

Approved 4-27-89
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at
Chairperson

4:30 ~~am~~/p.m. on March 29, 1989 in room 519-S of the Capitol.

All members were present ~~except~~: Senators Winter, Yost, Moran, Bond, Feleciano, Gaines, D. Kerr, Martin, Morris, Oleen, Parrish, Petty and Rock.

Committee staff present:

- Mike Heim, Legislative Research Department
- Gordon Self, Revisor of Statutes
- Tom Wolff, Legislative Research Department
- Jane Tharp, Committee Secretary

Conferees appearing before the committee:

- Paul Shelby, Judicial Administrator
- Tom Bell, Kansas Hospital Association

House Bill 2200 - Crime victims, reparations and assistance.

Paul Shelby, Judicial Administrator, explained the two proposals he handed out (See Attachments I). He stated the position of the attorney general is that he agrees this formula is better. Now he has concern the smaller counties out west may get more money than what they wanted them to get. He said the attorney general will address the problem when the bill is in conference. Senator Parrish moved to amend the bil by adopting the balloon amentments. Senator Petty seconded the motion. The motion carried. Senator Petty moved to report the bill favorably as amended. Senator Yost seconded the motion. The motion carried.

House Bill 2199 - Requiring notice to be given to victims of crime of inmate's public hearing and release of inmates; release considerations.

The chairman explained the bill. Senator Morris moved to amend the bill to provide there should be no cause of action against the state of any individuals for failure to notify. Senator Moran seconded the motion. The motion carried. Senator Feleciano moved to adopt the proposals made by Chairman Pomeroy to strike "hearing" and insert "comment sessions". Senator Rock seconded the motion. The motion carried. Senator Rock moved to report the bill favorably as amended. Senator Morris seconded the motion. The motion carried.

House Bill 2101 - Civil liability for giving a worthless check.

Senator Moran explained the bill and the recommendation of the subcommittee (See Attachment II). Senator Rock moved to amend the bill by adopting the entire balloon verson that allows for civil penalty for worthless checks made on an installment debt but doesn't apply if there is collateral for the debt. Senator Moran seconded the motion. The motion carried. Senator Rock moved to report the bill favorably as amended. Senator Morris seconded the motion. The motion carried.

House Bill 2181 - Eliminating sunset for joint underwriting authority for medical malpractice insurance.

Senator Bond explained the bill and the recommendation of the subcommittee (See Attachment III). Senator Bond moved to report the bill favorably. Senator Yost seconded the motion. The motion carried.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 519-S, Statehouse, at 4:30 ~~xxx~~/p.m. on March 29, 1989

House Bill 2113 - Health care risk management.

Senator Bond explained the bill and the recommendation of the subcommittee (See Attachment IV). A committee member inquired what does this new language do in making these records available. Tom Wolff, Legislative Research Department, explained what the bill does in regard to documents. Tom Bell explained the two purposes of the bill and the technical amendments at the top of page 2 of Department of Health and Environment. Senator Bond moved to amend the bill by adopting the technical amendments, striking all of line 47 through 49 after the word "act". Senator Rock seconded the motion. The motion carried. Senator Bond moved to report the bill favorably as amended. Senator D. Kerr seconded the motion. The motion carried.

Senate Bill 364 - Medical malpractice screening panels, access of costs and attorney fees.

Senate Bill 285 - Medical malpractice screening panels, deposition of health care provider involved as basis of findings.

Senator Bond reported the subcommittee recommended Senate Bill 364 and Senate Bill 285 be held and no action taken on them (See Attachment V).

Senate Bill 225 - Limitation of actions, commencement when injury becomes reasonably ascertainable.

Senator Bond explained the bill and recommendation of the subcommittee (See Attachment VI). Senator Bond moved to report the bill adversely. Senator Moran seconded the motion. Following committee discussion, the motion carried.

Senate Bill 174 - Health care stabilization fund; liability.

Senator Bond reported it was the recommendation of the subcommittee the bill be held and no action taken.

Senate Bill 223 - Health care stabilization fund, liability thereof and attorney fees on amounts recovered therefrom.

Senator Bond reported the recommendation of the subcommittee was to hold the bill in committee (See Attachment VII).

House Bill 2501 - Medical malpractice claims; phase out of health care stabilization fund.

