

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2516

By Committee on Insurance

1-27

1 AN ACT concerning health care provider liability insurance; relating to
2 mutual insurance companies organized to provide health care provider
3 liability insurance; health care provider insurance availability act;
4 amending K.S.A. 40-12a02, 40-12a06, 40-12a09, 40-3402, 40-3403a,
5 40-3403b, 40-3407, 40-3408, 40-3411, 40-3412, 40-3413, 40-3416, 40-
6 3419 and 40-3422 and K.S.A. 2013 Supp. 40-3401, 40-3403, 40-3404,
7 40-3414 and 40-3421 and repealing the existing sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) For all claims made on and after July 1, 2014, the
11 amount of fund liability for a judgment or settlement against a resident or
12 nonresident inactive health care provider shall be equal to the minimum
13 professional liability insurance policy limits required pursuant to K.S.A.
14 40-3402, and amendments thereto, plus the level of coverage selected by
15 the health care provider pursuant to subsection (l) of K.S.A. 40-3403, and
16 amendments thereto, at the time of the incident giving rise to a claim.

17 (b) This section shall be part of and supplemental to the health care
18 provider insurance availability act.

19 Sec. 2. K.S.A. 40-12a02 is hereby amended to read as follows: 40-
20 12a02. (a) Except as otherwise provided in this act, the provisions of
21 article 12 of chapter 40 of the Kansas Statutes Annotated, *and amendments*
22 *thereto*, shall control the formation and operation of companies organized
23 under this act.

24 (b) Any association of health care providers domiciled within the
25 state of Kansas which has been in existence for three years or more, may,
26 as provided in this act, form an insurance company for the purpose of
27 issuing contracts of insurance providing ~~liability~~ insurance for health care
28 providers which are members of the association, the member's employees,
29 directors, professional associations and affiliates.

30 (c) Any two or more such associations of health care providers, may
31 form an insurance company for the purpose of issuing contracts of
32 insurance providing ~~liability~~ insurance for such association's respective
33 members, the member's employees, directors, professional associations
34 and affiliates ~~upon the assessment plan~~.

35 (d) *In addition to other requirements of law, any plan or agreement*
36 *for the sale, merger, consolidation or change of control of any company*

1 *organized under the provisions of this act shall not be effective unless such*
2 *plan or agreement has been approved by resolution of the governing board*
3 *of directors or board of trustees of the association which formed such*
4 *company.*

5 Sec. 3. K.S.A. 40-12a06 is hereby amended to read as follows: 40-
6 12a06. (a) Any company organized under the provisions of this act shall be
7 empowered to make contracts of insurance as provided herein and to cede
8 to any insurer or accept from any insurer reinsurance on any portion of any
9 such risk for the following kinds of insurance:

10 ~~(1) Against loss or liability arising out of the performance of~~
11 ~~professional services rendered or which should have been rendered by an~~
12 ~~insured.~~

13 ~~(2) Against loss or liability to persons or property for which the~~
14 ~~insured may be liable or have assumed liability, including but not limited~~
15 ~~to liability of any person who is a director or officer of a health care~~
16 ~~provider arising out of acts performed or which should have been~~
17 ~~performed by such director or officer.~~

18 ~~(3) Against loss or liability to persons or property resulting from the~~
19 ~~ownership, maintenance or use of any ambulance, aircraft or other vehicle~~
20 ~~used by an insured in connection with rendering professional services~~
21 ~~authorized by article 12 of chapter 40 of the Kansas Statutes Annotated,~~
22 ~~and amendments thereto.~~

23 (b) Any company organized under the provisions of this act shall be
24 empowered to contract with the governing board of any plan created
25 pursuant to K.S.A. 40-3413, and amendments thereto, to issue policies to
26 any applicant for liability insurance under the provisions of any such plan,
27 to service and manage such policies and in all respects to administer and
28 carry out the functions of any plan as the same may be authorized by the
29 contract. Policies may be issued to persons and corporations under the
30 provisions of such contract even though the insured is not a member of the
31 association of health care providers forming the insurance company. No
32 provision of this act or of article 12 of chapter 40 of the Kansas Statutes
33 Annotated, *and amendments thereto*, regarding the voting rights of
34 members or the payment of dividends shall apply to policies issued under
35 this subsection.

36 Sec. 4. K.S.A. 40-12a09 is hereby amended to read as follows: 40-
37 12a09. Each company organized pursuant to this act shall file an annual
38 statement each year in accordance with the requirements for domestic
39 insurers writing the same kind of insurance. ~~Any company organized~~
40 ~~pursuant to this section which states its liabilities for losses and loss~~
41 ~~adjustment expenses on a present value basis on the effective date of this~~
42 ~~act shall be allowed a reasonable period of time to discontinue such~~
43 ~~practice in accordance with a plan approved by the commissioner.~~

1 Sec. 5. K.S.A. 2013 Supp. 40-3401 is hereby amended to read as
2 follows: 40-3401. As used in this act the following terms shall have the
3 meanings respectively ascribed to them herein.

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

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

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

10 (d) "Fiscal year" means the year commencing on the effective date of
11 this act and each year, commencing on the first day of ~~that month~~, *July*
12 thereafter.

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

15 (f) "Health care provider" means a person licensed to practice any
16 branch of the healing arts by the state board of healing arts ~~with the~~
17 ~~exception of physician assistants~~, a person who holds a temporary permit
18 to practice any branch of the healing arts issued by the state board of
19 healing arts, a person engaged in a postgraduate training program
20 approved by the state board of healing arts, a medical care facility licensed
21 by the ~~department of health and environment~~, a ~~health maintenance~~
22 ~~organization issued a certificate of authority by the commissioner of~~
23 ~~insurance state of Kansas~~, a podiatrist licensed by the state board of
24 healing arts, ~~an optometrist licensed by the board of examiners in~~
25 ~~optometry~~, ~~a pharmacist licensed by the state board of pharmacy~~, **a health**
26 **maintenance organization issued a certificate of authority by the**
27 **commissioner of insurance, an optometrist licensed by the board of**
28 **examiners in optometry, a pharmacist licensed by the state board of**
29 **pharmacy**, a licensed professional nurse who is authorized to practice as a
30 registered nurse anesthetist, a licensed professional nurse who has been
31 granted a temporary authorization to practice nurse anesthesia under
32 K.S.A. 65-1153, and amendments thereto, a professional corporation
33 organized pursuant to the professional corporation law of Kansas by
34 persons who are authorized by such law to form such a corporation and
35 who are health care providers as defined by this subsection, a Kansas
36 limited liability company organized for the purpose of rendering
37 professional services by its members who are health care providers as
38 defined by this subsection and who are legally authorized to render the
39 professional services for which the limited liability company is organized,
40 a partnership of persons who are health care providers under this
41 subsection, a Kansas not-for-profit corporation organized for the purpose
42 of rendering professional services by persons who are health care
43 providers as defined by this subsection, a nonprofit corporation organized

