

Approved \_\_\_\_\_

Date

2/21/91

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by SENATOR RICHARD L. BOND at  
Chairperson

9:00 a.m./~~xxx~~ on TUESDAY, FEBRUARY 19, 1991 in room 529-S of the Capitol.

~~All~~ members ~~xxxx~~ present ~~xxxxx~~

Senators Anderson, Francisco, Kerr, Moran, Parrish, Salisbury, Strick and Yost.

Committee staff present:

Bill Wolff, Research Department  
Fred Carman, Revisors Office  
Bill Edds, Revisors Office  
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Steven Sanford, Kansas Insurance Department  
Jerry Slaughter, Kansas Medical Society

Chairman Bond called the meeting to order at 9:09.

SB 81 - An Act concerning liens; assignment of rents of real property and other amounts as security for repayment of indebtedness.

The Chairman advised the committee members of the three proposed amendments before them: Draft A, Attachment 1), proposed by the Kansas Bar Association, Draft B, (Attachment 2) proposed by the Kansas Bankers Association, and a third amendment proposed by Ron Smith, Kansas Bar Association, Attachment 3) He further stated that the Bar Association was in agreement with the Bankers' amendments. These amendments would insert the word "royalties" on page 1, line 24; insert language on page 1, line 43, to allow an affidavit of assignment of rents which would preclude searching through volumes of documents in order to effect an enforceable lien; delete the word "shall" from page 2, new section (d) which would insure that a tenant would receive credit for rent payments made to a lender. Mr. Smith's amendment would delete language on page 2, lines 1 and 2 through the word "other", and insert "having jurisdiction for". An amendment, suggested by Barkley Clark, would change the effective date from publication in the statute book to publication in the "Kansas Register". Chairman Bond reminded the committee that the real purpose of SB 81 was to clear up the priorities in the event of a bankruptcy.

Senator Parrish made a motion to accept the aforementioned amendments. Senator Moran seconded the motion. The motion carried.

Senator Strick made a motion to pass the bill out of committee favorably as amended. Senator Parrish seconded the motion. The motion carried.

SB 38 - Concerning the Health Care Stabilization Fund.

Chairman Bond called on Steven Sanford, Kansas Insurance Department, to inform the members regarding the amendments to the bill proposed by the Kansas Insurance Department. Attachment 4) Mr. Sanford explained that the language on page 13, lines 23-31, subsection (n) had been clarified to allow optometrists and pharmacists to withdraw from the Fund but still be able to purchase "tail coverage" if other coverage is not available for them. (Attachment 5) Staff prepared material detailing each amendment requested by the Insurance Department and Mr. Sanford explained each amendment to the committee members. Attachment 6)

Senator Yost made a motion to accept the amendments proposed by the Insurance Department with the exception of section (o), page 13. Senator Anderson seconded the motion. The motion carried.

Jerry Slaughter, Kansas Medical Society, presented his organization's proposed amendments to SB 38. One amendment would delete the language putting a fixed date of termination

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on TUESDAY, FEBRUARY 19, 1991

of the Fund. Another amendment would grant the Board of Governors of the HCSF the flexibility, with limits, to grant exemptions to health care providers who leave the state for humanitarian reasons. Mr. Slaughter also recommended deleting all of subsection (o), page 13, which deals with the provisions of "tail coverage." (Attachment 7)

Considerable discussion ensued. Chairman Bond reminded the members that the Health Care Stabilization Fund had been a success and had accomplished its goal. He stated that the Fund was actuarially sound and that the Legislature had also made provisions for a back-up fund. The Chairman told the committee that private carriers had not been eager to pick up the coverage if the Fund should be phased out. Chairman Bond further advised against mandating a termination date. He said that if the committee legislates these termination dates, then the Overview Committee of the Health Care Commission will have numerous issues to deal with this summer that the phase out of the Fund will raise. Members observed that if this bill were passed mandating termination dates for the Fund, then the Insurance Department would have to collect additional surcharge in order to pay off any outstanding debts. If it is decided not to phase out the Fund by a certain date, then the surcharge would be less. Members were also concerned about the possibility that they would discourage physicians from practicing in the state without tail coverage.

Several committee members expressed their confusion and discomfort with the bill and said they were not prepared at this time to make a decision concerning the Fund. Chairman Bond announced that the discussion on SB 38 would be continued at some point in the future and, meanwhile, he urged the committee to look carefully at section "o" and also at the termination dates.

The meeting adjourned at 10:05 a.m.



DRAFT "A"

Lawyer  
Attachment 1  
FF 17  
2/19/91

Session of 1991

SENATE BILL No. 81

By Committee on Financial Institutions and Insurance

1-30

[ of real property

8 AN ACT concerning liens; assignment of rents and other amounts  
9 as security for repayment of indebtedness.

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

12 Section 1. (a) As used in this section:

13 (1) "Assignment instrument" means any mortgage, deed of trust,  
14 ~~real property security instrument~~, or other instrument or agreement  
15 by which a borrower assigns, transfers, pledges, or otherwise grants  
16 a lien upon or encumbers its rights to rents of real property therein  
17 described to or for the benefit of a lender as security for the re-  
18 payment of any indebtedness or the performance of any obligations.

19 (2) "Borrower" means any mortgagor, deed of trust grantor, as-  
20 signor, or debtor of any lender.

21 (3) "Lender" means any mortgagee, deed of trust beneficiary,  
22 assignee, or creditor, or its assigns, holding an assignment  
23 instrument.

24 (4) "Rents" includes the rents, income, proceeds, profits and  
25 other sums which (A) are derived under present and future leases,  
26 licenses, contracts and other agreements for the use or possession  
27 of real property and (B) are either in the possession or control of  
28 the borrower or are due and unpaid or are to become due and  
29 payable. [ , royalties

30 (b) The lien of an assignment instrument shall be a good, valid  
31 and enforceable lien on the rents from the real property therein  
32 described. Such lien shall be valid and binding against, unavoidable  
33 by and fully perfected as to the borrower and all subsequent pur-  
34 chasers, mortgagees, lien creditors, other lienholders and other per-  
35 sons for all purposes from the time of filing the assignment  
36 instrument for record in accordance with K.S.A. 58-2221 and amend-  
37 ments thereto, with a priority dating from the time of such filing,  
38 without any necessity for the lender to take possession or control of  
39 such rents or the property from which such rents are derived, to  
40 take any action tantamount to the taking of such possession or control,  
41 or to take other action whatsoever.

42 (c) Upon default by a borrower under the terms of an assignment  
43 instrument, the lender shall be entitled to apply to the district court

enforce the assignment instrument in accordance with its terms and applicable law, and may

1-2

1 of the county in which the real property is located for ~~the appoint-~~  
2 ~~ment of a receiver for the rents or other~~ appropriate relief to gain  
3 possession and control of the rents in enforcement of the assignment  
4 instrument. Upon such application, the court shall enter such orders  
5 and take such actions as appear necessary to collect, protect and  
6 preserve the rents and protect and preserve the lender's interest  
7 therein pending final disposition of an action upon the obligations  
8 secured by the assignment instrument.

9 Sec. 2. This act shall take effect and be in force from and after  
10 its publication in the ~~statute book~~.

[Kansas register

(d) Any tenant who, upon due notice from the lender, shall make rent payments to the lender in accordance with the terms of the assignment instrument shall be given credit for such payment as if the payments had been made to the borrower, but nothing herein shall affect the other rights and obligations of the borrower or the tenant as to one another.

DRAFT "B"

Banker  
Attachment 2  
H I & I  
2/19/91

Session of 1991

SENATE BILL No. 81

By Committee on Financial Institutions and Insurance

1-30

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28 the borrower or are due and unpaid or are to become due and  
29 payable.

[ , royalties

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38 without any necessity for the lender to take possession or control of  
39 such rents or the property from which such rents are derived, to  
40 take any action tantamount to the taking of such possession or control,  
41 or to take other action whatsoever.