Senator Bond explained the proposed amendments of the subcommittee as appears on the attached balloon (See Attachment VIII). Following considerable committee discussion, Senator Gaines moved to adopt the recommendations of the subcommittee. Senator Yost seconded the motion. Senator Rock made a substitute motion to amend the bill by adopting the subcommittee's report and by striking the date 1989 and inserting 1979. Senator Parrish seconded the motion. Senator Gaines withdrew his motion. Considerable committee discussion followed. Senator Rock withdrew his motion. Senator Rock then moved conceptually to amend the subcommittee report by putting in an exception in subsection (n) with reference to payments from the JUA. Senator Yost seconded the motion. The motion carried. Senator Parrish moved to amend the subcommittee report by deleting subsection (n). Senator Petty seconded the motion. The motion failed. Senator Bond moved to adopt the subcommittee report and amend the bill accordingly. Senator Moran seconded the motion. The motion carried. Senator Bond moved to report the bill favorably as amended. Senator Gaines seconded the motion. The motion carried.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-29-89
P.M.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<i>Russell</i>	<i>Topica</i>	<i>KBA</i>

Attachment IX
Senate Judiciary Committee
3-29-89

515 shall be notified of the right to be present at any public hearing
516 where the accused or the convicted person has the right to appear
517 and be heard.

518 (b) As used in this section: (1) "Public hearing" means any court
519 proceeding or administrative hearing which is required to be open
520 to the public and shall include but not be limited to the:

- 521 (A) Preliminary hearing;
- 522 (B) trial;
- 523 (C) sentencing;
- 524 (D) sentencing modification;
- 525 (E) parole hearings, pursuant to K.S.A. 22-3717 and 22-3718,
- 526 and amendments thereto; and
- 527 (F) expungement hearing.

528 (2) "Victims' family" means a spouse, surviving spouse, children
529 or parents.

530 (c) Notification shall be made to any victim of the crime who
531 is alive and whose address is known to the county or district attorney
532 or, if the victim is deceased, to the victim's family if the family's
533 address is known to the county or district attorney.

534 (d) Costs of transportation for the victim to appear shall be
535 borne by the victim unless the appearance is required pursuant to
536 a subpoena or other order of the court.

537 New Sec. 31 ~~32.3~~ (a) ~~[Except for the forfeiture of any bond~~
538 ~~pursuant to K.S.A. 8-2107, and amendments thereto,] at least~~
539 ~~monthly the clerk of the district court shall remit all moneys payable,~~
540 ~~as provided in subsection (c)(1), to the state treasurer from forfeitures~~
541 ~~of appearance bonds as provided in K.S.A. 22-2807 and amendments~~
542 ~~thereto, to the state treasurer. The state treasurer shall deposit such~~
543 ~~moneys in the state treasury as provided in subsection (c)(2).~~

544 (b) ~~[Except for the forfeiture of any bond pursuant to K.S.A.~~
545 ~~8-2107, and amendments thereto,] at least monthly the clerk of the~~
546 ~~district court shall remit all moneys from forfeitures of appearance~~
547 ~~bonds as provided in K.S.A. 22-2807 and amendments thereto, which~~
548 ~~are payable, as provided in subsection (c)(1), to the county treasurer~~
549 ~~of the county in which such forfeiture took place, to such county~~
550 ~~treasurer. Such county treasurer shall deposit such moneys as pro-~~
551 ~~vided in subsection (c)(3).~~

New Sec. 31. (a) Of the remittances of fines, penalties and forfeitures received from clerks of the district court, at least monthly the state treasurer shall credit 19% to the crime victims compensation fund, 1% to the crime victims assistance fund, and 1% shall be distributed (on the basis of population figures of the counties certified to the secretary of state pursuant to K. S. A. 11-201 and amendments thereto on July 1 of each year) to county treasurers for credit to the county's witness and crime victims program. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit moneys as provided in subsection (a) to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

NOTE: The above percentages are based on revenue received the State Treasurer in FY 1988; and may be adjusted to deliver whatever amount is deemed appropriate to any of the named funds.