1 to administer the graduate medical education programs of community
2 hospitals or medical care facilities affiliated with the university of Kansas
3 school of medicine, a dentist certified by the state board of healing arts to
4 administer anesthetics under K.S.A. 65-2899, and amendments thereto, a
5 psychiatric hospital licensed *prior to January 1, 1988, and continuously*
6 *thereafter* under K.S.A. 75-3307b, and amendments thereto, or a mental
7 health center or mental health clinic licensed by the ~~secretary of social and~~
8 ~~rehabilitation services, except that health~~ *state of Kansas. On and after*
9 *January 1, 2015, "health care provider" also means a physician assistant*
10 *licensed by the state board of healing arts, a licensed professional nurse*
11 *who is authorized by the state board of nursing to practice as an advanced*
12 *practice registered nurse, a licensed professional nurse who has been*
13 *granted a temporary authorization by the state board of nursing to*
14 *practice as an advanced practice registered nurse, a nursing facility*
15 *licensed by the state of Kansas, an assisted living facility licensed by the*
16 *state of Kansas or a residential health care facility licensed by the state of*
17 *Kansas. "Health care provider" does not include: (1) Any state institution*
18 *for people with intellectual disability; (2) any state psychiatric hospital; (3)*
19 *any person holding an exempt license issued by the state board of healing*
20 *arts; ~~or~~ (4) any person holding a visiting clinical professor license from the*
21 *state board of healing arts; (5) any person holding an inactive license*
22 *issued by the state board of healing arts; (6) any person holding a*
23 *federally active license issued by the state board of healing arts; (7) an*
24 *advanced practice registered nurse who practices solely in the course of*
25 *employment or active duty in the United States government or any of its*
26 *departments, bureaus or agencies or who, in addition to such employment*
27 *or assignment, provides professional services as a charitable health care*
28 *provider as defined under K.S.A. 75-6102, and amendments thereto; or (8)*
29 *a physician assistant licensed by the state board of healing arts who*
30 *practices solely in the course of employment or active duty in the United*
31 *States government or any of its departments, bureaus or agencies or who,*
32 *in addition to such employment or assignment, provides professional*
33 *services as a charitable health care provider as defined under K.S.A. 75-*
34 *6102, and amendments thereto.*

35 (g) "Inactive health care provider" means a person or other entity who
36 purchased basic coverage or qualified as a self-insurer on or subsequent to
37 the effective date of this act but who, at the time a claim is made for
38 personal injury or death arising out of the rendering of or the failure to
39 render professional services by such health care provider, does not have
40 basic coverage or self-insurance in effect solely because such person is no
41 longer engaged in rendering professional service as a health care provider.

42 (h) "Insurer" means any corporation, association, reciprocal
43 exchange, inter-insurer and any other legal entity authorized to write

1 bodily injury or property damage liability insurance in this state, including
2 workers compensation and automobile liability insurance, pursuant to the
3 provisions of the acts contained in article 9, 11, 12 or 16 of chapter 40 of
4 Kansas Statutes Annotated, *and amendments thereto*.

5 (i) "Plan" means the operating and administrative rules and
6 procedures developed by insurers and rating organizations or the
7 commissioner to make professional liability insurance available to health
8 care providers.

9 (j) "Professional liability insurance" means insurance providing
10 coverage for legal liability arising out of the performance of professional
11 services rendered or which should have been rendered by a health care
12 provider.

13 (k) "Rating organization" means a corporation, an unincorporated
14 association, a partnership or an individual licensed pursuant to K.S.A. 40-
15 956, and amendments thereto, to make rates for professional liability
16 insurance.

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

19 (m) "Medical care facility" means the same when used in the health
20 care provider insurance availability act as the meaning ascribed to that
21 term in K.S.A. 65-425, and amendments thereto, except that as used in the
22 health care provider insurance availability act such term, as it relates to
23 insurance coverage under the health care provider insurance availability
24 act, also includes any director, trustee, officer or administrator of a medical
25 care facility.

26 (n) "Mental health center" means a mental health center licensed by
27 ~~the secretary of social and rehabilitation services~~ *state of Kansas* under
28 K.S.A. 75-3307b, and amendments thereto, except that as used in the
29 health care provider insurance availability act such term, as it relates to
30 insurance coverage under the health care provider insurance availability
31 act, also includes any director, trustee, officer or administrator of a mental
32 health center.

33 (o) "Mental health clinic" means a mental health clinic licensed by
34 ~~the secretary of social and rehabilitation services~~ *state of Kansas* under
35 K.S.A. 75-3307b, and amendments thereto, except that as used in the
36 health care provider insurance availability act such term, as it relates to
37 insurance coverage under the health care provider insurance availability
38 act, also includes any director, trustee, officer or administrator of a mental
39 health clinic.

40 (p) "State institution for people with intellectual disability" means
41 Winfield state hospital and training center, Parsons state hospital and
42 training center and the Kansas neurological institute.

43 (q) "State psychiatric hospital" means Larned state hospital,

1 Osawatomie state hospital and Rainbow mental health facility.

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

3 (1) A person engaged in a postgraduate training program approved by
4 the state board of healing arts who is employed by and is studying at the
5 university of Kansas medical center only when such person is engaged in
6 medical activities which do not include extracurricular, extra-institutional
7 medical service for which such person receives extra compensation and
8 which have not been approved by the dean of the school of medicine and
9 the executive vice-chancellor of the university of Kansas medical center.
10 Persons engaged in residency training shall be considered resident health
11 care providers for purposes of K.S.A. 40-3401 et seq., and amendments
12 thereto; and

13 (2) a person engaged in a postgraduate training program approved by
14 the state board of healing arts who is employed by a nonprofit corporation
15 organized to administer the graduate medical education programs of
16 community hospitals or medical care facilities affiliated with the university
17 of Kansas school of medicine or who is employed by an affiliate of the
18 university of Kansas school of medicine as defined in K.S.A. 76-367, and
19 amendments thereto, only when such person is engaged in medical
20 activities which do not include extracurricular, extra-institutional medical
21 service for which such person receives extra compensation and which have
22 not been approved by the chief operating officer of the nonprofit
23 corporation or the chief operating officer of the affiliate and the executive
24 vice-chancellor of the university of Kansas medical center.

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

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

31 (u) *"Board" means the board of governors created by K.S.A. 40-3403,*
32 *and amendments thereto.*

33 (v) *"Board of directors" means the governing board created by K.S.A.*
34 *40-3413, and amendments thereto.*

35 (w) *"Locum tenens contract" means a temporary agreement not*
36 *exceeding 182 days per calendar year that employs a health care provider*
37 *to actively render professional services in this state.*

38 (x) *"Professional services" means patient care or other services*
39 *authorized under the act governing licensure of a health care provider.*

40 Sec. 6. K.S.A. 40-3402 is hereby amended to read as follows: 40-
41 3402. (a) A policy of professional liability insurance approved by the
42 commissioner and issued by an insurer duly authorized to transact business
43 in this state in which the limit of the insurer's liability is not less than

1 \$200,000 per claim, subject to not less than a \$600,000 annual aggregate
2 for all claims made during the policy period, shall be maintained in effect
3 by each resident health care provider as a condition ~~to rendering~~ *of active*
4 *licensure or other statutory authorization to render* professional service as
5 a health care provider in this state, unless such health care provider is a
6 self-insurer. This provision shall not apply to optometrists and pharmacists
7 on or after July 1, 1991 nor to physical therapists on and after July 1, 1995
8 nor to health maintenance organizations on or after July 1, 1997. Such
9 policy shall provide as a minimum coverage for claims made during the
10 term of the policy which were incurred during the term of such policy or
11 during the prior term of a similar policy. Any insurer offering such policy
12 of professional liability insurance to any health care provider may offer to
13 such health care provider a policy as prescribed in this section with
14 deductible options. Such deductible shall be within such policy limits.