~~or an affidavit of assign-  
ment of rents signed by  
the borrower~~

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enforce the assignment  
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cable law, and may

OK w/ Editor

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2 ~~ment of a receiver for the rents or other~~ appropriate relief to gain  
3 possession and control of the rents in enforcement of the assignment  
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5 and take such actions as appear necessary to collect, protect and  
6 preserve the rents and protect and preserve the lender's interest  
7 therein pending final disposition of an action upon the obligations  
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[Kansas register

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*Ken Smith*

*Attachment 3  
H & I  
2/19/91*

1 ~~of the county in which the real property is located for the appoint~~  
2 ~~ment of a receiver for the rents or other~~ appropriate relief to gain  
3 possession and control of the rents in enforcement of the assignment  
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[Kansas register

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STATE OF KANSAS

# KANSAS INSURANCE DEPARTMENT

420 S.W. 9th  
Topeka 66612-1678 913-296-3071

1-800-432-2484  
Consumer Assistance  
Division calls only

RON TODD  
Commissioner

February 12, 1991

HAND DELIVERED

The Honorable Richard L. Bond  
Senator - 8th District  
The Statehouse - Room 128-S  
Topeka, Kansas 66612

RE: Senate Bill No. 38

Dear Senator Bond:

Following the testimony of Gary Robbins (optometrists) and Bob Williams (pharmacists), I was requested by these health care provider groups to draft language which would clarify that optometrists and pharmacists could purchase their tail coverage from the Fund.

I suggest the following language be added to subsection (n) as the last sentence.

Optometrists and pharmacists not qualified as inactive providers prior to July 1, 1991 may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1991 and payment within 30 days from notice of the calculated amount as determined by the commissioner to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

Very truly yours,

Ron Todd  
Commissioner of Insurance

*Steven R. Sanford*  
Steven R. Sanford, Attorney (SLS)  
health Care Stabilization Fund

SRS:jc

cc:

Bill Woolff  
Gary Robbins  
Bob Williams

LE/4243

*Attachment 4  
F I V I  
2/19/91*



STATE OF KANSAS

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Consumer Assistance  
Division calls only

RON TODD  
Commissioner

February 18, 1991

HAND DELIVERED

The Honorable Richard L. Bond  
Senator, Eighth District  
State of Kansas  
Capitol, Room 128-S

Dear Senator Bond:

As the Kansas Insurance Department has recommended several changes to Senate Bill No. 38, we have attempted to present these changes in a consolidated letter to your Committee. The following is a summary of changes we have suggested.

1. On page 1, of Senate Bill No. 38, we suggest that the original language of K.S.A. 40-3401 be restored. This is necessary to preserve the Fund's authority to provide coverage to optometrists and pharmacists who qualified as inactive providers prior to July 1, 1991. The Department believes the withdrawal of optometrists and pharmacists can be better accomplished by addition of language to p. 4, line 28; p. 5, line 33; p. 16, line 7, stating "This provision shall not apply to optometrists and pharmacists on or after July 1, 1991."

2. On page 13, lines 23-31, we have recommended language that clarifies the Fund responsibility for optometrists and pharmacists. The language of subsection (n) would read as follows:

(n) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1991, against a licensed optometrist or pharmacist relating to any injury or death arising out of the rendering of or failure to render professional services by such optometrist or pharmacist prior to July 1, 1991, unless such optometrist or pharmacist qualified as an inactive provider prior to July 1, 1991 and obtained coverage pursuant to subsection (m).

3. With regard to the issue of tail coverage, the Department has recommended significant redrafting of new subsection (o) on p. 13, line 32, to p. 14, line 2. The purpose of the modifications is to accurately reflect the desire to restrict tail coverage for providers who leave practice in Kansas to practice elsewhere. The language of subsection (o) should read as follows:

Attachment 5  
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2/19/91

INSURANCE DEPARTMENT

TOPEKA

(o) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim against an inactive health care provider relating to any injury or death arising out of the rendering of or failure to render professional services by such inactive health care provider in circumstances where such individual became an inactive health care provider on or after July 1, 1991 and rendered professional services in another state subsequent to the time that such individual became an inactive health care provider, unless such health care provider purchased coverage therefor in the same manner as provided for in subsection (m).

In addition to these recommended changes the Department has also previously provided the Committee with draft language requested by the optometrists and pharmacists that would permit the purchase of tail coverage from the Fund. This language would be added as the last sentence to subsection (n):

Optometrists and pharmacists not qualified as inactive providers prior to July 1, 1991 may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1991 and payment within 30 days from notice of the calculated amount as determined by the commissioner to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.

If this change is adopted, the Department suggests additional modifications to K.S.A. 40-3403 that would permit the Fund to make payments for optometrists and pharmacists purchasing tail coverage pursuant to this new language. On page 8, lines 12-20, subsections (3) and (4), would be changed as follows:

(3) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a resident inactive health care provider, or an optometrist or pharmacist who purchased coverage pursuant to subsection (n), for any such injury or death arising out of the rendering of or failure to render professional services; (4) subject to the provisions of subsection (m), any amount due from a judgment or settlement against a nonresident inactive health care provider, or an optometrist or pharmacist who purchased coverage pursuant to subsection (n), for any such injury or death . . ."

Again, the Department notes that these changes were suggested by the optometrists and pharmacists to take care of any potential problems regarding tail coverage. These changes may not be necessary based on recent conversations with private companies willing to provide complete replacement coverage to optometrists and pharmacists. Allowing private industry to assume these obligations is the approach preferred by the Department. In order to facilitate this approach we would also suggest that the reporting requirements of K.S.A. 40-3421 be amended so as not to apply to optometrists and pharmacists for occurrences after July 1, 1991.

The Honorable Richard L. Bond  
February 18, 1991  
Page 3

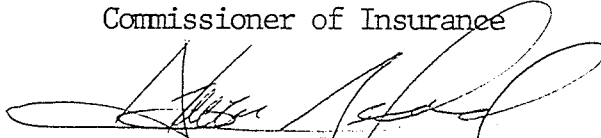
INSURANCE DEPARTMENT

TOPEKA

Representatives of the Kansas Insurance Department will be available to discuss these matters with the members of the Committee.

Very truly yours,

Ron Todd  
Commissioner of Insurance



Steven R. Sanford, Attorney  
Health Care Stabilization Fund

SRS:jc  
cc:  
LE/4260

William Wolff

SENATE BILL No. 38

By Senators Bond and Rock

1-16

Attachment 6  
FI + T  
2/19/91

8 AN ACT amending the health care provider insurance availability  
9 act; concerning liability of the health care stabilization fund;  
10 amending K.S.A. 1990 Supp. 40-3401, 40-3402, 40-3403, 40-3403b  
11 and 40-3404 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 1990 Supp. 40-3401 is hereby amended to read  
15 as follows: 40-3401. As used in this act the following terms shall  
16 have the meanings respectively ascribed to them herein.

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

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

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

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

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

29 (f) "Health care provider" means a person licensed to practice  
30 any branch of the healing arts by the state board of healing arts, a  
31 person who holds a temporary permit to practice any branch of the  
32 healing arts issued by the state board of healing arts, a person  
33 engaged in a postgraduate training program approved by the state  
34 board of healing arts, a medical care facility licensed by the de-  
35 partment of health and environment, a health maintenance organi-  
36 zation issued a certificate of authority by the commissioner of  
37 insurance, ~~an optometrist licensed by the board of examiners~~  
38 ~~in optometry, a podiatrist licensed by the state board of healing~~  
39 ~~arts, a pharmacist licensed by the state board of pharmacy, a~~  
40 registered professional nurse who is authorized to practice as a reg-  
41 istered nurse anesthetist, a licensed professional nurse who has been  
42 granted a temporary authorization to practice nurse anesthesia under  
43 K.S.A. 1989 Supp. 65-1153 and amendments thereto, a professional

(Restore the original language of this subsection in order to retain authority to provide coverage to optometrists and pharmacists who qualify as inactive providers prior to July 1, 1991)

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1 corporation organized pursuant to the professional corporation law  
2 of Kansas by persons who are authorized by such law to form such  
3 a corporation and who are health care providers as defined by this  
4 subsection, a partnership of persons who are health care providers  
5 under this subsection, a Kansas not-for-profit corporation organized  
6 for the purpose of rendering professional services by persons who  
7 are health care providers as defined by this subsection, a dentist  
8 certified by the state board of healing arts to administer anesthetics  
9 under K.S.A. 65-2899 and amendments thereto, a physical therapist  
10 registered by the state board of healing arts, a psychiatric hospital  
11 licensed under K.S.A. 75-3307b and amendments thereto, or a men-  
12 tal health center or mental health clinic licensed by the secretary  
13 of social and rehabilitation services, except that health care provider  
14 does not include (1) any state institution for the mentally retarded,  
15 (2) any state psychiatric hospital or (3) any person holding an exempt  
16 license issued by the state board of healing arts.

17 (g) "Inactive health care provider" means a person or other entity  
18 who purchased basic coverage or qualified as a self-insurer on or  
19 subsequent to the effective date of this act but who, at the time a  
20 claim is made for personal injury or death arising out of the rendering  
21 of or the failure to render professional services by such health care  
22 provider, does not have basic coverage or self-insurance in effect  
23 solely because such person is no longer engaged in rendering profes-  
24 sional service as a health care provider.