ATTACHMENT
STATE JUDICIAL COMM.
29-89

House Bill 2200

House Bill 2200 as currently drafted, would cause a number of problems for the clerks of the district court. There would be additional payments made at the local clerk of the district courts' offices as well as some substantial accounting changes. Because the accounting system we currently have does not isolate out bond forfeitures or probation fees; the bill would require four additional accounting columns to account for and record these fees. This would require computer changes in those counties that have their accounting system computerized, and would require forms changes in all other counties.

Other than the marriage license fee increase, which from an accounting perspective, is how we would propose handling all of this money. The amounts of money generated by this bill would be:

Docket Fee Increase--\$686,589
Probation Fee--\$286,275 (Estimate)
Bond Forfeitures--\$325,000 (Estimate)

We would propose generating approximately the same amount of money for each of the accounts identified in the bill. However, we would propose using a percentage of the current fines, penalties, and forfeitures item in the district court clerks accounting. In this process we would eliminate the docket fee deduction for crime victims reparation and replace it with moneys from the fines, penalties, and forfeitures. All money would be paid to the state treasurer as is currently done. There it would be divided up by giving 19% to the crime victims compensation fund, 1% to the crime victims assistance fund, and 1% to the various county funds identified in the bill. This would generate total dollars as identified below:

Crime Victims Compensation--\$1,549,771
Crime Victims Assistance--\$81,567
County Funds--\$81,567

The money going to the counties could be based either on receipts of fines, penalties, and forfeitures from the various counties comparable to what is now proposed in the bill or could be returned to the counties on the basis of population as other statutes currently do.

JS:emk

SJC
3-29-89

REPORT OF JUDICIARY SUB-COMMITTEE ON CRIMINAL/PROBATE MATTERS

The following is a record of the hearings held on March 15, 1989, by the Sub-Committee on Criminal/Probate Matters along with its recommendations on the bills heard:

HOUSE BILL 2026 - Aggravated vehicular homicide.

The Sub-Committee heard testimony from Representative Barbara Allen, sponsor of the bill. Others speaking in support were:

Paul Morrison, Johnson County District Attorney (Attachment I)
Mary Lou Belz, Kansas City, Kansas
Ed Van Petten, Office of the Attorney General (Attachment II)
Jim Clark, Kansas County and District Attorneys Association
(Attachments III and IV)


The Sub-Committee recommends that HB 2026 be recommended favorably to the Senate Judiciary Committee.

HOUSE BILL 2035 - Forensic examinations.

The Sub-Committee heard testimony from Representative Mary Jane Johnson, sponsor of the bill. (Attachment V) Others speaking in support were:

Nick Tomasic, Wyandotte County District Attorney
Ed Van Petten, Office of the Attorney General

The Sub-Committee recommended that HB 2035 be recommended favorably to the Senate Judiciary Committee.

 HOUSE BILL 2101 - Worthless checks.

Testimony was received from Representative David Heinemann, sponsor of the bill. Others appearing in support were:

Frances Kastner, Kansas Food Dealers Association (Attachment VI)
Bud Grant, Kansas Chamber of Commerce and Industry, who presented a proposed amendment for the Sub-Committee's consideration.
(Attachment VII)

Ed Van Petten, Office of the Attorney General, who supported the bill with the proposed amendment.

Attachment II
Senate Judiciary
3-29-89

Sub-Committee Hearings - March 15, 1989

The Sub-Committee recommended that HB 2101 with Mr. Grant's proposed amendment be reported to the Senate Judiciary Committee without recommendation.

Although the hearings on these bills were held on March 15, 1989, action was not taken until the meeting of March 22, 1989.



Senator Jerry Moran
Sub-Committee Chairman

The Judiciary subcommittee on Health Care Liability met on Thursday, March 23, 1989, to receive testimony on the following bills.

The conferees included:

Kent Roth, Physicians National Risk Retention Group, Great Bend
Rebecca Fretz, Overland Park
Jerry Palmer, Past President, Kansas Trial Lawyers, Topeka
Ron Smith, Kansas Bar Association
Ron Todd, Assistant Insurance Commissioner
Harold Riehm, Kansas Asso. of Osteopathic Medicine.

The committee passed out favorably:

HB 2113, Discovery of Risk Management Records

HB 2181, Eliminating sunset for joint underwriting for medical malpractice insurance.

The subcommittee met on adjournment, Tuesday, March 28, 1989 and made the following recommendations:

To be held in committee:

SB 174 HCSF 10 year provision

SB 223 HCSF, liability thereof

To be recommended favorably to the full committee by amending language into the bill from SB 223 and other amendments.