15 (1) Each insurer providing basic coverage shall, within 30 days after
16 ~~the premium for the basic coverage is received by the insurer or within 30~~
17 ~~days from the effective date of this act, whichever is later,~~ *effective date of*
18 *any policy issued in accordance with this subsection*, notify the board of
19 governors that such coverage is or will be in effect. Such notification shall
20 be on a form approved by the board of governors and shall include
21 information identifying the professional liability policy issued or to be
22 issued, the name and address of all health care providers covered by the
23 policy, the amount of the annual premium, the ~~inception~~ *effective* and
24 expiration dates of the coverage and such other information as the board of
25 governors shall require. A copy of the notice required by this subsection
26 shall be furnished the named insured.

27 (2) In the event of termination of basic coverage by cancellation,
28 nonrenewal, expiration or otherwise by either the insurer or named
29 insured, notice of such termination shall be furnished by the insurer to the
30 board of governors, the state agency which licenses, registers or certifies
31 the named insured and the named insured. Such notice shall be provided
32 no less than 30 days prior to the effective date of any termination initiated
33 by the insurer or within 10 *business* days after the date coverage is
34 terminated at the request of the named insured and shall include the name
35 and address of the health care provider or providers for whom basic
36 coverage is terminated and the date basic coverage will cease to be in
37 effect. No basic coverage shall be terminated by cancellation or failure to
38 renew by the insurer unless such insurer provides a notice of termination
39 as required by this subsection.

40 (3) Any professional liability insurance policy issued, delivered or in
41 effect in this state on and after July 1, 1976, shall contain or be endorsed to
42 provide basic coverage as required by subsection (a) of this section.
43 Notwithstanding any omitted or inconsistent language, any contract of

1 professional liability insurance shall be construed to obligate the insurer to
2 meet all the mandatory requirements and obligations of this act. The
3 liability of an insurer for claims made prior to July 1, 1984, shall not
4 exceed those limits of insurance provided by such policy prior to July 1,
5 1984.

6 (b) ~~Unless A nonresident health care provider is a self-insurer, such~~
7 ~~health care provider~~ shall not *be licensed to actively* render professional
8 service as a health care provider in this state unless such health care
9 provider maintains *continuous* coverage in effect as prescribed by
10 subsection (a), except such coverage may be provided by a nonadmitted
11 insurer who has filed the form required by subsection (b)(1). This
12 provision shall not apply to optometrists and pharmacists on or after July
13 1, 1991 nor to physical therapists on and after July 1, 1995.

14 (1) Every insurance company authorized to transact business in this
15 state, that is authorized to issue professional liability insurance in any
16 jurisdiction, shall file with the commissioner, as a condition of its
17 continued transaction of business within this state, a form prescribed by
18 the commissioner declaring that its professional liability insurance
19 policies, wherever issued, shall be deemed to provide at least the insurance
20 required by this subsection when the insured is rendering professional
21 services as a nonresident health care provider in this state. Any
22 nonadmitted insurer may file such a form.

23 (2) Every nonresident health care provider who is required to
24 maintain basic coverage pursuant to this subsection shall pay the surcharge
25 levied by the board of governors pursuant to subsection (a) of K.S.A. 40-
26 3404, and amendments thereto, directly to the board of governors and shall
27 furnish to the board of governors the information required in subsection (a)
28 (1).

29 (c) Every health care provider that is a self-insurer, the university of
30 Kansas medical center for persons engaged in residency training, as
31 described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto,
32 the employers of persons engaged in residency training, as described in
33 subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, the private
34 practice corporations or foundations and their full-time physician faculty
35 employed by the university of Kansas medical center or a medical care
36 facility or mental health center for self-insurers under subsection (e) of
37 K.S.A. 40-3414, and amendments thereto, shall pay the surcharge levied
38 by the board of governors pursuant to subsection (a) of K.S.A. 40-3404,
39 and amendments thereto, directly to the board of governors and shall
40 furnish to the board of governors the information required in subsection (a)
41 (1) and (a)(2).

42 (d) In lieu of a claims made policy otherwise required under this
43 section, a person engaged in residency training who is providing services

1 as a health care provider but while providing such services is not covered
2 by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and
3 amendments thereto, may obtain basic coverage under an occurrence form
4 policy if such policy provides professional liability insurance coverage and
5 limits which are substantially the same as the professional liability
6 insurance coverage and limits required by subsection (a) of K.S.A. 40-
7 3402, and amendments thereto. Where such occurrence form policy is in
8 effect, the provisions of the health care provider insurance availability act
9 referring to claims made policies shall be construed to mean occurrence
10 form policies.

11 *(e) In lieu of a claims made policy otherwise required under this*
12 *section, a nonresident health care provider employed pursuant to a locum*
13 *tenens contract to provide services in this state as a health care provider*
14 *may obtain basic coverage under an occurrence form policy if such policy*
15 *provides professional liability insurance coverage and limits which are*
16 *substantially the same as the professional liability insurance coverage and*
17 *limits required by K.S.A. 40-3402, and amendments thereto. Where such*
18 *occurrence form policy is in effect, the provisions of the health care*
19 *provider insurance availability act referring to claims made policies shall*
20 *be construed to mean occurrence form policies.*

21 Sec. 7. K.S.A. 2013 Supp. 40-3403 is hereby amended to read as
22 follows: 40-3403. (a) For the purpose of paying damages for personal
23 injury or death arising out of the rendering of or the failure to render
24 professional services by a health care provider, self-insurer or inactive
25 health care provider subsequent to the time that such health care provider
26 or self-insurer has qualified for coverage under the provisions of this act,
27 there is hereby established the health care stabilization fund. The fund
28 shall be held in trust in the state treasury and accounted for separately from
29 other state funds. The board of governors shall administer the fund or
30 contract for the administration of the fund with an insurance company
31 authorized to do business in this state.

32 (b) (1) There is hereby created a board of governors which shall be
33 composed of such members and shall have such powers, duties and
34 functions as are prescribed by this act. The board of governors shall:

35 (A) Administer the fund and exercise and perform other powers,
36 duties and functions required of the board under the health care provider
37 insurance availability act;

38 (B) provide advice, information and testimony to the appropriate
39 licensing or disciplinary authority regarding the qualifications of a health
40 care provider;

41 (C) prepare and publish, on or before October 1 of each year, a
42 summary of the fund's activity during the preceding fiscal year, including
43 but not limited to the amount collected from surcharges, the highest and

1 lowest surcharges assessed, the amount paid from the fund, the number of
2 judgments paid from the fund, the number of settlements paid from the
3 fund and the amount in the fund at the end of the fiscal year; and

4 (D) have the authority to grant *temporary* exemptions from the
5 provisions of ~~subsection (m) of this section when a health care provider~~
6 ~~temporarily leaves the state for the purpose of obtaining additional~~
7 ~~education or training or to participate in religious, humanitarian or~~
8 ~~government service programs. Whenever a health care provider has~~
9 ~~previously left the state for one of the reasons specified in this paragraph~~
10 ~~and returns to the state and recommences practice, the board of governors~~
11 ~~may refund any amount paid by the health care provider pursuant to~~
12 ~~subsection (m) of this section if no claims have been filed against such~~
13 ~~health care provider during the provider's temporary absence from the state~~
14 *K.S.A. 40-3402 and 40-3404, and amendments thereto, to health care*
15 *providers who have exceptional circumstances and verify in writing that*
16 *the health care provider will not render professional services in this state*
17 *during the period of exemption. Whenever the board grants such an*
18 *exemption, the board shall notify the state agency which licenses the*
19 *exempted health care provider.*

20 (2) The board shall consist of ~~10~~ 11 persons appointed by the
21 commissioner of insurance, as provided by this subsection (b) and as
22 follows:

23 (A) Three members who are licensed to practice medicine and
24 surgery in Kansas who are doctors of medicine and who are on a list of
25 nominees submitted to the commissioner by the Kansas medical society;

26 (B) three members who are representatives of Kansas hospitals and
27 who are on a list of nominees submitted to the commissioner by the
28 Kansas hospital association;

29 (C) two members who are licensed to practice medicine and surgery
30 in Kansas who are doctors of osteopathic medicine and who are on a list of
31 nominees submitted to the commissioner by the Kansas association of
32 osteopathic medicine;

33 (D) one member who is licensed to practice chiropractic in Kansas
34 and who is on a list of nominees submitted to the commissioner by the
35 Kansas chiropractic association;

36 (E) one member who is a licensed professional nurse authorized to
37 practice as a registered nurse anesthetist who is on a list of nominees
38 submitted to the commissioner by the Kansas association of nurse
39 anesthetists.