25 (h) "Insurer" means any corporation, association, reciprocal ex-  
26 change, inter-insurer and any other legal entity authorized to write  
27 bodily injury or property damage liability insurance in this state,  
28 including workers compensation and automobile liability insurance,  
29 pursuant to the provisions of the acts contained in article 9, 11, 12  
30 or 16 of chapter 40 of Kansas Statutes Annotated.

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

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

39 (k) "Rating organization" means a corporation, an unincorporated  
40 association, a partnership or an individual licensed pursuant to K.S.A.  
41 40-930 or 40-1114, or both, and amendments thereto, to make rates  
42 for professional liability insurance.

43 (l) "Self-insurer" means a health care provider who qualifies as

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1 a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

2 (m) "Medical care facility" means the same when used in the  
3 health care provider insurance availability act as the meaning ascribed  
4 to that term in K.S.A. 65-425 and amendments thereto, except that  
5 as used in the health care provider insurance availability act such  
6 term, as it relates to insurance coverage under the health care prov-  
7 ider insurance availability act, also includes any director, trustee,  
8 officer or administrator of a medical care facility.

9 (n) "Mental health center" means a mental health center licensed  
10 by the secretary of social and rehabilitation services under K.S.A.  
11 75-3307b and amendments thereto, except that as used in the health  
12 care provider insurance availability act such term, as it relates to  
13 insurance coverage under the health care provider insurance avail-  
14 ability act, also includes any director, trustee, officer or administrator  
15 of a mental health center.

16 (o) "Mental health clinic" means a mental health clinic licensed  
17 by the secretary of social and rehabilitation services under K.S.A.  
18 75-3307b and amendments thereto, except that as used in the health  
19 care provider insurance availability act such term, as it relates to  
20 insurance coverage under the health care provider insurance avail-  
21 ability act, also includes any director, trustee, officer or administrator  
22 of a mental health clinic.

23 (p) "State institution for the mentally retarded" means Norton  
24 state hospital, Winfield state hospital and training center, Parsons  
25 state hospital and training center and the Kansas neurological  
26 institute.

27 (q) "State psychiatric hospital" means Larned state hospital, Os-  
28 awatomie state hospital, Rainbow mental health facility and Topeka  
29 state hospital.

30 (r) "Person engaged in residency training" means:

31 (1) A person engaged in a postgraduate training program ap-  
32 proved by the state board of healing arts who is employed by and  
33 is studying at the university of Kansas medical center only when  
34 such person is engaged in medical activities which do not include  
35 extracurricular, extra-institutional medical service for which such per-  
36 son receives extra compensation and which have not been approved  
37 by the dean of the school of medicine and the executive vice-chan-  
38 cellor of the university of Kansas medical center. Persons engaged  
39 in residency training shall be considered resident health care pro-  
40 viders for purposes of K.S.A. 40-3401 *et seq.*, and amendments  
41 thereto; and

42 (2) a person engaged in a postgraduate training program approved  
43 by the state board of healing arts who is employed by a nonprofit

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1 corporation organized to administer the graduate medical education  
 2 programs of community hospitals or medical care facilities affiliated  
 3 with the university of Kansas school of medicine or who is employed  
 4 by an affiliate of the university of Kansas school of medicine as  
 5 defined in K.S.A. 76-367 and amendments thereto only when such  
 6 person is engaged in medical activities which do not include extra-  
 7 curricular, extra-institutional medical service for which such person  
 8 receives extra compensation and which have not been approved by  
 9 the chief operating officer of the nonprofit corporation or the chief  
 10 operating officer of the affiliate and the executive vice-chancellor of  
 11 the university of Kansas medical center.

12 (s) "Full-time physician faculty employed by the university of  
 13 Kansas medical center" means a person licensed to practice medicine  
 14 and surgery who holds a full-time appointment at the university of  
 15 Kansas medical center when such person is providing health care.

16 (t) "Sexual act" or "sexual activity" means that sexual conduct  
 17 which constitutes a criminal or tortious act under the laws of the  
 18 state of Kansas.

19 Sec. 2. K.S.A. 1990 Supp. 40-3402 is hereby amended to read  
 20 as follows: 40-3402. (a) A policy of professional liability insurance  
 21 approved by the commissioner and issued by an insurer duly au-  
 22 thorized to transact business in this state in which the limit of the  
 23 insurer's liability is not less than \$200,000 per occurrence, subject  
 24 to not less than a \$600,000 annual aggregate for all claims made  
 25 during the policy period, shall be maintained in effect by each res-  
 26 ident health care provider as a condition to rendering professional  
 27 service as a health care provider in this state, unless such health  
 28 care provider is a self-insurer. Such policy shall provide as a min-  
 29 imum coverage for claims made during the term of the policy which  
 30 were incurred during the term of such policy or during the prior  
 31 term of a similar policy. Any insurer offering such policy of profes-  
 32 sional liability insurance to any health care provider may offer to  
 33 such health care provider a policy as prescribed in this section with  
 34 deductible options. Such deductible shall be within such policy  
 35 limits.

This provision shall not apply to optometrists and  
 pharmacists on or after July 1, 1991.

36 (1) Each insurer providing basic coverage shall within 30 days  
 37 after the premium for the basic coverage is received by the insurer  
 38 or within 30 days from the effective date of this act, whichever is  
 39 later, notify the commissioner that such coverage is or will be in  
 40 effect. Such notification shall be on a form approved by the com-  
 41 missioner and shall include information identifying the professional  
 42 liability policy issued or to be issued, the name and address of all  
 43 health care providers covered by the policy, the amount of the annual



1 premium, the inception and expiration dates of the coverage and  
2 such other information as the commissioner shall require. A copy of  
3 the notice required by this subsection shall be furnished the named  
4 insured.

5 (2) In the event of termination of basic coverage by cancellation,  
6 nonrenewal, expiration or otherwise by either the insurer or named  
7 insured, notice of such termination shall be furnished by the insurer  
8 to the commissioner, the state agency which licenses, registers or  
9 certifies the named insured and the named insured. Such notice  
10 shall be provided no less than 30 days prior to the effective date of  
11 any termination initiated by the insurer or within 10 days after the  
12 date coverage is terminated at the request of the named insured  
13 and shall include the name and address of the health care provider  
14 or providers for whom basic coverage is terminated and the date  
15 basic coverage will cease to be in effect. No basic coverage shall be  
16 terminated by cancellation or failure to renew by the insurer unless  
17 such insurer provides a notice of termination as required by this  
18 subsection.

19 (3) Any professional liability insurance policy issued, delivered  
20 or in effect in this state on and after the effective date of this act  
21 shall contain or be endorsed to provide basic coverage as required  
22 by subsection (a) of this section. Notwithstanding any omitted or  
23 inconsistent language, any contract of professional liability insurance  
24 shall be construed to obligate the insurer to meet all the mandatory  
25 requirements and obligations of this act. The liability of an insurer  
26 for claims made prior to July 1, 1984, shall not exceed those limits  
27 of insurance provided by such policy prior to July 1, 1984.

28 (b) Unless a nonresident health care provider is a self-insurer,  
29 such provider shall not render professional service as a health care  
30 provider in this state unless such provider maintains coverage in  
31 effect as prescribed by subsection (a), except such coverage may be  
32 provided by a nonadmitted insurer who has filed the form required  
33 by subsection (b)(1).

This provision shall not apply to optometrists and  
pharmacists on or after July 1, 1991.

34 (1) Every insurance company authorized to transact business in  
35 this state, that is authorized to issue professional liability insurance  
36 in any jurisdiction, shall file with the commissioner, as a condition  
37 of its continued transaction of business within this state, a form  
38 prescribed by the commissioner declaring that its professional liability  
39 insurance policies, wherever issued, shall be deemed to provide at  
40 least the insurance required by this subsection when the insured is  
41 rendering professional services as a nonresident health care provider  
42 in this state. Any nonadmitted insurer may file such a form.

43 (2) Every nonresident health care provider who is required to

1 maintain basic coverage pursuant to this subsection shall pay the  
2 surcharge levied by the commissioner pursuant to subsection (a) of  
3 K.S.A. 40-3404 and amendments thereto directly to the commis-  
4 sioner and shall furnish to the commissioner the information required  
5 in subsection (a)(1).