HB 2501 HCSF phase out bill

The subcommittee recommends no action be taken on the following two bills in light of discussion that is ongoing on this subject between the Kansas Medical Society and the Kansas Bar Association:

SB 285 & SB 364 - screening panels

The subcommittee recommended the following bill be reported adversely:

SB 225 - Limitations of actions

Attachment III
Senate Judiciary Committee
3-29-89

The Judiciary subcommittee on Health Care Liability met on Thursday, March 23, 1989, to receive testimony on the following bills.

The conferees included:

Kent Roth, Physicians National Risk Retention Group, Great Bend
Rebecca Fretz, Overland Park
Jerry Palmer, Past President, Kansas Trial Lawyers, Topeka
Ron Smith, Kansas Bar Association
Ron Todd, Assistant Insurance Commissioner
Harold Riehm, Kansas Asso. of Osteopathic Medicine.

The committee passed out favorably:

HB 2113, Discovery of Risk Management Records

HB 2181, Eliminating sunset for joint underwriting for medical malpractice insurance.

The subcommittee met on adjournment, Tuesday, March 28, 1989 and made the following recommendations:

To be held in committee:

SB 174 HCSF 10 year provision

SB 223 HCSF, liability thereof

To be recommended favorably to the full committee by amending language into the bill from SB 223 and other amendments.

HB 2501 HCSF phase out bill

The subcommittee recommends no action be taken on the following two bills in light of discussion that is ongoing on this subject between the Kansas Medical Society and the Kansas Bar Association:

SB 285 & SB 364 screening panels

The subcommittee recommended the following bill be reported adversely:

SB 225 Limitations of actions

Attachment IV
Senate Judiciary Com
3-29-89

The Judiciary subcommittee on Health Care Liability met on Thursday, March 23, 1989, to receive testimony on the following bills.

The conferees included:

Kent Roth, Physicians National Risk Retention Group, Great Bend
Rebecca Fretz, Overland Park
Jerry Palmer, Past President, Kansas Trial Lawyers, Topeka
Ron Smith, Kansas Bar Association
Ron Todd, Assistant Insurance Commissioner
Harold Riehm, Kansas Asso. of Osteopathic Medicine.

The committee passed out favorably:

HB 2113, Discovery of Risk Management Records

HB 2181, Eliminating sunset for joint underwriting for medical malpractice insurance.

The subcommittee met on adjournment, Tuesday, March 28, 1989 and made the following recommendations:

To be held in committee:

SB 174 HCSF 10 year provision

SB 223 HCSF, liability thereof

To be recommended favorably to the full committee by amending language into the bill from SB 223 and other amendments.

HB 2501 HCSF phase out bill

The subcommittee recommends no action be taken on the following two bills in light of discussion that is ongoing on this subject between the Kansas Medical Society and the Kansas Bar Association:

SB 285 & SB 364 screening panels

The subcommittee recommended the following bill be reported adversely:

SB 225 Limitations of actions

Attachment IV
Senate Judiciary Comm
3-29-89

The Judiciary subcommittee on Health Care Liability met on Thursday, March 23, 1989, to receive testimony on the following bills.

The conferees included:

Kent Roth, Physicians National Risk Retention Group, Great Bend

Rebecca Fretz, Overland Park

Jerry Palmer, Past President, Kansas Trial Lawyers, Topeka

Ron Smith, Kansas Bar Association

Ron Todd, Assistant Insurance Commissioner

Harold Riehm, Kansas Asso. of Osteopathic Medicine.

The committee passed out favorably:

HB 2113, Discovery of Risk Management Records

HB 2181, Eliminating sunset for joint underwriting for medical malpractice insurance.

The subcommittee met on adjournment, Tuesday, March 28, 1989 and made the following recommendations:

To be held in committee:

SB 174 HCSF 10 year provision

SB 223 HCSF, liability thereof

To be recommended favorably to the full committee by amending language into the bill from SB 223 and other amendments.