40 (F) *one member who is a representative of adult care homes who is*
41 *on a list of nominees submitted to the commissioner by statewide*
42 *associations comprised of members who represent adult care homes.*

43 (3) When a vacancy occurs in the membership of the board of

1 governors created by this act, the commissioner shall appoint a successor
2 of like qualifications from a list of three nominees submitted to the
3 commissioner by the professional society or association prescribed by this
4 section for the category of health care provider required for the vacant
5 position on the board of governors. All appointments made shall be for a
6 term of office of four years, but no member shall be appointed for more
7 than two successive four-year terms. Each member shall serve until a
8 successor is appointed and qualified. Whenever a vacancy occurs in the
9 membership of the board of governors created by this act for any reason
10 other than the expiration of a member's term of office, the commissioner
11 shall appoint a successor of like qualifications to fill the unexpired term. In
12 each case of a vacancy occurring in the membership of the board of
13 governors, the commissioner shall notify the professional society or
14 association which represents the category of health care provider required
15 for the vacant position and request a list of three nominations of health
16 care providers from which to make the appointment.

17 (4) The board of governors shall organize ~~on~~ in July ~~+~~ of each year
18 and shall elect a chairperson and vice-chairperson from among its
19 membership. Meetings shall be called by the chairperson or by a written
20 notice signed by three members of the board.

21 (5) The board of governors, in addition to other duties imposed by
22 this act, shall study and evaluate the operation of the fund and make such
23 recommendations to the legislature as may be appropriate to ensure the
24 viability of the fund.

25 (6) (A) The board shall appoint an executive director who shall be in
26 the unclassified service under the Kansas civil service act and may ~~appoint~~
27 ~~such~~ *employ* attorneys, legal assistants, claims managers and compliance
28 ~~auditors and other employees~~ who shall also be in the unclassified service
29 under the Kansas civil service act. Such executive director, attorneys, legal
30 ~~assistants, claims managers and compliance auditors and other employees~~
31 shall receive compensation fixed by the board, in accordance with
32 appropriation acts of the legislature, not subject to approval of the
33 governor.

34 (B) The board may ~~appoint such additional employees, and~~ provide
35 all office space, services, equipment, materials and supplies, and all
36 budgeting, personnel, purchasing and related management functions
37 required by the board in the exercise of the powers, duties and functions
38 imposed or authorized by the health care provider insurance availability
39 act or may enter into a contract with the commissioner of insurance for the
40 provision, by the commissioner, of all or any part thereof.

41 (7) The commissioner shall:

42 (A) Provide technical and administrative assistance to the board of
43 governors with respect to administration of the fund upon request of the

1 board;

2 (B) provide such expertise as the board may reasonably request with
3 respect to evaluation of claims or potential claims.

4 (c) ~~Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), (p) and~~
5 ~~(q)~~, *Except as otherwise provided by any other provision of this act*, the
6 fund shall be liable to pay: (1) Any amount due from a judgment or
7 settlement which is in excess of the basic coverage liability of all liable
8 resident health care providers or resident self-insurers for any personal
9 injury or death arising out of the rendering of or the failure to render
10 professional services within or without this state;

11 (2) subject to the provisions of ~~subsection~~ *subsections (f) and (m)*,
12 any amount due from a judgment or settlement which is in excess of the
13 basic coverage liability of all liable nonresident health care providers or
14 nonresident self-insurers for any such injury or death arising out of the
15 rendering or the failure to render professional services within this state but
16 in no event shall the fund be obligated for claims against nonresident
17 health care providers or nonresident self-insurers who have not complied
18 with this act or for claims against nonresident health care providers or
19 nonresident self-insurers that arose outside of this state;

20 (3) subject to the provisions of ~~subsection~~ *subsections (f) and (m)*,
21 any amount due from a judgment or settlement against a resident inactive
22 health care provider, ~~an optometrist or pharmacist who purchased coverage~~
23 ~~pursuant to subsection (n) or a physical therapist who purchased coverage~~
24 ~~pursuant to subsection (o)~~; for any such injury or death arising out of the
25 rendering of or failure to render professional services;

26 (4) subject to the provisions of ~~subsection~~ *subsections (f) and (m)*,
27 any amount due from a judgment or settlement against a nonresident
28 inactive health care provider, ~~an optometrist or pharmacist who purchased~~
29 ~~coverage pursuant to subsection (n) or a physical therapist who purchased~~
30 ~~coverage pursuant to subsection (o)~~; for any injury or death arising out of
31 the rendering or failure to render professional services within this state, but
32 in no event shall the fund be obligated for claims against: (A) Nonresident
33 inactive health care providers who have not complied with this act; or (B)
34 nonresident inactive health care providers for claims that arose outside of
35 this state, unless such health care provider was a resident health care
36 provider or resident self-insurer at the time such act occurred;

37 (5) subject to subsection (b) of K.S.A. 40-3411, and amendments
38 thereto, reasonable and necessary expenses for attorney fees, *depositions,*
39 *expert witnesses and other costs* incurred in defending the fund against
40 claims, *which expenditures shall not be subject to the provisions of K.S.A.*
41 *75-3738 through 75-3744, and amendments thereto*;

42 (6) any amounts expended for reinsurance obtained to protect the best
43 interests of the fund purchased by the board of governors, which purchase

1 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
2 amendments thereto, but shall not be subject to the provisions of K.S.A.
3 75-4101, and amendments thereto;

4 (7) reasonable and necessary actuarial expenses incurred in
5 administering the act, including expenses for any actuarial studies
6 contracted for by the legislative coordinating council, which expenditures
7 shall not be subject to the provisions of K.S.A. 75-3738 through 75-3744,
8 and amendments thereto;

9 (8) periodically to the plan or plans, any amount due pursuant to
10 subsection (a)(3) of K.S.A. 40-3413, and amendments thereto;

11 (9) reasonable and necessary expenses incurred by the board of
12 governors in the administration of the fund or in the performance of other
13 powers, duties or functions of the board under the health care provider
14 insurance availability act;

15 (10) ~~return of any unearned~~ surcharge *refunds payable when the*
16 *notice of cancellation requirements of K.S.A. 40-3402, and amendments*
17 *thereto, are met;*

18 (11) subject to subsection (b) of K.S.A. 40-3411, and amendments
19 thereto, reasonable and necessary expenses for attorney fees and other
20 costs incurred in defending a person engaged or who was engaged in
21 residency training or the private practice corporations or foundations and
22 their full-time physician faculty employed by the university of Kansas
23 medical center or any nonprofit corporation organized to administer the
24 graduate medical education programs of community hospitals or medical
25 care facilities affiliated with the university of Kansas school of medicine
26 from claims for personal injury or death arising out of the rendering of or
27 the failure to render professional services by such health care provider;

