursuant to subsection (d) or (e).

225 (b) Any such health care provider or health care system that
226 holds a certificate of self-insurance shall pay the applicable surcharge
227 set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto.

228 (c) The Kansas soldiers' home shall be a self-insurer and shall
229 pay the applicable surcharge set forth in subsection (c) of K.S.A.
230 40-3402 and amendments thereto.

231 (d) A person engaged in residency training shall be self-insured
232 by the university of Kansas medical center for occurrences arising
233 during such training, and such person shall be deemed a self-insurer
234 for the purposes of the health care provider insurance availability
235 act. The university of Kansas medical center shall pay the applicable
236 surcharge set forth in subsection (c) of K.S.A. 40-3402 and amend-
237 ments thereto on behalf of such person. Such self-insurance shall be
238 applicable to a person engaged in residency training only when such
239 person is engaged in medical activities which do not include extra-

240 curricular, extra-institutional medical service for which such person
241 receives extra compensation and which have not been approved by
242 the dean of the school of medicine and the executive vice-chancellor
243 of the university of Kansas medical center.

244 (e) (1) A person engaged in a postgraduate training program ap-
245 proved by the state board of healing arts at a medical care facility
246 or mental health center in this state may be self-insured by such
247 medical care facility or mental health center in accordance with this
248 subsection (e) and in accordance with such terms and conditions of
249 eligibility therefor as may be specified by the medical care facility
250 or mental health center and approved by the commissioner. A person
251 self-insured under this subsection (e) by a medical care facility or
252 mental health center shall be deemed a self-insurer for purposes of
253 the health care provider insurance availability act. Upon application
254 by a medical care facility or mental health center, on a form pre-
255 scribed by the commissioner, the commissioner may authorize such
256 medical care facility or mental health center to self-insure persons
257 engaged in postgraduate training programs approved by the state
258 board of healing arts at such medical care facility or mental health
259 center if the commissioner is satisfied that the medical care facility
260 or mental health center is possessed and will continue to be possessed
261 of ability to pay any judgment for which liability exists equal to the
262 amount of basic coverage required of a health care provider obtained
263 against a person engaged in such a postgraduate training program
264 and arising from such person's rendering of or failure to render
professional services as a health care provider.

266 (2) In making such determination the commissioner shall consider
267 (A) the financial condition of the medical care facility or mental health
268 center, (B) the procedures adopted by the medical care facility or
269 mental health center to process and handle claims and potential
270 claims, (C) the amount and liquidity of assets reserved for the set-
271 tlement of claims or potential claims by the medical care facility or
272 mental health center and (D) any other factors the commissioner
273 deems relevant. The commissioner may specify such conditions for
274 the approval of an application as the commissioner deems necessary.
5 Upon approval of an application, the commissioner shall issue a
276 certificate of self-insurance to each person engaged in such post-

277 graduate training program at the medical care facility or mental
278 health center who is self-insured by such medical care facility or
279 mental health center.

280 (3) Upon ~~not less than five days'~~ notice and a hearing pursuant
281 ~~to such notice in accordance with the provisions of the Kansas~~
282 *administrative procedure act*, the commissioner may cancel, upon
283 reasonable grounds therefor, a certificate of self-insurance issued
284 pursuant to this subsection (e) or the authority of a medical care
285 facility or mental health center to self-insure persons engaged in
286 such postgraduate training programs at the medical care facility or
287 mental health center. Failure of a person engaged in such post-
288 graduate training program to comply with the terms and conditions
289 of eligibility to be self-insured by the medical care facility or mental
290 health center, the failure of a medical care facility or mental health
291 center to pay any judgment for which such medical care facility or
292 mental health center is liable as self-insurer of such person, the
293 failure to comply with any provisions of the health care provider
294 insurance availability act or the failure to comply with any conditions
295 for approval of the application or any conditions contained in the
296 certificate of self-insurance shall be reasonable grounds for cancel-
297 lation of such certificate of self-insurance or the authority of a medical
298 care facility or mental health center to self-insure such persons.

299 (4) A medical care facility or mental health center authorized to
300 self-insure persons engaged in such postgraduate training programs
301 shall pay the applicable surcharge set forth in subsection (c) of K.S.A.
302 40-3402 and amendments thereto on behalf of such persons.

303 (5) As used in this subsection (e), "medical care facility" does
304 not include the university of Kansas medical center.

305 (f) For the purposes of subsection (a), "health care provider" may
306 include each health care provider in any group of health care pro-
307 viders who practice as a group to provide physician services only
308 for a health maintenance organization, any professional corporations,
309 partnerships or not-for-profit corporations formed by such group and
310 the health maintenance organization itself. The premiums for each
311 such provider, health maintenance organization and group corpo-
312 ration or partnership may be aggregated for the purpose of being
313 eligible for and subject to the statutory requirements for self-insur-

314 ance as set forth in this section.

315 (g) The provisions of subsections (a) and (f), relating to health
316 care systems, shall not affect the responsibility of individual health
317 care providers as defined in subsection (f) of K.S.A. 40-3401, and
318 amendments thereto, or organizations whose premiums are aggre-
319 gated for purposes of being eligible for self-insurance from individ-
320 ually meeting the requirements imposed by K.S.A. 40-3402, and
321 amendments thereto, with respect to the ability to respond to injury
322 or damages to the extent specified therein and K.S.A. 40-3404, and
323 amendments thereto, with respect to the payment of the health care
324 stabilization fund surcharge.