HB 2501 HCSF phase out bill

The subcommittee recommends no action be taken on the following two bills in light of discussion that is ongoing on this subject between the Kansas Medical Society and the Kansas Bar Association:

SB 285 & SB 364 screening panels

The subcommittee recommended the following bill be reported adversely:

SB 225 Limitations of actions

Attachment VI
Senate Judiciary
3-29-89

The Judiciary subcommittee on Health Care Liability met on Thursday, March 23, 1989, to receive testimony on the following bills.

The conferees included:

Kent Roth, Physicians National Risk Retention Group, Great Bend

Rebecca Fretz, Overland Park

Jerry Palmer, Past President, Kansas Trial Lawyers, Topeka

Ron Smith, Kansas Bar Association

Ron Todd, Assistant Insurance Commissioner

Harold Riehm, Kansas Asso. of Osteopathic Medicine.

The committee passed out favorably:

HB 2113, Discovery of Risk Management Records

HB 2181, Eliminating sunset for joint underwriting for medical malpractice insurance.

The subcommittee met on adjournment, Tuesday, March 28, 1989 and made the following recommendations:

To be held in committee:

SB 174 HCSF 10 year provision

SB 223 HCSF, liability thereof

To be recommended favorably to the full committee by amending language into the bill from SB 223 and other amendments.

HB 2501 HCSF phase out bill

The subcommittee recommends no action be taken on the following two bills in light of discussion that is ongoing on this subject between the Kansas Medical Society and the Kansas Bar Association:

SB 285 & SB 364 screening panels

The subcommittee recommended the following bill be reported adversely:

SB 225 Limitations of actions

Attachment III
senate Judiciary Com.
3-29-89

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1989

HOUSE BILL No. 2501

By Committee on Insurance

2-22

PROPOSED SUBCOMMITTEE ON HEALTH CARE LIABILITY AMENDMENTS
TO HOUSE BILL NO. 2501

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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 the eventual termination of the fund; repealing certain statutes limiting awards in medical malpractice actions; amending the Kansas tort claims act with respect to claims against certain governmental entities or employees thereof; amending K.S.A. 40-3402, 40-3415, 40-3416 and 75-6115, K.S.A. 1987 Supp. 40-3413 as amended by section 124 of chapter 356 of the laws of 1988, and K.S.A. 1988 Supp. 40-3401, 40-3403, 40-3404, 40-3414 and 60-3410 and repealing the existing sections; also repealing K.S.A. 40-3405 and 40-3414 as amended by section 125 of chapter 356 of the laws of 1988, K.S.A. 1987 Supp. 40-3403 as amended by section 123 of chapter 356 of the laws of 1988 and K.S.A. 1988 Supp. ~~60-3407~~ 60-3409 and 60-3411.

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

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

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

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

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

(d) "Fiscal year" means the year commencing on the effective date of this act and each year, commencing on the first day of that

Attachment VIII

3-29-89 PM

307 liable resident health care providers or resident self-insurers for any
 308 personal injury or death arising out of the rendering of or the failure
 309 to render professional services within or without this state; (2) any
 310 amount due from a judgment or settlement which is in excess of
 311 the basic coverage liability of all liable nonresident health care pro-
 312 viders or nonresident self-insurers for any such injury or death arising
 313 out of the rendering or the failure to render professional services
 314 within this state but in no event shall the fund be obligated for
 315 claims against nonresident health care providers or nonresident self-
 316 insurers who have not complied with this act or for claims against
 317 nonresident health care providers or nonresident self-insurers that
 318 arose outside of this state; (3) any amount due from a judgment or
 319 settlement against a resident inactive health care provider for any
 320 such injury or death arising out of the rendering of or failure to
 321 render professional services; (4) any amount due from a judgment
 322 or settlement against a nonresident inactive health care provider for
 323 any injury or death arising out of the rendering or failure to render
 324 professional services within this state, but in no event shall the fund
 325 be obligated for claims against: (A) Nonresident inactive health care
 326 providers who have not complied with this act; or (B) nonresident
 327 inactive health care providers for claims that arose outside of this
 328 state, unless such health care provider was a resident health care
 329 provider or resident self-insurer at the time such act occurred; (5)
 330 reasonable and necessary expenses for attorney fees incurred in de-
 331 fending the fund against claims; (6) any amounts expended for rein-
 332 surance obtained to protect the best interests of the fund purchased
 333 by the commissioner, which purchase shall be subject to the pro-
 334 visions of K.S.A. 75-3738 through 75-3744, and amendments thereto,
 335 but shall not be subject to the provisions of K.S.A. 75-4101 and
 336 amendments thereto; (7) reasonable and necessary actuarial expenses
 337 incurred in administering the act, which expenditures shall not be
 338 subject to the provisions of K.S.A. 75-3738 through 75-3744, and
 339 amendments thereto; (8) annually to the plan or plans, any amount
 340 due pursuant to subsection (a)(3) of K.S.A. 40-3413 and amendments
 341 thereto; (9) reasonable and necessary expenses incurred by the in-
 342 surance department and the board of governors in the administration