6 (c) Every health care provider that is a self-insurer, the university  
7 of Kansas medical center for persons engaged in residency training,  
8 as described in subsection (r)(1) of K.S.A. 40-3401 and amendments  
9 thereto, the employers of persons engaged in residency training, as  
10 described in subsection (r)(2) of K.S.A. 40-3401 and amendments  
11 thereto, the private practice corporations or foundations and their  
12 full-time physician faculty employed by the university of Kansas  
13 medical center or a medical care facility or mental health center for  
14 self-insurers under subsection (e) of K.S.A. 40-3414 and amendments  
15 thereto shall pay the surcharge levied by the commissioner pursuant  
16 to subsection (a) of K.S.A. 40-3404 and amendments thereto directly  
17 to the commissioner and shall furnish to the commissioner the in-  
18 formation required in subsection (a)(1) and (a)(2).

19 (d) In lieu of a claims made policy otherwise required under this  
20 section, a person engaged in residency training who is providing  
21 services as a health care provider but while providing such services  
22 is not covered by the self-insurance provisions of subsection (d) of  
23 K.S.A. 40-3414 and amendments thereto may obtain basic coverage  
24 under an occurrence form policy if such policy provides professional  
25 liability insurance coverage and limits which are substantially the  
26 same as the professional liability insurance coverage and limits re-  
27 quired by subsection (a) of K.S.A. 40-3402 and amendments thereto.  
28 Where such occurrence form policy is in effect, the provisions of  
29 the health care provider insurance availability act referring to claims  
30 made policies shall be construed to mean occurrence form policies.

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

32 Sec. 3. K.S.A. 1990 Supp. 40-3403 is hereby amended to read  
33 as follows: 40-3403. (a) For the purpose of paying damages for per-  
34 sonal injury or death arising out of the rendering of or the failure  
35 to render professional services by a health care provider, self-insurer  
36 or inactive health care provider subsequent to the time that such  
37 health care provider or self-insurer has qualified for coverage under  
38 the provisions of this act, there is hereby established the health care  
39 stabilization fund. The fund shall be held in trust in a segregated  
40 fund in the state treasury. The commissioner shall administer the  
41 fund or contract for the administration of the fund with an insurance  
42 company authorized to do business in this state.

43 (b) (1) There is hereby created a board of governors. The board

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1 of governors shall:

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

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

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

9 (D) prepare and publish, on or before October 1 of each year,  
10 a summary of the fund's activity during the preceding fiscal year,  
11 including but not limited to the amount collected from surcharges,  
12 the highest and lowest surcharges assessed, the amount paid from  
13 the fund, the number of judgments paid from the fund, the number  
14 of settlements paid from the fund and the amount in the fund at  
15 the end of the fiscal year.

16 (2) The board shall consist of 14 persons appointed by the com-  
17 missioner of insurance, as follows: (A) The commissioner of insurance,  
18 or the designee of the commissioner, who shall act as chairperson;  
19 (B) two members appointed from the public at large who are not  
20 affiliated with any health care provider; (C) three members licensed  
21 to practice medicine and surgery in Kansas who are doctors of med-  
22 icine; (D) three members who are representatives of Kansas hospitals;  
23 (E) two members licensed to practice medicine and surgery in Kansas  
24 who are doctors of osteopathic medicine; (F) one member licensed  
25 to practice chiropractic in Kansas; (G) one member who is a licensed  
26 professional nurse authorized to practice as a registered nurse an-  
27 esthetist; and (H) one member of another category of health care  
28 providers. Meetings shall be called by the chairperson or by a written  
29 notice signed by three members of the board. The board, in addition  
30 to other duties imposed by this act, shall study and evaluate the  
31 operation of the fund and make such recommendations to the leg-  
32 islature as may be appropriate to ensure the viability of the fund.

33 (3) The board shall be attached to the insurance department and  
34 shall be within the insurance department as a part thereof. All budg-  
35 eting, purchasing and related management functions of the board  
36 shall be administered under the direction and supervision of the  
37 commissioner of insurance. All vouchers for expenditures of the board  
38 shall be approved by the commissioner of insurance or a person  
39 designated by the commissioner.

40 (c) Subject to subsections (d), (e), (f), (i), (k), (m) and, (n), (o)  
41 and (p), the fund shall be liable to pay: (1) Any amount due from  
42 a judgment or settlement which is in excess of the basic coverage  
43 liability of all liable resident health care providers or resident self-

1 insurers for any personal injury or death arising out of the rendering  
 2 of or the failure to render professional services within or without  
 3 this state; (2) subject to the provisions of subsection (m), any amount  
 4 due from a judgment or settlement which is in excess of the basic  
 5 coverage liability of all liable nonresident health care providers or  
 6 nonresident self-insurers for any such injury or death arising out of  
 7 the rendering or the failure to render professional services within  
 8 this state but in no event shall the fund be obligated for claims  
 9 against nonresident health care providers or nonresident self-insurers  
 10 who have not complied with this act or for claims against nonresident  
 11 health care providers or nonresident self-insurers that arose outside  
 12 of this state; (3) subject to the provisions of subsection (m), any  
 13 amount due from a judgment or settlement against a resident inactive  
 14 health care provider ~~for any such injury or death arising out of the~~  
 15 ~~rendering of or failure to render professional services;~~ (4) subject to  
 16 the provisions of subsection (m), any amount due from a judgment  
 17 or settlement against a nonresident inactive health care provider ~~for~~  
 18 ~~any injury or death arising out of the rendering or failure to render~~  
 19 ~~professional services within this state, but in no event shall the fund~~  
 20 ~~be obligated for claims against: (A) Nonresident inactive health care~~  
 21 ~~providers who have not complied with this act; or (B) nonresident~~  
 22 ~~inactive health care providers for claims that arose outside of this~~  
 23 ~~state, unless such health care provider was a resident health care~~  
 24 ~~provider or resident self-insurer at the time such act occurred;~~ (5)  
 25 reasonable and necessary expenses for attorney fees incurred in de-  
 26 fending the fund against claims; (6) any amounts expended for rein-  
 27 surance obtained to protect the best interests of the fund purchased  
 28 by the commissioner, which purchase shall be subject to the pro-  
 29 visions of K.S.A. 75-3738 through 75-3744, and amendments thereto,  
 30 but shall not be subject to the provisions of K.S.A. 75-4101 and  
 31 amendments thereto; (7) reasonable and necessary actuarial expenses  
 32 incurred in administering the act, including expenses for any actuarial  
 33 study studies contracted for by the legislative coordinating council,  
 34 which expenditures shall not be subject to the provisions of K.S.A.  
 35 75-3738 through 75-3744, and amendments thereto; (8) annually to  
 36 the plan or plans, any amount due pursuant to subsection (a)(3) of  
 37 K.S.A. 40-3413 and amendments thereto; (9) reasonable and nec-  
 38 essary expenses incurred by the insurance department and the board  
 39 of governors in the administration of the fund; (10) return of any  
 40 unearned surcharge; (11) reasonable and necessary expenses for at-  
 41 torney fees and other costs incurred in defending a person engage-  
 42 or who was engaged in residency training or the private practice  
 43 corporations or foundations and their full-time physician faculty em-

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 , or an optometrist or pharmacist who purchased  
 coverage pursuant to subsection (n),

, or an optometrist or pharmacist who purchased  
 coverage pursuant to subsection (n),

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1 ployed by the university of Kansas medical center from claims for  
2 personal injury or death arising out of the rendering of or the failure  
3 to render professional services by such health care provider; (12)  
4 notwithstanding the provisions of subsection (m), any amount due  
5 from a judgment or settlement for an injury or death arising out of  
6 the rendering of or failure to render professional services by a person  
7 engaged or who was engaged in residency training or the private  
8 practice corporations or foundations and their full-time physician  
9 faculty employed by the university of Kansas medical center; (13)  
10 reasonable and necessary expenses for the development and pro-  
11 motion of risk management education programs; (14) notwithstanding  
12 the provisions of subsection (m), any amount, but not less than the  
13 required basic coverage limits, owed pursuant to a judgment or  
14 settlement for any injury or death arising out of the rendering of or  
15 failure to render professional services by a person, other than a  
16 person described in clause (12) of this subsection, who was engaged  
17 in a postgraduate program of residency training approved by the  
18 state board of healing arts but who, at the time the claim was made,  
19 was no longer engaged in such residency program; and (15) reason-  
20 able and necessary expenses for attorney fees and other costs incurred  
21 in defending a person described in clause (14) of this subsection.

22 (d) All amounts for which the fund is liable pursuant to subsection  
23 (c) shall be paid promptly and in full except that, if the amount for  
24 which the fund is liable is \$300,000 or more, it shall be paid, by  
25 installment payments of \$300,000 or 10% of the amount of the judg-  
26 ment including interest thereon, whichever is greater, per fiscal year,  
27 the first installment to be paid within 60 days after the fund becomes  
28 liable and each subsequent installment to be paid annually on the  
29 same date of the year the first installment was paid, until the claim  
30 has been paid in full. Any attorney fees payable from such installment  
31 shall be similarly prorated.