28 (12) notwithstanding the provisions of subsection (m), any amount
29 due from a judgment or settlement for an injury or death arising out of the
30 rendering of or failure to render professional services by a person engaged
31 or who was engaged in residency training or the private practice
32 corporations or foundations and their full-time physician faculty employed
33 by the university of Kansas medical center or any nonprofit corporation
34 organized to administer the graduate medical education programs of
35 community hospitals or medical care facilities affiliated with the university
36 of Kansas school of medicine;

37 (13) subject to the provisions of K.S.A. 65-429, and amendments
38 thereto, reasonable and necessary expenses for the development and
39 promotion of risk management education programs and for the medical
40 care facility licensure and risk management survey functions carried out
41 under K.S.A. 65-429, and amendments thereto;

42 (14) notwithstanding the provisions of subsection (m), any amount,
43 but not less than the required basic coverage limits, owed pursuant to a

1 judgment or settlement for any injury or death arising out of the rendering
2 of or failure to render professional services by a person, other than a
3 person described in ~~clause~~ *paragraph* (12) of this subsection (c), who was
4 engaged in a postgraduate program of residency training approved by the
5 state board of healing arts but who, at the time the claim was made, was no
6 longer engaged in such residency program;

7 (15) subject to subsection (b) of K.S.A. 40-3411, and amendments
8 thereto, reasonable and necessary expenses for attorney fees and other
9 costs incurred in defending a person described in ~~clause~~ *paragraph* (14) of
10 this subsection (c);

11 (16) expenses incurred by the commissioner in the performance of
12 duties and functions imposed upon the commissioner by the health care
13 provider insurance availability act, and expenses incurred by the
14 commissioner in the performance of duties and functions under contracts
15 entered into between the board and the commissioner as authorized by this
16 section; and

17 (17) periodically to the state general fund reimbursements of amounts
18 paid to members of the health care stabilization fund oversight committee
19 for compensation, travel expenses and subsistence expenses pursuant to
20 subsection (e) of K.S.A. 40-3403b, and amendments thereto.

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

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

37 (f) ~~The fund shall not~~ *In no event shall the fund* be liable to pay in
38 excess of the amounts specified in the option selected by ~~the~~ *an active or*
39 *inactive* health care provider pursuant to subsection (l) for judgments or
40 settlements relating to injury or death arising out of the rendering of or
41 failure to render professional services by such health care provider on or
42 after July 1, 1989.

43 (g) A health care provider shall be deemed to have qualified for

1 coverage under the fund:

2 (1) On and after July 1, 1976, if basic coverage is then in effect;

3 (2) subsequent to July 1, 1976, at such time as basic coverage
4 becomes effective; or

5 (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414, and
6 amendments thereto.

7 (h) A health care provider who is qualified for coverage under the
8 fund shall have no vicarious liability or responsibility for any injury or
9 death arising out of the rendering of or the failure to render professional
10 services inside or outside this state by any other health care provider who
11 is also qualified for coverage under the fund. The provisions of this
12 subsection shall apply to all claims filed on or after July 1, 1986.

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

29 (j) (1) Subject to the provisions of paragraph (7) of this subsection (j),
30 upon the payment of moneys from the health care stabilization fund
31 pursuant to subsection (c)(11), the board of governors shall certify to the
32 ~~director of accounts and reports~~ *secretary of administration* the amount of
33 such payment, and the ~~director of accounts and reports~~ *secretary of*
34 *administration* shall transfer an amount equal to the amount certified,
35 reduced by any amount transferred pursuant to paragraph (3) or (4) of this
36 subsection (j), from the state general fund to the health care stabilization
37 fund.

38 (2) Subject to the provisions of paragraph (7) of this subsection (j),
39 upon the payment of moneys from the health care stabilization fund
40 pursuant to subsection (c)(12), the board of governors shall certify to the
41 ~~director of accounts and reports~~ *secretary of administration* the amount of
42 such payment which is equal to the basic coverage liability of self-
43 insurers, and the ~~director of accounts and reports~~ *secretary of*

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

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

30 (4) The graduate medical education administration reserve fund is
31 hereby established in the state treasury. If the balance in such reserve fund
32 is less than \$40,000 on July 1 of any year, the nonprofit corporations
33 organized to administer the graduate medical education programs of
34 community hospitals or medical care facilities affiliated with the university
35 of Kansas school of medicine shall remit the amount necessary to increase
36 such balance to \$40,000 to the state treasurer for credit to such reserve
37 fund as soon after such July 1 date as is practicable. Upon receipt of each
38 such remittance, the state treasurer shall credit the same to such reserve
39 fund. When compliance with the foregoing provisions of this paragraph
40 have been achieved on or after July 1 of any year in which the same are
41 applicable, the state treasurer shall certify to the board of governors that
42 such reserve fund has been funded for the year in the manner required by
43 law. Moneys in such reserve fund may be invested or reinvested in

1 accordance with the provisions of K.S.A. 40-3406, and amendments
2 thereto, and any income or interest earned by such investments shall be
3 credited to such reserve fund. Upon payment of moneys from the health
4 care stabilization fund pursuant to subsection (c)(11) or (c)(12) with
5 respect to any nonprofit corporations organized to administer the graduate
6 medical education programs of community hospitals or medical care
7 facilities affiliated with the university of Kansas school of medicine the
8 ~~director of accounts and reports~~ *secretary of administration* shall transfer
9 an amount equal to the amount paid from the graduate medical education
10 administration reserve fund to the health care stabilization fund or, if the
11 balance in such reserve fund is less than the amount so paid, an amount
12 equal to the balance in such reserve fund.

13 (5) Upon payment of moneys from the health care stabilization fund
14 pursuant to subsection (c)(14) or (c)(15), the board of governors shall
15 certify to the ~~director of accounts and reports~~ *secretary of administration*
16 the amount of such payment, and the ~~director of accounts and reports~~
17 *secretary of administration* shall transfer an amount equal to the amount
18 certified from the state general fund to the health care stabilization fund.

19 (6) Transfers from the state general fund to the health care
20 stabilization fund pursuant to subsection (j) shall not be subject to the
21 provisions of K.S.A. 75-3722, and amendments thereto.

22 (7) The funds required to be transferred from the state general fund to
23 the health care stabilization fund pursuant to paragraphs (1) and (2) of this
24 subsection (j) for the fiscal years ending June 30, 2010, June 30, 2011,
25 June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1,
26 2013. The ~~director of accounts and reports~~ *secretary of administration*
27 shall maintain a record of the amounts certified by the board of governors
28 pursuant to paragraphs (1) and (2) of this subsection (j) for the fiscal years
29 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.
30 Beginning July 1, 2013, in addition to any other transfers required
31 pursuant to subsection (j), the state general fund transfers which are
32 deferred pursuant to this paragraph shall be transferred from the state
33 general fund to the health care stabilization fund in the following manner:
34 On July 1, 2013, and annually thereafter through July 1, 2017, an amount
35 equal to 20% of the total amount of state general fund transfers deferred
36 pursuant to this paragraph for the fiscal years ending June 30, 2010, June
37 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred
38 pursuant to this paragraph shall not accrue interest thereon.

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

1 prior to January 1, 1988.

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

32 (1) *OPTION 1.* The fund shall not be liable to pay in excess of
33 \$100,000 pursuant to any one judgment or settlement for any party against
34 such health care provider, subject to an aggregate limitation for all
35 judgments or settlements arising from all claims made in the fiscal year in
36 an amount of \$300,000 for such provider.

