

Approved

3/4/91

Date

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. ~~pm~~ on WEDNESDAY, FEBRUARY 27, 1991 in room 529-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~

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

Committee staff present:

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

Conferees appearing before the committee:

Laird Bowman, KU Endowment Association

Chairman Bond called the meeting to order at 9:04 a.m.

SB 115 - Insurance benefiting charitable, benevolent, educational and religious institutions.

Laird Bowman, Kansas University Endowment Association, appeared before the committee on behalf of this bill. Mr. Bowman explained that this bill was modeled after that of other states that do allow life insurance to be used as a charitable contribution. He emphasized that the language in the statutes needs to be clarified.

Discussion followed. A committee member suggested making the effective date publication in the Kansas Register rather than July 1, 1991, since there seems to be some urgency about clarifying the language. Insurance Commissioner Todd spoke briefly in support of the bill and agreed that the earlier effective date would be preferable.

Senator Reilly made a motion to amend SB 115 to make the effective date on publication in the Kansas Register. Senator Strick seconded the motion. The motion carried.

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

HB 2059 - Interstate Banking.

A brief discussion took place with a committee member remarking that this bill should be approved as they did not want to run the risk of the federal government taking over the banking system in Kansas.

Senator Salisbury made a motion to pass HB 2059 out of committee with a favorable recommendation. Senator Parrish seconded the motion. The motion carried.

SB 38 - Health Care Stabilization Fund.

Discussion resumed on SB 38 with Chairman Bond suggesting that they examine the amendments offered by the Kansas Medical Society and the Insurance Department section by section. Attachment 1)

Chairman Bond suggested that to the committee that they consider (1) removing the mandated dates, (2) keeping the Oversight Committee, (3) broaden its responsibilities, and (4) keeping the second actuary in place. He further advised that if private insurance companies were interested in picking up the coverage they would be in attendance and none had appeared. Another member stated that unless the mandate was eliminated, companies would not be interested in providing excess coverage.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on WEDNESDAY, FEBRUARY 27, 1991.

Senator Salisbury made a motion to strike line 31, page 6. Senator Reilly seconded the motion. The motion carried.

Senator Yost made a motion to delete section "o", page 13. Senator Kerr seconded the motion. The motion carried.

Senator Yost made a motion to approve the amendment on page 7, new section (E). Senator Parrish seconded the motion. The motion carried.

Senator Moran made a motion to adopt the language on page 14 and 15 to clarify and broaden the scope of the Oversight Committee. Senator Yost seconded the motion. The motion carried.

Senator Yost made a motion to pass SB 38 out favorably as amended. Senator Moran seconded the motion. The motion carried.

SB 49 - Concerning garnishments.

Discussion resumed concerning this bill and the committee examined amendments to the bill suggested by Jim Maag, Kansas Bankers Association. (Attachment 2) The Chairman inquired of Paul Shelby, Acting Judicial Administrator, if he agreed with the Maag amendments and Mr. Shelby replied that he did. Bill Nichols, Commerce Bank & Trust Company was also asked his opinion. Mr. Nichols replied that he had no comments. A committee member informed the committee that the amendments offered by Ron Smith, Kansas Bar Association, appeared to deal more with attorneys who go on "fishing expeditions". Attachment 3) Committee members were especially concerned with the \$50 fee and with making certain that attorneys make every effort to act in good faith.

Senator Yost made a motion to approve the amendments proposed by Mr. Maag. Senator Kerr seconded the motion.

Senator Parrish made a substitute motion to adopt the strikeover, line 12-15, and to adopt the language on line 7 of Mr. Maag's suggested amendments and to adopt the language proposed in Ron Smith's amendment. Senator Francisco seconded the motion. The motion carried.

Senator Parrish made a motion to strike "shall be issued", line 9, of the Maag amendments. Senator Reilly seconded the motion. The motion carried.

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

Minutes of the Monday, February 25, 1991, meeting were approved on a motion by Senator Reilly with Senator Yost seconding the motion. The motion carried.