32 (e) In no event shall the fund be liable to pay in excess of  
33 \$3,000,000 pursuant to any one judgment or settlement against any  
34 one health care provider relating to any injury or death arising out  
35 of the rendering of or the failure to render professional services on  
36 and after July 1, 1984, and before July 1, 1989, subject to an ag-  
37 gregate limitation for all judgments or settlements arising from all  
38 claims made in any one fiscal year in the amount of \$6,000,000 for  
39 each provider.

40 (f) The fund shall not be liable to pay in excess of the amounts  
41 specified in the option selected by the health care provider pursuant  
42 to subsection (l) for judgments or settlements relating to injury or  
43 death arising out of the rendering of or failure to render professional

1 services by such health care provider on or after July 1, 1989.

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

8 (h) A health care provider who is qualified for coverage under  
9 the fund shall have no vicarious liability or responsibility for any  
10 injury or death arising out of the rendering of or the failure to render  
11 professional services inside or outside this state by any other health  
12 care provider who is also qualified for coverage under the fund. The  
13 provisions of this subsection shall apply to all claims filed on or after  
14 the effective date of this act.

15 (i) Notwithstanding the provisions of K.S.A. 40-3402 and amend-  
16 ments thereto, if the board of governors determines due to the  
17 number of claims filed against a health care provider or the outcome  
18 of those claims that an individual health care provider presents a  
19 material risk of significant future liability to the fund, the board of  
20 governors is authorized by a vote of a majority of the members  
21 thereof, after notice and an opportunity for hearing in accordance  
22 with the provisions of the Kansas administrative procedure act, to  
23 terminate the liability of the fund for all claims against the health  
24 care provider for damages for death or personal injury arising out  
25 of the rendering of or the failure to render professional services after  
26 the date of termination. The date of termination shall be 30 days  
27 after the date of the determination by the board of governors. The  
28 board of governors, upon termination of the liability of the fund  
29 under this subsection, shall notify the licensing or other disciplinary  
30 board having jurisdiction over the health care provider involved of  
31 the name of the health care provider and the reasons for the  
32 termination.

33 (j) (1) Upon the payment of moneys from the health care sta-  
34 bilization fund pursuant to subsection (c)(11), the commissioner shall  
35 certify to the director of accounts and reports the amount of such  
36 payment, and the director of accounts and reports shall transfer an  
37 amount equal to the amount certified, reduced by any amount trans-  
38 ferred pursuant to paragraph (3) of this subsection, from the state  
39 general fund to the health care stabilization fund.

40 (2) Upon the payment of moneys from the health care stabili-  
41 zation fund pursuant to subsection (c)(12), the commissioner shall  
42 certify to the director of accounts and reports the amount of such  
43 payment which is equal to the basic coverage liability of self-insurers,

1 and the director of accounts and reports shall transfer an amount  
2 equal to the amount certified, reduced by any amount transferred  
3 pursuant to paragraph (3) of this subsection, from the state general  
4 fund to the health care stabilization fund.

5 (3) The university of Kansas medical center private practice foun-  
6 dation reserve fund is hereby established in the state treasury. On  
7 July 1, 1989, or as soon thereafter as is practicable, the private  
8 practice corporations or foundations referred to in subsection (c) of  
9 K.S.A. 40-3402, and amendments thereto, shall remit \$500,000 to  
10 the state treasurer, and the state treasurer shall credit the same to  
11 the university of Kansas medical center private practice foundation  
12 reserve fund. If the balance in such reserve fund is less than \$500,000  
13 on July 1 of any succeeding year, the private practice corporations  
14 or foundations shall remit the amount necessary to increase such  
15 balance to \$500,000 to the state treasurer for credit to such fund as  
16 soon after such July 1 date as is practicable. When compliance with  
17 the foregoing provisions of this paragraph have been achieved on or  
18 after July 1 of any year in which the same are applicable, it shall  
19 be the duty of the state treasurer to certify to the commissioner that  
20 the reserve fund has been funded for the year in the manner required  
21 by law. Moneys in such reserve fund may be invested or reinvested  
22 in accordance with the provisions of K.S.A. 40-3406, and amend-  
23 ments thereto, and any income or interest earned by such invest-  
24 ments shall be credited to the reserve fund. Upon payment of  
25 moneys from the health care stabilization fund pursuant to subsection  
26 (c)(11) or (c)(12) with respect to any private practice corporation or  
27 foundation or any of its full-time physician faculty employed by the  
28 university of Kansas, the director of accounts and reports shall trans-  
29 fer an amount equal to the amount paid from the university of Kansas  
30 medical center private practice foundation reserve fund to the health  
31 care stabilization fund or, if the balance in such reserve fund is less  
32 than the amount so paid, an amount equal to the balance of the  
33 fund.

34 (4) Upon payment of moneys from the health care stabilization  
35 fund pursuant to subsection (c)(14) or (15), the commissioner shall  
36 certify to the director of accounts and reports the amount of such  
37 payment, and the director of accounts and reports shall transfer an  
38 amount equal to the amount certified from the state general fund  
39 to the health care stabilization fund.

40 (k) Notwithstanding any other provision of the health care prov-  
41 ider insurance availability act, no psychiatric hospital licensed under  
42 K.S.A. 75-3307b and amendments thereto shall be assessed a pre-  
43 mium surcharge or be entitled to coverage under the fund if such

1 hospital has not paid any premium surcharge pursuant to K.S.A. 40-  
2 3404 and amendments thereto prior to January 1, 1988.

3 (l) On or after July 1, 1989, every health care provider shall  
4 make an election to be covered by one of the following options  
5 provided in this subsection which shall limit the liability of the fund  
6 with respect to judgments or settlements relating to injury or death  
7 arising out of the rendering of or failure to render professional serv-  
8 ices on or after July 1, 1989. Such election shall be made at the  
9 time the health care provider renews the basic coverage in effect  
10 on the effective date of this act or, if basic coverage is not in effect,  
11 such election shall be made at the time such coverage is acquired  
12 pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the  
13 election shall be provided by the insurer providing the basic coverage  
14 in the manner and form prescribed by the commissioner and shall  
15 continue to be effective from year to year unless modified by a  
16 subsequent election made prior to the anniversary date of the policy.  
17 The health care provider may at any subsequent election reduce the  
18 dollar amount of the coverage for the next and subsequent fiscal  
19 years, but may not increase the same, unless specifically authorized  
20 by the board of governors. Such election shall be made for persons  
21 engaged in residency training and persons engaged in other post-  
22 graduate training programs approved by the state board of healing  
23 arts at medical care facilities or mental health centers in this state  
24 by the agency or institution paying the surcharge levied under K.S.A.  
25 40-3404, and amendments thereto, for such persons. Such options  
26 shall be as follows:

27 (1) *OPTION 1.* The fund shall not be liable to pay in excess of  
28 \$100,000 pursuant to any one judgment or settlement for any party  
29 against such health care provider, subject to an aggregate limitation  
30 for all judgments or settlements arising from all claims made in the  
31 fiscal year in an amount of \$300,000 for such provider.

32 (2) *OPTION 2.* The fund shall not be liable to pay in excess of  
33 \$300,000 pursuant to any one judgment or settlement for any party  
34 against such health care provider, subject to an aggregate limitation  
35 for all judgments or settlements arising from all claims made in the  
36 fiscal year in an amount of \$900,000 for such provider.

37 (3) *OPTION 3.* The fund shall not be liable to pay in excess of  
38 \$800,000 pursuant to any one judgment or settlement for any party  
39 against such health care provider, subject to an aggregate limitation  
40 for all judgments or settlements arising from all claims made in the  
41 fiscal year in an amount of \$2,400,000 for such provider.

42 (m) The fund shall not be liable for any amounts due from a  
43 judgment or settlement against resident or nonresident inactive



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2 health care providers who first qualify as an inactive health care  
 3 provider on or after July 1, 1989, unless such health care provider  
 4 has been in compliance with K.S.A. 40-3402, and amendments  
 5 thereto, for a period of not less than five years. If a health care  
 6 provider has not been in compliance for five years, such health care  
 7 provider may make application and payment for the coverage for  
 8 the period while they are nonresident health care providers, non-  
 9 resident self-insurers or resident or nonresident inactive health care  
 10 providers to the fund. Such payment shall be made within 30 days  
 11 after the health care provider ceases being an active health care  
 12 provider and shall be made in an amount determined by the com-  
 13 missioner to be sufficient to fund anticipated claims based upon  
 14 reasonably prudent actuarial principles. The provisions of this sub-  
 15 section shall not be applicable to any health care provider which  
 16 becomes inactive through death or retirement, or through disability  
 17 or circumstances beyond such health care provider's control, if such  
 18 health care provider notifies the board of governors and receives  
 19 approval for an exemption from the provisions of this subsection.  
 20 Any period spent in a postgraduate program of residency training  
 21 approved by the state board of healing arts shall not be included in  
 22 computation of time spent in compliance with the provisions of  
 23 K.S.A. 40-3402, and amendments thereto.