subject to the provisions of subsection (m),

344 and necessary expenses for attorney fees and other costs incurred
345 in defending a person engaged or who was engaged in residency
346 training from claims for personal injury or death arising out of the
347 rendering of or the failure to render professional services by such
348 health care provider; (12) any amount due from a judgment or set-
349 tlement for an injury or death arising out of the rendering of or
350 failure to render professional services by a person engaged or who
351 was engaged in residency training; and (13) amounts authorized
352 by the court pursuant to K.S.A. 1986 Supp. 60-3411 and amend-
353 ments thereto; and (14) reasonable and necessary expenses for the
354 development and promotion of risk management education programs
355 ~~and (14) any amount due from a judgment or settlement against~~
356 ~~an individual described in subsection (m) who has paid for past acts~~
357 ~~coverage for any injury or death arising out of the rendering of or~~
358 ~~failure to render professional services.~~

and

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

370 (e) In no event shall the fund be liable to pay in excess of
371 \$3,000,000 pursuant to any one judgment or settlement against any
372 one health care provider relating to any injury or death arising out
373 of the rendering of or the failure to render professional services on
374 and after July 1, 1984, and before July 1, 1986 1989, subject to an
375 aggregate limitation for all judgments or settlements arising from all
376 claims made in any one fiscal year in the amount of \$6,000,000 for
377 each provider.

378 (f) Except as provided by K.S.A. 1986 Supp. 60-3411 and
379 amendments thereto, The fund shall not be liable to pay in

40 care provider insurance availability act, no psychiatric hospital li-
 41 censed under K.S.A. 75-3307b and amendments thereto shall be
 42 assessed a premium surcharge or be entitled to coverage under the
 43 fund if such hospital has not paid any premium surcharge pursuant
 44 to K.S.A. 40-3404 and amendments thereto prior to January 1, 1988.

45 (l) ~~As of July 1, 1989, every health care provider shall make an~~
 46 ~~irrevocable~~ election to be covered by one of the following options
 47 provided in this subsection which shall limit the liability of the fund
 48 with respect to judgments or settlements from claims against such
 49 health care provider in any one fiscal year relating to injury or
 50 death arising out of the rendering of or failure to render profes-
 51 sional services on or after July 1, 1989. Such options shall be as
 52 follows:

Such election shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of the policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same.

53 (1) OPTION 1. The fund shall not be liable to pay in excess of
 54 \$100,000 pursuant to any one judgment or settlement for any party
 55 against such health care provider, subject to an aggregate limitation
 56 for all judgments or settlements arising from all claims made in
 57 the fiscal year in an amount of \$300,000 for such provider.

58 (2) OPTION 2. The fund shall not be liable to pay in excess of
 59 \$300,000 pursuant to any one judgment or settlement for any party
 60 against such health care provider, subject to an aggregate limitation
 61 for all judgments or settlements arising from all claims made in
 62 the fiscal year in an amount of \$900,000 for such provider.

63 (3) OPTION 3. The fund shall not be liable to pay in excess of
 64 \$800,000 pursuant to any one judgment or settlement for any party
 65 against such health care provider, subject to an aggregate limitation
 66 for all judgments or settlements arising from all claims made in
 67 the fiscal year in an amount of \$2,400,000 for such provider.