37 (2) *OPTION 2.* The fund shall not be liable to pay in excess of
38 \$300,000 pursuant to any one judgment or settlement for any party against
39 such health care provider, subject to an aggregate limitation for all
40 judgments or settlements arising from all claims made in the fiscal year in
41 an amount of \$900,000 for such provider.

42 (3) *OPTION 3.* The fund shall not be liable to pay in excess of
43 \$800,000 pursuant to any one judgment or settlement for any party against

1 such health care provider, subject to an aggregate limitation for all
2 judgments or settlements arising from all claims made in the fiscal year in
3 an amount of \$2,400,000 for such health care provider.

4 (m) The fund shall not be liable for any amounts due from a judgment
5 or settlement against resident or nonresident inactive health care providers
6 who first qualify as an inactive health care provider on or after July 1,
7 1989, unless such health care provider has been in compliance with K.S.A.
8 40-3402, and amendments thereto, for a period of not less than five years.
9 If a health care provider has not been in compliance for five years, such
10 health care provider may make application and payment for the coverage
11 for the period while they are nonresident health care providers, nonresident
12 self-insurers or resident or nonresident inactive health care providers to the
13 fund. Such payment shall be made within 30 days after the health care
14 provider ceases being an active health care provider and shall be made in
15 an amount determined by the board of governors to be sufficient to fund
16 anticipated claims based upon reasonably prudent actuarial principles. The
17 provisions of this subsection shall not be applicable to any health care
18 provider which becomes inactive through death or retirement, or through
19 disability or circumstances beyond such health care provider's control, if
20 such health care provider notifies the board of governors and receives
21 approval for an exemption from the provisions of this subsection. Any
22 period spent in a postgraduate program of residency training approved by
23 the state board of healing arts shall not be included in computation of time
24 spent in compliance with the provisions of K.S.A. 40-3402, and
25 amendments thereto. *The provisions of this subsection shall expire on July*
26 *1, 2014.*

27 (n) ~~Notwithstanding the provisions of subsection (m) or any other~~
28 ~~provision in article 34 of chapter 40 of the Kansas Statutes Annotated to~~
29 ~~the contrary, the fund shall not be liable for any claim made on or after~~
30 ~~July 1, 1991, against a licensed optometrist or pharmacist relating to any~~
31 ~~injury or death arising out of the rendering of or failure to render~~
32 ~~professional services by such optometrist or pharmacist prior to July 1,~~
33 ~~1991, unless such optometrist or pharmacist qualified as an inactive health~~
34 ~~care provider prior to July 1, 1991~~ *In the event of a claim against a health*
35 *care provider for personal injury or death arising out of the rendering of*
36 *or the failure to render professional services by such health care provider,*
37 *the liability of the fund shall be limited to the amount of coverage selected*
38 *by the health care provider at the time of the incident giving rise to the*
39 *claim.*

40 (o) ~~Notwithstanding the provisions of subsection (m) or any other~~
41 ~~provision in article 34 of chapter 40 of the Kansas Statutes Annotated to~~
42 ~~the contrary, the fund shall not be liable for any claim made on or after~~
43 ~~July 1, 1995, against a physical therapist registered by the state board of~~

1 healing arts relating to any injury or death arising out of the rendering of
2 or failure to render professional services by such physical therapist prior to
3 July 1, 1995, unless such physical therapist qualified as an inactive health
4 care provider prior to July 1, 1995.

5 ~~(p) Notwithstanding the provisions of subsection (m) or any other~~
6 ~~provision in article 34 of chapter 40 of the Kansas Statutes Annotated to~~
7 ~~the contrary, the fund shall not be liable for any claim made on or after~~
8 ~~July 1, 1997, against a health maintenance organization relating to any~~
9 ~~injury or death arising out of the rendering of or failure to render~~
10 ~~professional services by such health maintenance organization prior to July~~
11 ~~1, 1997, unless such health maintenance organization qualified as an~~
12 ~~inactive health care provider prior to July 1, 1997, and obtained coverage~~
13 ~~pursuant to subsection (m). Health maintenance organizations not qualified~~
14 ~~as inactive health care providers prior to July 1, 1997, may purchase~~
15 ~~coverage from the fund for periods of prior compliance by making~~
16 ~~application prior to August 1, 1997, and payment within 30 days from~~
17 ~~notice of the calculated amount as determined by the board of governors to~~
18 ~~be sufficient to fund anticipated claims based on reasonably prudent~~
19 ~~actuarial principles.~~

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

29 Sec. 8. K.S.A. 40-3403a is hereby amended to read as follows: 40-
30 3403a. Any health care provider whose fund coverage has been terminated
31 under subsection (i) of K.S.A. 40-3403 ,and amendments thereto, shall, as
32 a condition of licensure, maintain *continuous* professional liability
33 insurance coverage equivalent to that provided by the fund and shall
34 submit to the board of governors satisfactory proof of such coverage, as
35 required by the ~~commissioner~~ *board*.

36 Sec. 9. K.S.A. 40-3403b is hereby amended to read as follows: 40-
37 3403b. (a) There is hereby created a health care stabilization fund
38 oversight committee to consist of eleven members, one of whom shall be
39 the chairperson of the board of governors or another member of the board
40 of governors designated by the chairperson, one of whom shall be
41 appointed by the president of the state senate, one of whom shall be
42 appointed by the minority leader of the state senate, one of whom shall be
43 appointed by the speaker of the state house of representatives, one of

1 whom shall be appointed by the minority leader of the state house of
2 representatives and six of whom shall be persons appointed by the
3 legislative coordinating council. The four members appointed by the
4 president and minority leader of the state senate and the speaker and
5 minority leader of the state house of representatives shall be members of
6 the state legislature. Of the six members appointed by the legislative
7 coordinating council, four shall either be health care providers or be
8 employed by health care providers, one shall be a representative of the
9 insurance industry and one shall be appointed from the public at large who
10 is not affiliated with any health care provider or the insurance industry, but
11 none of such six members shall be members of the state legislature.
12 Members serving on the committee on July 1, ~~1994~~ 2014, shall continue to
13 serve at the pleasure of the appointing authority.

14 (b) The legislative coordinating council shall designate a chairperson
15 of the committee from among the members thereof. The committee shall
16 meet upon the call of the chairperson. It shall be the responsibility of the
17 committee to make an annual report to the legislative coordinating council
18 on or before ~~September~~ January 1 of each year and to perform such
19 additional duties as the legislative coordinating council shall direct. The
20 report required to be made to the legislative coordinating council shall
21 include recommendations to the legislature on the advisability of
22 continuation or termination of the fund or any provisions of this act, an
23 analysis of the market for insurance for health care providers,
24 recommendations on ways to reduce claim and operational costs of the
25 fund, and legislation necessary to implement recommendations of the
26 committee.

27 (c) The board of governors shall provide any consulting actuarial firm
28 contracting with the legislative coordinating council with such information
29 or materials pertaining to the health care stabilization fund deemed
30 necessary by the actuarial firm for performing the requirements of any
31 actuarial reviews for the health care stabilization fund oversight committee
32 notwithstanding any confidentiality prohibition, restriction or limitation
33 imposed on such information or materials by any other law. The
34 consulting actuarial firm and all employees and former employees thereof
35 shall be subject to the same duty of confidentiality imposed by law on
36 other persons or state agencies with regard to information and materials so
37 provided and shall be subject to any civil or criminal penalties imposed by
38 law for violations of such duty of confidentiality. Any reports of the
39 consulting actuarial firm shall be made in a manner which will not reveal
40 directly or indirectly the name of any persons or entities or individual
41 reserve information involved in claims or actions for damages for personal
42 injury or loss due to error, omission or negligence in the performance of
43 professional services by health care providers. Information provided to the

1 actuary shall not be subject to discovery, subpoena or other means of legal
2 compulsion in any civil proceedings and shall be returned by the actuary to
3 the health care stabilization fund.