24 (n) Notwithstanding the provisions of subsection (m) or any other  
 25 provision in article 34 of chapter 40 of the Kansas Statutes Annotated  
 26 to the contrary, the fund shall not be liable for any claim made  
 27 after July 1, 1991, against a licensed optometrist or pharmacist  
 28 relating to any injury or death arising out of the rendering of or  
 29 failure to render professional services by such optometrist or phar-  
 30 macist prior to July 1, 1991, unless such optometrist or pharmacist  
 31 ~~procured coverage therefor in the same manner as provided for~~  
 32 ~~inactive health care providers in subsection (m).~~

33 (o) Notwithstanding the provisions of subsection (m) or any other  
 34 provision in article 34 of chapter 40 of the Kansas Statutes Annotated  
 35 to the contrary, the fund shall not be liable for any claim against  
 36 an inactive health care provider relating to any injury or death  
 37 arising out of the rendering of or failure to render professional  
 38 services by such inactive health care provider in circumstances  
 39 ~~where: (1) Such individual became an inactive health care provider~~  
 40 ~~on or after July 1, 1991, (2) such individual departed this state, (3)~~  
 41 ~~such individual rendered professional services in another state sub-~~  
 42 ~~sequent to the time that such individual became an inactive health~~  
 43 ~~care provider, and (4) such claim was made subsequent to the time~~  
 44 ~~that such individual became an inactive health care provider unless~~

on or

qualified as an inactive health care provider prior to July 1, 1991, and obtained coverage pursuant to subsection (m). Optometrists and pharmacists not qualified as inactive providers prior to July 1, 1991, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1991, and payment within 30 days from notice of the calculated amount as determined by the commissioner to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles

where such individual became an inactive health care provider on or after July 1, 1991, and rendered professional services in another state subsequent to the time that such individual became an inactive health care provider, unless such health care provider purchased coverage therefor in the same manner as provided in subsection (m)

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~~1 such inactive health care provider procured coverage therefor in the  
2 same manner as provided for in subsection (n).~~

3 (n) (p) Notwithstanding anything in article 34 of chapter 40 of  
4 the Kansas Statutes Annotated to the contrary, the fund shall in no  
5 event be liable for any claims against any health care provider based  
6 upon or relating to the health care provider's sexual acts or activity,  
7 but in such cases the fund may pay reasonable and necessary ex-  
8 penses for attorney fees incurred in defending the fund against such  
9 claim. The fund may recover all or a portion of such expenses for  
10 attorney fees if an adverse judgment is returned against the health  
11 care provider for damages resulting from the health care provider's  
12 sexual acts or activity.

13 Sec. 4. K.S.A. 1990 Supp. 40-3403b is hereby amended to read  
14 as follows: 40-3403b. (a) There is hereby created a health care sta-  
15 bilization fund oversight committee to consist of eleven members,  
16 one of whom shall be the commissioner of insurance or the com-  
17 missioner's designee, one of whom shall be appointed by the pres-  
18 ident of the state senate, one of whom shall be appointed by the  
19 minority leader of the state senate, one of whom shall be appointed  
20 by the speaker of the state house of representatives, one of whom  
21 shall be appointed by the minority leader of the state house of  
22 representatives and six of whom shall be persons appointed by the  
23 legislative coordinating council. The four members appointed by the  
24 president and minority leader of the state senate and the speaker  
25 and minority leader of the state house of representatives shall be  
26 members of the state legislature. Of the six members appointed by  
27 the legislative coordinating council, four shall either be health care  
28 providers or be employed by health care providers, one shall be a  
29 representative of the insurance industry and one shall be appointed  
30 from the public at large who is not affiliated with any health care  
31 provider or the insurance industry, but none of such six members  
32 shall be members of the state legislature. *Members serving on the*  
33 *committee on the effective date of this act shall continue to serve at*  
34 *the pleasure of the appointing authority.*

35 (b) The legislative coordinating council shall designate a chair-  
36 person of the committee from among the members thereof. The  
37 committee shall meet upon the call of the chairperson. It shall be  
38 the responsibility of the committee to make a *an annual* report to  
39 the legislative coordinating council on or before September 1, 1990,  
40 *of each year* and to perform such additional duties after September  
41 1, 1990, as the legislative coordinating council shall direct. The  
42 report required to be made to the legislative coordinating council  
43 shall include recommendations to the legislature for commencing the

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1 phase-out of the fund on July 1, 1991-1994, an analysis of the market  
2 for insurance for health care providers, an analysis of the impact  
3 and recommendation on the advisability of the imposition of  
4 limitations on attorney fees involving actions arising out of the  
5 rendering or failure to render professional services by a health  
6 care provider for which the fund has liability and recommen-  
7 dations for legislation necessary to implement or alter the phase-out  
8 of the fund.

9 (c) The commissioner or the commissioner's designee shall pro-  
10 vide any consulting actuarial firm contracting with the legislative  
11 coordinating council with such information or materials pertaining  
12 to the health care stabilization fund deemed necessary by the ac-  
13 tuarial firm for performing the requirements of an *any* actuarial  
14 review reviews for the health care stabilization fund oversight com-  
15 mittee notwithstanding any confidentiality prohibition, restriction or  
16 limitation imposed on such information or materials by any other  
17 law. The consulting actuarial firm and all employees and former  
18 employees thereof shall be subject to the same duty of confidentiality  
19 imposed by law on other persons or state agencies with regard to  
20 information and materials so provided and shall be subject to any  
21 civil or criminal penalties imposed by law for violations of such duty  
22 of confidentiality. Any report reports of the consulting actuarial firm  
23 shall be made in a manner which will not reveal directly or indirectly  
24 the name of any persons or entities or individual reserve information  
25 involved in claims or actions for damages for personal injury or loss  
26 due to error, omission or negligence in the performance of profes-  
27 sional services by health care providers. Information provided to the  
28 actuary shall not be subject to discovery, subpoena or other means  
29 of legal compulsion in any civil proceedings and shall be returned  
30 by the actuary to the health care stabilization fund.

31 (d) The staff of the legislative research department, the office of  
32 the revisor of statutes and the division of legislative administrative  
33 services shall provide such assistance as may be requested by the  
34 committee and to the extent authorized by the legislative coordi-  
35 nating council.

36 (e) Members of the committee attending meetings of the com-  
37 mittee, or attending a subcommittee meeting thereof authorized by  
38 the committee, shall be paid compensation, travel expenses and  
39 subsistence expenses as provided in K.S.A. 75-3212, and amend-  
40 ments thereto.

41 (f) This section shall be a part of and supplemental to the health  
42 care provider insurance availability act. The provisions of this section  
43 shall expire on July 1, 1991-1994.

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1 Sec. 5. K.S.A. 1990 Supp. 40-3404 is hereby amended to read  
 2 as follows: 40-3404. (a) Except for any health care provider whose  
 3 participation in the fund has been terminated pursuant to subsection  
 4 (i) of K.S.A. 40-3403 and amendments thereto, the commissioner  
 5 shall levy an annual premium surcharge on each health care provider  
 6 who has obtained basic coverage and upon each self-insurer for each  
 7 fiscal year. Such premium surcharge shall be an amount equal to a  
 8 percentage of the annual premium paid by the health care provider  
 9 for the basic coverage required to be maintained as a condition to  
 10 coverage by the fund by subsection (a) of K.S.A. 40-3402 and amend-  
 11 ments thereto. The annual premium surcharge upon each self-in-  
 12 surer, except for persons engaged in residency training, shall be an  
 13 amount equal to a percentage of the amount such self-insurer would  
 14 pay for basic coverage as calculated in accordance with rating pro-  
 15 cedures approved by the commissioner pursuant to K.S.A. 40-3413  
 16 and amendments thereto. The annual premium surcharge upon the  
 17 university of Kansas medical center for persons engaged in residency  
 18 training, as described in subsection (r)(1) of K.S.A. 40-3401, and  
 19 amendments thereto, shall be an amount equal to a percentage of  
 20 an assumed aggregate premium of \$600,000. The annual premium  
 21 surcharge upon the employers of persons engaged in residency train-  
 22 ing, as described in subsection (r)(2) of K.S.A. 40-3401, and amend-  
 23 ments thereto, shall be an amount equal to a percentage of an  
 24 assumed aggregate premium of \$400,000. The surcharge on such  
 25 \$400,000 amount shall be apportioned among the employers of per-  
 26 sons engaged in residency training, as described in subsection (r)(2)  
 27 of K.S.A. 40-3401, and amendments thereto, based on the number  
 28 of residents employed as of July 1 of each year.