The Chairman announced the meeting adjourned at 10:03 a.m.

GUEST LIST

COMMITTEE: FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE DATE: Wed Feb 27, 1991

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
JERRY SAWYER	TOPEKA	KMS
GARY Robbins	Topeka	KS OPT ASSN
DAVE WATL	"	KAMMCO
Jim May	"	KBA
Bill Nichols	Topeka	Commerce Bank
Greg Winkler	Topeka	KCUL
DAVID REAM	TOPEKA	KARM
Bobby Williams	Topeka	Ks. Pharmacists Assoc
Tom Hitchcock	"	Bd. Pharmacy
TODD SEYMOUR LAIRD BOWMAN	LAWRENCE	KV ENDOWMENT ASSN
Laurin Hartman	Topeka	KBB
Harley Duff	Topeka	Ks Bankers Assn
Paul Shelton	Topeka	OJA
Chip Wheelen	Topeka	Ks Medical Soc
DAVID Nichols	Topeka	SWBT
KG Tracy	"	KTLA
KURT SCOTT	"	KAMMCO
M. Knapp	"	"
Ken Baker	Topeka	4th Financial Corp.
Steve Sanford	"	Ks Ins. Dept.
BOB HAYES	"	KS INS DEPT.
Lin Callahan	Topeka	AIA
JEFF SONNICH	TOPEKA	KINLSI

SENATE BILL No. 38

By Senators Bond and Rock

1-16

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 licensed 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)

(Adopted)

Attachment 1
FI + I
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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.

(Adopted)

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.

(Adopted)

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.~~

————— delete (Pending)

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
 fund or contract for the administration of the fund with an insurance
 company authorized to do business in this state.

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

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 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
43 liability of all liable resident health care providers or resident self-

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

(Pending)

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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),

(Both Adopted)

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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

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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,

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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 provi-
41 der 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

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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
 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
 42 care provider, and (4) such claim was made subsequent to the time
 43 that such individual became an inactive health care provider unless~~

Note: Options on Subsection (o):

1. delete entire subsection (KMS)
2. amend subsection by addition of language shown below

on or (Adopted)

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 (Adopted)

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) (Pending)

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

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.~~

on the advisability of continuation or termination of the fund, an analysis of the market for insurance for health care providers, recommendations on ways to reduce claim and operational costs of the fund, and legislation necessary to implement recommendations of the committee.
 (Pending)

9 (c) The commissioner or the commissioner's designee shall provide any consulting actuarial firm contracting with the legislative coordinating council with such information or materials pertaining to the health care stabilization fund deemed necessary by the actuarial firm for performing the requirements of an *any* actuarial ~~review reviews~~ for the health care stabilization fund oversight committee notwithstanding any confidentiality prohibition, restriction or limitation imposed on such information or materials by any other law. The consulting actuarial firm and all employees and former employees thereof shall be subject to the same duty of confidentiality imposed by law on other persons or state agencies with regard to information and materials so provided and shall be subject to any civil or criminal penalties imposed by law for violations of such duty of confidentiality. Any ~~report reports~~ of the consulting actuarial firm shall be made in a manner which will not reveal directly or indirectly the name of any persons or entities or individual reserve information involved in claims or actions for damages for personal injury or loss due to error, omission or negligence in the performance of professional services by health care providers. Information provided to the actuary shall not be subject to discovery, subpoena or other means of legal compulsion in any civil proceedings and shall be returned by the actuary to the health care stabilization fund.

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

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

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

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.

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

(Adopted)

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

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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.

(Adopted)

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Attachment 2
A I + I
2/27/91

1 (e) If an order of garnishment attaches funds, credits or indeb-
2 edness held by a bank, savings and loan association, credit union or
3 finance company and the garnishee holds funds or credits or is
4 indebted to the defendant in two or more accounts, the garnishee
5 may withhold payment of the amount attached from any one or more
6 of such accounts.