68 (m) ~~The fund shall not be liable, with respect to any individual~~
 69 ~~who was rendering professional services as a health care provider~~
 70 ~~in this state and participating in the fund on July [March] 1, 1989,~~
 71 ~~or any [other] individual who commenced rendering [rendered]~~
 72 ~~professional services as a health care provider in this state and~~
 73 ~~participated in the fund after July 1, 1988 [for a period of less~~
 74 ~~than 10 years], to pay any amount prescribed in subsection (c) if~~
 75 ~~[a claim therefor was made after] such individual has discontinued~~

77 ~~[state and participation in such fund before July 1, 1994, and com-~~
 78 ~~menced or continued to render such professional services in a lo-~~
 79 ~~cation outside of this state, unless such individual makes payment~~
 80 ~~for past acts coverage by the fund within 30 days of such individual's~~
 81 ~~termination of participation in the fund in an amount determined~~
 82 ~~by the commissioner to be sufficient to fund anticipated claims based~~
 83 ~~upon reasonably prudent actuarial principles.]~~

84 Sec. 4. K.S.A. 1988 Supp. 40-3404 is hereby amended to read
 85 as follows: 40-3404. (a) Except for any health care provider whose
 86 participation in the fund has been terminated pursuant to subsection
 87 (i) of K.S.A. 40-3403 and amendments thereto, the commissioner
 88 shall levy an annual premium surcharge on each health care provider
 89 who has obtained basic coverage and upon each self-insurer for each
 90 fiscal year commencing before July 1, 1994. Such premium surcharge
 91 shall be an amount equal to a percentage of the annual premium
 92 paid by the health care provider for the basic coverage required to
 93 be maintained as a condition to coverage by the fund by subsection
 94 (a) of K.S.A. 40-3402 and amendments thereto. The annual premium
 95 surcharge upon each self-insurer, except for the university of Kansas
 96 medical center for persons engaged in residency training, shall be
 97 an amount equal to a percentage of the amount such self-insurer
 98 would pay for basic coverage as calculated in accordance with rating
 99 procedures approved by the commissioner pursuant to K.S.A. 40-
 100 3413 and amendments thereto. The annual premium surcharge upon
 101 the university of Kansas medical center for persons engaged in re-
 102 residency training shall be an amount equal to a percentage of an
 103 assumed aggregate premium of \$600,000.

104 (b) In the case of a resident health care provider who is not a
 105 self-insurer, the premium surcharge shall be collected in addition to
 106 the annual premium for the basic coverage by the insurer and shall
 107 not be subject to the provisions of K.S.A. 40-252, 40-1113 and 40-
 108 2801 *et seq.*, and amendments thereto. The amount of the premium
 109 surcharge shall be shown separately on the policy or an endorsement
 110 thereto and shall be specifically identified as such. Such premium
 111 surcharge shall be due and payable by the insurer to the commis-
 112 sioner within 30 days after the annual premium for the basic coverage

(n) The fund shall not be liable for any amounts due from a judgment or set-
 ment which is in excess of the basic coverage liability of all liable
 resident health care providers, nonresident self-insurers, or resident or
 nonresident inactive health care providers who first qualify as a health
 care provider on or after July 1, 1989, unless such health care provider
 makes payment for the coverage for the period while they are nonresident
 health care providers, nonresident self-insurers or resident or nonresident
 inactive health care providers to the fund. Such payment shall be made
 within 30 days after the health care provider ceases being an active health
 care provider and shall be made in an amount determined by the commissioner
 to be sufficient to fund anticipated claims based upon reasonably prudent
 actuarial principles. The provisions of this subsection shall not be
 applicable to any health care provider which becomes inactive through
 death, disability or circumstances beyond such health care provider's
 control.

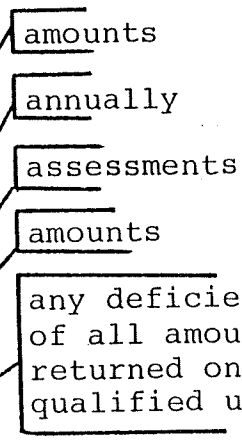
(n) (1) Whenever a claimant is represented by an attorney in a medical
 malpractice liability action pursuant to a contingent fee arrangement, such
 claimant's attorney fees from any recovery from the health care stabiliza-
 tion fund may not exceed the following:

- (A) Twenty-five percent of the first \$500,000 recovered from the fund;
- (B) twenty percent of the next \$500,000 recovered from the fund; and
- (C) fifteen percent of any amount recovered from the fund which exceeds \$1,000,000.