29 (b) In the case of a resident health care provider who is not a  
 30 self-insurer, the premium surcharge shall be collected in addition to  
 31 the annual premium for the basic coverage by the insurer and shall  
 32 not be subject to the provisions of K.S.A. 40-252, 40-1113 and 40-  
 33 2801 *et seq.*, and amendments thereto. The amount of the premium  
 34 surcharge shall be shown separately on the policy or an endorsement  
 35 thereto and shall be specifically identified as such. Such premium  
 36 surcharge shall be due and payable by the insurer to the commis-  
 37 sioner within 30 days after the annual premium for the basic coverage  
 38 is received by the insurer, but in the event basic coverage is in  
 39 effect at the time this act becomes effective, such surcharge shall  
 40 be based upon the unearned premium until policy expiration and  
 41 annually thereafter. Within 15 days immediately following the ef-  
 42 fective date of this act, the commissioner shall send to each insurer  
 43 information necessary for their compliance with this subsection. The

This provision shall not apply to optometrists  
 and pharmacists on or after July 1, 1991.

B 2  
 Compliance  
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1 certificate of authority of any insurer who fails to comply with the  
2 provisions of this subsection shall be suspended pursuant to K.S.A.  
3 40-222 and amendments thereto until such insurer shall pay the  
4 annual premium surcharge due and payable to the commissioner.  
5 In the case of a nonresident health care provider or a self-insurer,  
6 the premium surcharge shall be collected in the manner prescribed  
7 in K.S.A. 40-3402 and amendments thereto.

8 (c) The premium surcharge *made for any annual period begin-*  
9 *ning on or after the effective date of this act* shall be in an amount  
10 deemed sufficient by the commissioner, *together with the premium*  
11 *surcharges for any subsequent annual periods made prior to July*  
12 *1, 1994, to fund the total of any existing deficiencies in the fund on*  
13 *the effective date of this act and all anticipated claims to be made*  
14 *before July 1, 1994, for which the fund will be liable* based upon  
15 reasonably prudent actuarial principles. In setting the amount of  
16 such surcharge, the commissioner: (1) May require any health care  
17 provider who has paid a surcharge for less than 24 months to pay  
18 a higher surcharge than other health care providers; *and* (2) shall  
19 require that any health care provider who is insured by a policy of  
20 professional liability insurance with deductibles pay a surcharge based  
21 on an amount equal to a percentage on the annual amount of pre-  
22 mium that would have been paid by the health care provider for  
23 basic coverage required to be maintained by the fund as provided  
24 by K.S.A. 40-3402 and amendments thereto without any deductibles;  
25 ~~and (3) shall amortize any anticipated deficiencies in the fund~~  
26 ~~over a reasonable period of time.~~

27 Sec. 6. K.S.A. 1990 Supp. 40-3401, 40-3402, 40-3403, 40-3403b  
28 and 40-3404 are hereby repealed.

29 Sec. 7. This act shall take effect and be in force from and after  
30 its publication in the statute book.

Sec. 1. K.S.A. 40-3421 is hereby amended to read as follows:  
40-3421. (a) Any insurer providing professional liability insurance coverage to a health care provider, as defined by K.S.A. 40-3401 and amendments thereto, who is licensed in Kansas shall report to the appropriate state health care provider regulatory agency and the state department of insurance on forms prescribed by the commissioner of insurance any written or oral claim or action for damages for medical malpractice. The report shall be filed no later than 30 days following the insurer's receipt of notice of the claim or action and shall contain:

(1) The name, address, area of practice or specialty, policy coverage and policy number of the insured; and

(2) the date of the occurrence giving rise to the claim, the date the occurrence was reported to the insurer, and the date legal action, if any, was initiated.

(b) Upon request of an agency to which a report is made under subsection (a), the insurer making the report shall provide to the agency no later than 30 days following receipt of the request or receipt of the information, whichever is later:

(1) The names of all defendants involved in the claim; and

(2) a summary of the occurrence, including the name of the institution at which the incident occurred, the final diagnosis for which treatment was sought or rendered, the patient's actual condition, the incident, treatment or diagnosis giving rise to the claim and a description of the principal injury giving rise to the claim.

(c) Reports required to be filed pursuant to this section shall be confidential and shall not be admissible in any civil or criminal action or in any administrative proceeding other than a disciplinary proceeding of a health care provider involved in the reported occurrence.

(d) Any insurer which fails to report any information as required by this section shall be subject, after proper notice and an opportunity to be heard, to:

(1) A civil fine assessed by the commissioner of insurance in an amount not exceeding \$1,000 for each day after the thirty-day period for reporting that the information is not reported; and

(2) suspension, revocation, denial of renewal or cancellation of the insurer's certificate of authority to do business in this state or certificate of self-insurance.

The commissioner of insurance shall remit promptly to the state treasurer any moneys collected from fines assessed pursuant to this subsection. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the state general fund.

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

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

(g) The requirements of this section shall not be applicable with respect to any occurrence on or after July 1, 1991, giving rise to any claim or action against any optometrist or pharmacist.



## KANSAS MEDICAL SOCIETY

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February 14, 1991

TO: Senate Financial Institutions and Insurance Committee

FROM: Jerry Slaughter  
Executive Director

SUBJECT: Proposed Amendments to SB 38; Concerning the Health Care  
Stabilization Fund

As a followup to our testimony on February 6, we wanted to give you another copy of our proposed amendments to SB 38, with a brief rationale for each. The suggested amendments are included in the attached draft balloon.

1. On page 6, line 31 should be deleted. This provision would sunset K.S.A. 40-3402, which is the mandatory insurance provision of the law. There is no need to put a fixed termination date on this provision until all the details concerning termination of the Fund have been worked out by the Oversight Committee.
2. On page 7, line 15, add language granting the Board of Governors of the Health Care Stabilization Fund the authority to grant exemptions from the five year tail coverage provision for certain reasons. As outlined in the amendment, the Board of Governors would have the authority to grant exemptions to health care providers who leave the state to obtain additional education, or participate in religious, humanitarian or government service programs. This amendment provides some flexibility, with limits, to the Board to grant exemptions in deserving instances.
3. Delete all of subsection (o) beginning on page 13, line 32, and ending on page 14, line 2. Subsection (o) was added to the Oversight Committee's recommendations at the last minute, almost as an afterthought. There was no opportunity to present an opposing point of view on the matter, and the amendment was adopted on a split vote, with several members of the Oversight Committee not voting at all. In view of the fact that the Fund may only be around another three years, it just does not make any sense to change the provisions relating to "tail" coverage at this time. There already exists a five year provision (enacted in 1989) which deals with physicians who leave the state to practice elsewhere. This new subsection (o) will only cause a number of physicians to leave the state prior to the enactment of this bill, and may likely have the unintended effect of keeping many physicians from locating a practice in Kansas.

We do appreciate your consideration of these proposed amendments, and would urge you to support them in Committee. If you have any questions, please do not hesitate to contact me. Thank you.

JS:ns

*Attachment 7  
FI + I  
2/19/91*

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1 maintain basic coverage pursuant to this subsection shall pay the  
 2 surcharge levied by the commissioner pursuant to subsection (a) of  
 3 K.S.A. 40-3404 and amendments thereto directly to the commis-  
 4 sioner and shall furnish to the commissioner the information required  
 5 in subsection (a)(1).

6 (c) Every health care provider that is a self-insurer, the university  
 7 of Kansas medical center for persons engaged in residency training,  
 8 as described in subsection (r)(1) of K.S.A. 40-3401 and amendments  
 9 thereto, the employers of persons engaged in residency training, as  
 10 described in subsection (r)(2) of K.S.A. 40-3401 and amendments  
 11 thereto, the private practice corporations or foundations and their  
 12 full-time physician faculty employed by the university of Kansas  
 13 medical center or a medical care facility or mental health center for  
 14 self-insurers under subsection (e) of K.S.A. 40-3414 and amendments  
 15 thereto shall pay the surcharge levied by the commissioner pursuant  
 16 to subsection (a) of K.S.A. 40-3404 and amendments thereto directly  
 17 to the commissioner and shall furnish to the commissioner the in-  
 18 formation required in subsection (a)(1) and (a)(2).