7 (f) No order of garnishment attaching funds, credits or indebt-
8 edness held by a bank, savings and loan association, savings bank,
9 credit union or finance company shall be issued except on good faith
10 belief of the party seeking garnishment that the party to be served
11 with the garnishment order has, or will have, assets of the judgment
12 debtor, and unless the party seeking the order deposits a nonre-
13 fundable fee, not to exceed \$50, for each order of garnishment which
14 shall be forwarded to the financial institution with each order of
15 garnishment.

No party shall seek an order of garnishment

pays

of \$25

attached to and

16 (g) This section shall be part of and supplemental to the Kansas
17 code of civil procedure.
18 Sec. 2. KSA 1990 Supp. 60-726 is hereby repealed.
19 Sec. 3. This act shall take effect and be in force from and after
20 its publication in the statute book.

,except that the parties described in KSA 23-4, 106 (h)
are exempt from the requirement of the nonrefundable
fee.

MEMORANDUM

TO: Members, Senate Financial Institutions and Insurance
FROM: Ron Smith
SUBJ: SB 49; \$50.00 garnishment fee; amendments
DATE: February 12, 1991

Attached is a proposed amendment that provides banks sufficient flexibility to limit garnishments to as few as are necessary without imposing new costs on Kansas businesses trying to collect lawful debts. We would support SB 49 with this amendment. The reasons for this amendment are:

1. SB 49, as drafted, has a \$50.00 fee that penalizes those attorneys and their clients whose diligence results in a garnishment of a bank with an existing account. SB 49 tries to limit the number of bonafide garnishments because of a small number of garnishments that are labeled "fishing" amendments. However, it does so by rewarding debtors who cause people to sue in the first place by making it more financially difficult for creditors to collect judgments.

2. By giving the bank counsel authority to warn transgressing collection attorneys that fishing expeditions won't be tolerated also gives the bank attorney the incidental authority to file, prove and collect more than \$50.00, plus attorney fees, if the offending attorney is filing ungrounded garnishments.

3. If the problem is the attorney, then this amendment incorporates by reference and brings into play a tough sanction statute that we already think applies, but the amendment clarifies its application. SB 49, as drawn, does not contain this tough sanction language.

4. The amendment makes it clear that the party seeking the pleading -- not the court clerk -- must decide whether there is good faith belief that an account exists.

We think this amendment is simpler, more equitable to all parties, and speaks to the real problem.

*Attachment 3
FI + I
2/27/91*

1 (e) If an order of garnishment attaches funds, credits or indebt-
2 edness held by a bank, savings and loan association, credit union or
3 finance company and the garnishee holds funds or credits or is
4 indebted to the defendant in two or more accounts, the garnishee
5 may withhold payment of the amount attached from any one or more
6 of such accounts.

7 (f) No order of garnishment attaching funds, credits or indebt-
8 edness held by a bank, savings and loan association, savings bank,
9 credit union or finance company shall be issued except on good faith
10 belief of the party seeking garnishment that the party to be served
11 with the garnishment order has, or will have, assets of the judgment
12 debtor, ~~and unless the party seeking the order deposits a nonre-~~
13 ~~fundable fee, not to exceed \$50, for each order of garnishment which~~
14 ~~shall be forwarded to the financial institution with each order of~~
15 ~~garnishment.~~

16 (g) This section shall be part of and supplemental to the Kansas
17 code of civil procedure.

18 Sec. 2. K.S.A. 1990 Supp. 60-726 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after
20 its publication in the statute book.

. A written direction filed under subsection (a) shall be considered a pleading under provisions of K.S.A. 1990 Supp. 60-211 and amendments thereto.

60-211. Signing of pleadings, motions and other papers; liability for frivolous filings. Every pleading, motion and other paper provided for by this article of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number shall be stated. A pleading, motion or other paper provided for by this article of a party who is not represented by an attorney shall be signed by the party and shall state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. The signature of a person constitutes a certificate by the person that the person has read the pleading; that to the best of the person's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not imposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper provided for by this article is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper provided for by this article is signed in violation of this section, the court, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed it or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

Note →

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