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

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

12 (f) This section shall be a part of and supplemental to the health care
13 provider insurance availability act.

14 Sec. 10. K.S.A. 2013 Supp. 40-3404 is hereby amended to read as
15 follows: 40-3404. (a) Except for any health care provider whose
16 participation in the fund has been terminated pursuant to subsection (i) of
17 K.S.A. 40-3403, and amendments thereto, the board of governors shall
18 levy an annual premium surcharge on each health care provider who has
19 obtained basic coverage and upon each self-insurer for each year. This
20 provision shall not apply to optometrists and pharmacists on or after July
21 1, 1991, nor to physical therapists on or after July 1, 1995, nor to health
22 maintenance organizations on and after July 1, 1997. Such premium
23 surcharge shall be an amount based upon a rating classification system
24 established by the board of governors which is reasonable, adequate and
25 not unfairly discriminating. The annual premium surcharge upon the
26 university of Kansas medical center for persons engaged in residency
27 training, as described in paragraph (1) of subsection (r) of K.S.A. 40-3401,
28 and amendments thereto, shall be based on an assumed aggregate premium
29 of \$600,000. The annual premium surcharge upon the employers of
30 persons engaged in residency training, as described in paragraph (2) of
31 subsection (r) of K.S.A. 40-3401, and amendments thereto, shall be based
32 on an assumed aggregate premium of \$400,000. The surcharge on such
33 \$400,000 amount shall be apportioned among the employers of persons
34 engaged in residency training, as described in paragraph (2) of subsection
35 (r) of K.S.A. 40-3401, and amendments thereto, based on the number of
36 residents employed as of July 1 of each year. The annual premium
37 surcharge upon any nonprofit corporation organized to administer the
38 graduate medical education programs of community hospitals or medical
39 care facilities affiliated with the university of Kansas school of medicine
40 shall be based upon an assumed aggregate premium of \$10,000. The
41 surcharge on such assumed aggregate premium shall be apportioned
42 among all such nonprofit corporations.

43 (b) In the case of a resident health care provider who is not a self-

1 insurer, the premium surcharge shall be collected in addition to the annual
2 premium for the basic coverage by the insurer and shall not be subject to
3 the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and
4 amendments thereto. The amount of the premium surcharge shall be
5 shown separately on the policy or an endorsement thereto and shall be
6 specifically identified as such. Such premium surcharge shall be due and
7 payable by the insurer to the board of governors within 30 days after the
8 annual premium for the basic coverage is received by the insurer, ~~but in~~
9 ~~the event basic coverage is in effect at the time this act becomes effective,~~
10 ~~such surcharge shall be based upon the unearned premium until policy~~
11 ~~expiration and annually thereafter.~~ Within 15 days immediately following
12 the effective date of this act, the board of governors shall send to each
13 insurer information necessary for their compliance with this subsection.
14 The certificate of authority of any insurer who fails to comply with the
15 provisions of this subsection shall be suspended pursuant to K.S.A. 40-
16 222, and amendments thereto, until such insurer shall pay the annual
17 premium surcharge due and payable to the board of governors. In the case
18 of a nonresident health care provider or a self-insurer, the premium
19 surcharge shall be collected ~~in the manner prescribed in~~ *paid upon*
20 *submitting documentation of compliance with* K.S.A. 40-3402, and
21 amendments thereto.

22 (c) In setting the amount of such surcharge, the board of governors
23 may require any health care provider who has paid a surcharge for less
24 than 24 months to pay a higher surcharge than other health care providers.

25 Sec. 11. K.S.A. 40-3407 is hereby amended to read as follows: 40-
26 3407. (a) Except for investment purposes, all payments from the fund shall
27 be upon warrants of the ~~director of accounts and reports~~ *state of Kansas*
28 ~~issued pursuant to vouchers approved by the chairperson of the board of~~
29 ~~governors, or the chairperson's executive director or the executive~~
30 ~~director's~~ *designee*, and, with respect to claim payments, accompanied by:
31 (1) A ~~certified~~ *file stamped* copy of a final judgment against a health care
32 provider or inactive health care provider for which the fund is liable; or (2)
33 a ~~certified~~ *file stamped* copy of a court approved settlement against a
34 health care provider or inactive health care provider for which the fund is
35 liable.

36 (b) For investment purposes amounts shall be paid from the fund
37 upon vouchers approved by the chairperson of the pooled money
38 investment board.

39 Sec. 12. K.S.A. 40-3408 is hereby amended to read as follows: 40-
40 3408. (a) The insurer of a health care provider covered by the fund or self-
41 insurer shall be liable only for the first \$200,000 of a claim for personal
42 injury or death arising out of the rendering of or the failure to render
43 professional services by such health care provider, subject to an annual

1 aggregate of \$600,000 for all such claims against the health care provider.
2 However, if any liability insurance in excess of such amounts is applicable
3 to any claim or would be applicable in the absence of this act, any
4 payments from the fund shall be excess over such amounts paid, payable
5 or that would have been payable in the absence of this act. ~~The liability of~~
6 ~~an insurer for claims made prior to July 1, 1984, shall not exceed those~~
7 ~~limits of insurance provided by such policy prior to July 1, 1984.~~

8 (b) If any inactive health care provider has liability insurance in effect
9 which is applicable to any claim or would be applicable in the absence of
10 this act, any payments from the fund shall be excess over such amounts
11 paid, payable or that would have been payable in the absence of this act.

12 (c) Notwithstanding anything in article 34 of chapter 40 of the Kansas
13 Statutes Annotated, *and amendments thereto*, to the contrary, an insurer
14 that provides coverage to a health care provider may exclude from
15 coverage any liability incurred by such provider:

16 (1) From the rendering of or the failure to render professional
17 services by any other health care provider who is required by K.S.A. 40-
18 3402, and amendments thereto, to maintain professional liability insurance
19 in effect as a condition to rendering professional services as a health care
20 provider in this state; or

21 (2) based upon or relating to the health care provider's sexual acts or
22 activity, but in such cases the insurer may provide reasonable and
23 necessary expenses for attorney fees incurred in defending against such
24 claim. The insurer may recover all or a portion of such expenses for
25 attorney fees if an adverse judgment is returned against the health care
26 provider for damages resulting from the health care provider's sexual acts
27 or activity.

28 (d) *The fund shall not be liable for payment of any claim excluded by*
29 *an insurer pursuant to this section or any claim otherwise excluded from*
30 *coverage under a health care provider's professional liability insurance.*

31 Sec. 13. K.S.A. 40-3411 is hereby amended to read as follows: 40-
32 3411. (a) In any claim in which the insurer of a health care provider or
33 inactive health care provider covered by the fund has agreed to settle its
34 liability on a claim against its insured or when the self-insurer has agreed
35 to settle liability on a claim and the claimant's demand is in an amount in
36 excess of such settlement, to which the board of governors does not agree,
37 or where the claim is against an inactive health care provider covered by
38 the fund who does not have liability insurance in effect which is applicable
39 to the claim and the claimant and board of governors cannot agree upon a
40 settlement, an action must be commenced by the claimant against the
41 health care provider or inactive health care provider in a court of
42 appropriate jurisdiction for such damages as are reasonable in the
43 premises. If an action is already pending against the health care provider

1 or inactive health care provider, the pending action shall be conducted in
2 all respects as if the insurer or self-insurer had not agreed to settle.