(2) In lieu of the provisions of subsection (1) of this subsection, a
 claimant has the right to elect to pay for the attorney fees on a mutually
 satisfactory hourly or fixed fee basis. Such election must be exercised
 in written form at the time of employment of the attorney.

114 effect at the time this act becomes effective, such surcharge shall
 115 be based upon the unearned premium until policy expiration and
 116 annually thereafter. Within 15 days immediately following the ef-
 117 fective date of this act, the commissioner shall send to each insurer
 118 information necessary for their compliance with this subsection. The
 119 certificate of authority of any insurer who fails to comply with the
 120 provisions of this subsection shall be suspended pursuant to K.S.A.
 121 40-222 and amendments thereto until such insurer shall pay the
 122 annual premium surcharge due and payable to the commissioner.
 123 In the case of a nonresident health care provider or a self-insurer,
 124 the premium surcharge shall be collected in the manner prescribed
 125 in K.S.A. 40-3402 and amendments thereto.

126 (c) The premium surcharge shall be an amount deemed sufficient
 127 by the commissioner to fund anticipated claims based upon reason-
 128 ably prudent actuarial principles. In setting the amount of such
 129 surcharge, the commissioner: (1) May require any health care prov-
 130 ider who has paid a surcharge for less than 24 months to pay a
 131 higher surcharge than other health care providers; (2) shall require
 132 that any health care provider who is insured by a policy of profes-
 133 sional liability insurance with deductibles pay a surcharge based on
 134 an amount equal to a percentage on the annual amount of premium
 135 that would have been paid by the health care provider for basic
 136 coverage required to be maintained by the fund as provided by
 137 K.S.A. 40-3402 and amendments thereto without any deductibles;
 138 ~~and~~ (3) shall amortize any anticipated deficiencies in the fund over
 139 a reasonable period of time; *and (4) shall determine that the amount*
 140 *is fixed at a rate estimated to be sufficient to achieve a fund balance*
 141 *by July 1, 1994, equal to the fund's liabilities for claims filed or*
 142 *which may be filed in the future.* [Notwithstanding the foregoing,
 143 upon certification by the commissioner to the director of accounts
 144 and reports that the fund is insufficient to pay ~~an amount~~ for which
 145 the fund is liable ~~and upon confirmation by the director of accounts~~
 146 ~~and reports of such deficiency,~~ the commissioner may make ~~an~~
 147 additional ~~assessment~~ upon health care providers in ~~an amount~~
 148 necessary to accommodate ~~the deficiency.~~ The agencies responsible
 149 for the licensing, certification or registration of health care pro-
 150



any deficiencies. In the event a surplus exists in the fund after payment of all amounts for which the fund is liable, any such surplus shall be returned on a pro rata basis to those health care providers who were qualified under this act during fiscal years 1990 through 1994.

447 of a governmental entity, arising out of the rendering or failure to
 448 render professional services by such health care provider, may be
 449 recovered in the same manner as claims for damages against any
 450 other health care provider. As used in this section, "health care
 451 provider" shall have the meaning provided by K.S.A. 40-3401 and
 452 amendments thereto.

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

454 Sec. ~~12~~ 10. K.S.A. 1988 Supp. 60-3410 is hereby amended to
 455 read as follows: 60-3410. The provisions of K.S.A. ~~1986~~ 1988 Supp.
 456 ~~60-3406 through 60-3409~~ 60-3408 and amendments thereto shall
 457 apply only to medical malpractice liability actions which are based
 458 on causes of action accruing on or after July 1, 1986.

459 ¹² Sec. ~~13~~ ~~11~~ K.S.A. 40-3402, 40-3405, 40-3414 as amended by
 460 section 125 of chapter 356 of the laws of 1988, 40-3415, 40-3416 and
 461 75-6115, K.S.A. 1987 Supp. 40-3403 as amended by section 123 of
 462 chapter 356 of the laws of 1988 and ~~40-3413 as amended by section~~
 463 ~~124 of chapter 356 of the laws of 1988,~~ and K.S.A. 1988 Supp.
 464 40-3401, 40-3403, 40-3404, 40-3414, ~~60-3407,~~ 60-3409, 60-3410 and
 465 60-3411 are hereby repealed.

466 Sec. ~~14~~ ~~12~~ ¹³ This act shall take effect and be in force from and
 467 after its publication in the statute book.

New Sec. 11. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.