325 (h) *The provisions of this section shall expire on July 1, 1994.*

326 Sec. ~~7.~~ K.S.A. 40-3415 is hereby amended to read as follows:
327 40-3415. The board of governors, the commissioner, the attorney
328 general, *the health care stabilization fund oversight committee* and
329 the officers and employees of the state agencies which license, reg-
330 ister, certify or otherwise regulate health care providers are au-
331 thorized and directed to consult with and assist each other in
332 maintaining compliance with the provisions of this act.

6.

333 Sec. ~~8.~~ K.S.A. 40-3416 is hereby amended to read as follows:
334 40-3416. (a) Whenever the commissioner is informed or reasonably
335 suspects that a health care provider is rendering professional services
336 in violation of K.S.A. 40-3402 *and amendments thereto*, ~~said such~~
337 commissioner shall report the suspected violation to the state agency
338 which licenses, registers or certifies such health care provider. Upon
339 receipt of such report or other evidence of a violation of K.S.A. 40-
340 3402 *and amendments thereto*, ~~said such~~ state agency shall make
341 such investigation as it deems necessary and take such other official
342 action as deemed appropriate. If a violation is found to exist, ~~said~~
343 *such* state agency shall promptly notify the attorney general of this
344 state. Upon such notice the attorney general or county attorney of
345 the proper county shall, in the name of the state, institute and
346 maintain an action to enjoin the health care provider from rendering
347 professional services in this state in the district court of the district
348 in which such health care provider is rendering professional services.

7.

349 (b) *The provisions of this section shall expire on July 1, 1994.*

350 New Sec. ~~9.~~ (a) There is hereby created a health care stabili-

8.

351 zation fund oversight committee to consist of five members, one of
352 which shall be the commissioner of insurance or the commissioner's
353 designee, who shall be chairperson, three who shall either be health
354 care providers or who shall be employed by health care providers,
355 and one who shall be a representative of the insurance industry.

356 (b) The committee members, with the exception of the chair-
357 person, shall be appointed by the governor, two for a term of three
358 years and two for a term of two years. The committee members
359 shall be eligible for reappointment.

360 (c) The committee shall meet at least twice each year, or more
361 often if required; to: (1) Review the progress made towards phasing
362 out the fund, (2) annually report to the legislature and the governor
363 on the status of the phase out of the fund, (3) recommend any
364 additional legislation necessary to implement or alter the phase out
365 of the fund, (4) meet with insurers to determine the availability of
366 insurance for health care providers and encourage the writing of such
367 insurance, and (5) take such additional acts as are appropriate to
368 assist the state in providing access to health care to its citizens,
369 phase out the fund and provide for the availability of insurance for
370 health care providers.

371 (d) This section shall be a part of and supplemental to the health
372 care provider insurance availability act.

373 ~~New Sec. 10. Subsequent to July 1, 1994, and after the fund~~
374 ~~has paid all amounts required to be paid by it:~~

375 ~~(a) Any balance remaining shall be paid to the general fund.~~

376 ~~(b) Upon certification by the commissioner to the director of~~
377 ~~accounts and reports, that the fund is insufficient to pay an amount~~
378 ~~for which the fund is liable, the director shall transfer an amount~~
379 ~~equal to such insufficiency from the state general fund to the fund~~
380 ~~and the amount to be transferred is hereby appropriated for the~~
381 ~~fiscal year in which such amount is required to be transferred.~~

382 ~~(c) This section shall be a part of and supplemental to the health~~
383 ~~care provider insurance availability act.~~

384 Sec. 11. K.S.A. 75-6115 is hereby amended to read as follows:
385 75-6115. (a) The Kansas tort claims act shall not be applicable to
386 claims arising from the rendering of or failure to render professional
387 services by a health care provider. Claims for damages against a

388 health care provider that is a governmental entity or an employee
 389 of a governmental entity, arising out of the rendering or failure to
 390 render professional services by such health care provider, may be
 391 recovered in the same manner as claims for damages against any
 392 other health care provider. As used in this section, "health care
 393 provider" shall have the meaning provided by K.S.A. 40-3401 and
 394 amendments thereto.

395 (b) *The provisions of this section shall expire on July 1, 1994.*

396 Sec. 12. K.S.A. 1988 Supp. 60-3410 is hereby amended to read 10.
 397 as follows: 60-3410. The provisions of K.S.A. ~~1986 1988 Supp. 60-~~
 398 ~~3406 through 60-3409 60-3408 and amendments thereto~~ shall apply
 399 only to medical malpractice liability actions which are based on causes
 400 of action accruing on or after July 1, 1986.

401 Sec. 13. K.S.A. 40-3402, 40-3405, 40-3414 as amended by sec- 11.
 402 tion 125 of chapter 356 of the laws of 1988, 40-3415, 40-3416 and
 403 75-6115, K.S.A. 1987 Supp. 40-3403 as amended by section 123 of
 404 chapter 356 of the laws of 1988 ~~and 40-3413 as amended by section~~
 405 ~~124 of chapter 356 of the laws of 1988~~, and K.S.A. 1988 Supp. 40-
 406 3401, 40-3403, 40-3404, 40-3414, 60-3407, 60-3409, 60-3410 and 60-
 407 3411 are hereby repealed.

408 Sec. 14. This act shall take effect and be in force from and after 12.
 409 its publication in the statute book.