19 (d) In lieu of a claims made policy otherwise required under this  
 20 section, a person engaged in residency training who is providing  
 21 services as a health care provider but while providing such services  
 22 is not covered by the self-insurance provisions of subsection (d) of  
 23 K.S.A. 40-3414 and amendments thereto may obtain basic coverage  
 24 under an occurrence form policy if such policy provides professional  
 25 liability insurance coverage and limits which are substantially the  
 26 same as the professional liability insurance coverage and limits re-  
 27 quired by subsection (a) of K.S.A. 40-3402 and amendments thereto.  
 28 Where such occurrence form policy is in effect, the provisions of  
 2 the health care provider insurance availability act referring to claims  
 30 made policies shall be construed to mean occurrence form policies.

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

————— delete

32 Sec. 3. K.S.A. 1990 Supp. 40-3403 is hereby amended to read  
 33 as follows: 40-3403. (a) For the purpose of paying damages for per-  
 34 sonal injury or death arising out of the rendering of or the failure  
 35 to render professional services by a health care provider, self-insurer  
 36 or inactive health care provider subsequent to the time that such  
 37 health care provider or self-insurer has qualified for coverage under  
 38 the provisions of this act, there is hereby established the health care  
 39 stabilization fund. The fund shall be held in trust in a segregated  
 40 fund in the state treasury. The commissioner shall administer the  
 41 fund or contract for the administration of the fund with an insurance  
 42 company authorized to do business in this state.

43 (b) (1) There is hereby created a board of governors. The board



of governors shall:

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

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

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

9 (D) prepare and publish, on or before October 1 of each year,  
10 a summary of the fund's activity during the preceding fiscal year,  
11 including but not limited to the amount collected from surcharges,  
12 the highest and lowest surcharges assessed, the amount paid from  
13 the fund, the number of judgments paid from the fund, the number  
14 of settlements paid from the fund and the amount in the fund at  
15 the end of the fiscal year.

16 (2) The board shall consist of 14 persons appointed by the com-  
17 missioner of insurance, as follows: (A) The commissioner of insurance,  
18 or the designee of the commissioner, who shall act as chairperson;  
19 (B) two members appointed from the public at large who are not  
20 affiliated with any health care provider; (C) three members licensed  
21 to practice medicine and surgery in Kansas who are doctors of med-  
22 icine; (D) three members who are representatives of Kansas hospitals;  
23 (E) two members licensed to practice medicine and surgery in Kansas  
24 who are doctors of osteopathic medicine; (F) one member licensed  
25 to practice chiropractic in Kansas; (G) one member who is a licensed  
26 professional nurse authorized to practice as a registered nurse an-  
27 esthetist; and (H) one member of another category of health care  
28 providers. Meetings shall be called by the chairperson or by a written  
29 notice signed by three members of the board. The board, in addition  
30 to other duties imposed by this act, shall study and evaluate the  
31 operation of the fund and make such recommendations to the leg-  
32 islation as may be appropriate to ensure the viability of the fund.

33 (3) The board shall be attached to the insurance department and  
34 shall be within the insurance department as a part thereof. All budg-  
35 eting, purchasing and related management functions of the board  
36 shall be administered under the direction and supervision of the  
37 commissioner of insurance. All vouchers for expenditures of the board  
38 shall be approved by the commissioner of insurance or a person  
39 designated by the commissioner.

40 (c) Subject to subsections (d), (e), (f), (i), (k), (m) ~~and~~ (n), (o)  
41 and (p), the fund shall be liable to pay: (1) Any amount due from  
42 a judgment or settlement which is in excess of the basic coverage  
liability of all liable resident health care providers or resident self-

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(E) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider leaves the state for the purpose of obtaining additional education or training, or to participate in religious, humanitarian, or government service programs.

7-4

1 health care providers who first qualify as an inactive health care  
 2 provider on or after July 1, 1989, unless such health care provider  
 3 has been in compliance with K.S.A. 40-3402, and amendments  
 4 thereto, for a period of not less than five years. If a health care  
 5 provider has not been in compliance for five years, such health care  
 6 provider may make application and payment for the coverage for  
 7 the period while they are nonresident health care providers, non-  
 8 resident self-insurers or resident or nonresident inactive health care  
 9 providers to the fund. Such payment shall be made within 30 days  
 10 after the health care provider ceases being an active health care  
 11 provider and shall be made in an amount determined by the com-  
 12 missioner to be sufficient to fund anticipated claims based upon  
 13 reasonably prudent actuarial principles. The provisions of this sub-  
 14 section shall not be applicable to any health care provider which  
 15 becomes inactive through death or retirement, or through disability  
 16 or circumstances beyond such health care provider's control, if such  
 17 health care provider notifies the board of governors and receives  
 18 approval for an exemption from the provisions of this subsection.  
 19 Any period spent in a postgraduate program of residency training  
 20 approved by the state board of healing arts shall not be included in  
 21 computation of time spent in compliance with the provisions of  
 22 K.S.A. 40-3402, and amendments thereto.

23 *(n) Notwithstanding the provisions of subsection (m) or any other*  
 24 *provision in article 34 of chapter 40 of the Kansas Statutes Annotated*  
 25 *to the contrary, the fund shall not be liable for any claim made*  
 26 *after July 1, 1991, against a licensed optometrist or pharmacist*  
 27 *relating to any injury or death arising out of the rendering of or*  
 28 *failure to render professional services by such optometrist or phar-*  
 29 *macist prior to July 1, 1991, unless such optometrist or pharmacist*  
 30 *procured coverage therefor in the same manner as provided for*  
 31 *inactive health care providers in subsection (m).*

32 ~~*(o) Notwithstanding the provisions of subsection (m) or any other*~~  
 33 ~~*provision in article 34 of chapter 40 of the Kansas Statutes Annotated*~~  
 34 ~~*to the contrary, the fund shall not be liable for any claim against*~~  
 35 ~~*an inactive health care provider relating to any injury or death*~~  
 36 ~~*arising out of the rendering of or failure to render professional*~~  
 37 ~~*services by such inactive health care provider in circumstances*~~  
 38 ~~*where: (1) Such individual became an inactive health care provider*~~  
 39 ~~*on or after July 1, 1991, (2) such individual departed this state, (3)*~~  
 40 ~~*such individual rendered professional services in another state sub-*~~  
 41 ~~*sequent to the time that such individual became an inactive health*~~  
~~*care provider, and (4) such claim was made subsequent to the time*~~  
~~*that such individual became an inactive health care provider unless*~~

} ————— delete

~~such inactive health care provider procured coverage therefor in the same manner as provided for in subsection (m).~~

delete

(n) (p) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall in no event be liable for any claims against any health care provider based upon or relating to the health care provider's sexual acts or activity, but in such cases the fund may pay reasonable and necessary expenses for attorney fees incurred in defending the fund against such claim. The fund may recover all or a portion of such expenses for attorney fees if an adverse judgment is returned against the health care provider for damages resulting from the health care provider's sexual acts or activity.

Sec. 4. K.S.A. 1990 Supp. 40-3403b is hereby amended to read as follows: 40-3403b. (a) There is hereby created a health care stabilization fund oversight committee to consist of eleven members, one of whom shall be the commissioner of insurance or the commissioner's designee, one of whom shall be appointed by the president of the state senate, one of whom shall be appointed by the minority leader of the state senate, one of whom shall be appointed by the speaker of the state house of representatives, one of whom shall be appointed by the minority leader of the state house of representatives and six of whom shall be persons appointed by the legislative coordinating council. The four members appointed by the president and minority leader of the state senate and the speaker and minority leader of the state house of representatives shall be members of the state legislature. Of the six members appointed by the legislative coordinating council, four shall either be health care providers or be employed by health care providers, one shall be a representative of the insurance industry and one shall be appointed from the public at large who is not affiliated with any health care provider or the insurance industry, but none of such six members shall be members of the state legislature. *Members serving on the committee on the effective date of this act shall continue to serve at the pleasure of the appointing authority.*

(b) The legislative coordinating council shall designate a chairperson of the committee from among the members thereof. The committee shall meet upon the call of the chairperson. It shall be the responsibility of the committee to make a *an annual* report to the legislative coordinating council on or before September 1, 1990, of each year and to perform such additional duties ~~after September 1, 1990,~~ as the legislative coordinating council shall direct. The report required to be made to the legislative coordinating council shall include recommendations to the legislature for commencing the