3 (b) Any such action against a health care provider covered by the
4 fund or inactive health care provider covered by the fund who has liability
5 insurance in effect which is applicable to the claim shall be defended by
6 the insurer or self-insurer in all respects as if the insurer or self-insurer had
7 not agreed to settle its liability. Notwithstanding any other provision of
8 law, the insurer or self-insurer shall be reimbursed from the fund for the
9 costs of such defense incurred after the settlement agreement was reached,
10 including a reasonable attorney's fee not to exceed the maximum hourly
11 rate established by the board of governors. The board of governors is
12 authorized to employ independent counsel in any such action against a
13 health care provider or an inactive health care provider covered by the
14 fund. If the primary carrier or self-insurer determines that the policy limits
15 or the self-insured amount of basic coverage should be tendered to the
16 fund in order to relieve itself of further costs of defense, it may do so in the
17 manner specified by the board of governors. In the event of such a tender,
18 the fund shall become responsible for the conduct of the defense. The
19 board of governors may employ the attorney retained by the primary
20 carrier or self-insurer or appoint other counsel to represent such health care
21 provider. In any event, the board of governors shall pay attorneys' fees at a
22 rate not to exceed the maximum hourly rate established by the board of
23 governors. Under such circumstances, the fund shall have no liability for
24 attorneys' fees to any attorney not so appointed.

25 (c) In any such action the health care provider or the inactive health
26 care provider against whom claim is made shall be obligated to attend
27 hearings and trials, as necessary, and to give evidence.

28 ~~(d) The costs of the action shall be assessed against the fund if the~~
29 ~~recovery is in excess of the amount offered by the board of governors to~~
30 ~~settle the case and against the claimant if the recovery is less than such~~
31 ~~amount.~~

32 Sec. 14. K.S.A. 40-3412 is hereby amended to read as follows: 40-
33 3412. (a) Any action for personal injury or death arising out of the
34 rendering of or the failure to render professional services by any health
35 care provider or inactive health care provider shall be maintained against
36 such health care provider or inactive health care provider. No claimant
37 shall have any right of action directly against the fund. No claimant shall
38 have any right of action under this act directly against an insurer.

39 (b) Evidence that a portion of any verdict would be payable from
40 insurance or the fund shall be inadmissible in any such action.

41 (c) Nothing ~~herein~~ *in this act* shall be construed to impose any
42 liability in the fund in excess of that specifically provided for ~~herein~~ *in this*
43 *act* for negligent failure to settle a claim or for failure to settle a claim in

1 good faith.

2 (d) The fund shall have no obligations whatsoever for payment for
3 punitive damages.

4 (e) The fund shall not be liable to pay amounts due from a judgment
5 against an inactive health care provider arising from the rendering of
6 professional services as a health care provider contrary to the provisions of
7 this act.

8 (f) Any action for damages or for approval of a settlement as set forth
9 in K.S.A. 40-3409, 40-3410 or 40-3411, *and amendments thereto*, shall be
10 brought in a court of appropriate jurisdiction and venue.

11 Sec. 15. K.S.A. 40-3413 is hereby amended to read as follows: 40-
12 3413. (a) Every insurer and every rating organization shall cooperate in the
13 preparation of a plan or plans for the equitable apportionment among such
14 insurers of applicants for professional liability insurance and such other
15 liability insurance as may be included in or added to the plan, who are in
16 good faith entitled to such insurance but are unable to procure the same
17 through ordinary methods. Such plan or plans shall be prepared and filed
18 with the commissioner and the board of governors within a reasonable
19 time but not exceeding 60 calendar days from the effective date of this act.
20 Such plan or plans shall provide:

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

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

26 (3) a method whereby periodically the plan shall compare the
27 premiums earned to the losses and expenses sustained by the plan. If there
28 is any surplus of premiums over losses and expenses received for that year
29 such surplus shall be transferred to the fund. If there is any excess of
30 losses and expenses over premiums earned such losses shall be transferred
31 from the fund, however such transfers shall not occur more often than once
32 each three months;

33 (4) the limits of liability which the plan shall be required to provide,
34 but in no event shall such limits be less than those limits provided for in
35 subsection (a) of K.S.A. 40-3402, and amendments thereto;

36 (5) a method whereby applicants for insurance, insureds and insurers
37 may have a hearing on grievances and the right of appeal to the
38 commissioner.

39 (b) *For every such plan or plans, there shall be a governing board*
40 *which shall meet at least annually to review and prescribe operating rules.*
41 *Such board of directors shall consist of nine members to be appointed, for*
42 *terms of four years, by the commissioner as follows:*

43 (1) *Two members shall be representatives of foreign insurers;*

- 1 (2) *two members shall be representatives of domestic insurers;*
2 (3) *two members shall be health care providers;*
3 (4) *one member shall be a licensed insurance agent actively engaged*
4 *in the solicitation of casualty insurance;*
5 (5) *one member shall be the chairperson of the board of governors or*
6 *the chairperson's designee; and*
7 (6) *one member shall be a representative of the general public.*

8 (c) The commissioner and board of ~~governors~~ *directors* shall review
9 the plan as soon as reasonably possible after filing in order to determine
10 whether it meets the requirements set forth in subsection (a). As soon as
11 reasonably possible after the plan has been filed the commissioner,
12 consistent with the recommendations of the board of ~~governors~~ *directors*,
13 shall in writing approve or disapprove the plan. Any plan shall be deemed
14 approved unless disapproved within 30 days. Subsequent to the waiting
15 period the commissioner may disapprove any plan on the ground that it
16 does not meet the requirements set forth in subsection (a), but only after a
17 hearing held upon not less than 10 days' written notice to every insurer and
18 rating organization affected specifying in what respect the commissioner
19 finds that such plan fails to meet such requirements, and stating when
20 within a reasonable period thereafter such plan shall be deemed no longer
21 effective. Such order shall not affect any assignment made or policy
22 issued or made prior to the expiration of the period set forth in the order.
23 Amendments to such plan or plans shall be prepared, and filed and
24 reviewed in the same manner as herein provided with respect to the
25 original plan or plans.

26 ~~(e)~~ (d) If no plan meeting the standards set forth in subsection (a) is
27 submitted to the commissioner and board of ~~governors~~ *directors* within 60
28 calendar days from the effective date of this act or within the period stated
29 in any order disapproving an existing plan, the commissioner with the
30 assistance of the board of ~~governors~~ *directors* shall after a hearing, if
31 necessary to carry out the purpose of this act, prepare and promulgate a
32 plan meeting such requirements.

33 ~~(d)~~ (e) If, after a hearing conducted in accordance with the provisions
34 of the Kansas administrative procedure act, the commissioner and board of
35 ~~governors~~ *directors* find that any activity or practice of any insurer or
36 rating organization in connection with the operation of such plan or plans
37 is unfair or unreasonable or otherwise inconsistent with the provisions of
38 this act, the commissioner and board of ~~governors~~ *directors* may issue a
39 written order specifying in what respects such activity or practice is unfair
40 or unreasonable or otherwise inconsistent with the provisions of this act
41 and requiring discontinuance of such activity or practice.

42 ~~(e) For every such plan or plans, there shall be a governing board~~
43 ~~which shall meet at least annually to review and prescribe operating rules.~~

1 ~~Such board shall consist of nine members to be appointed by the~~
2 ~~commissioner as follows: Three members shall be representatives of~~
3 ~~foreign insurers, two members shall be representatives of domestic~~
4 ~~insurers, two members shall be representatives of the general public, one~~
5 ~~member shall be a licensed insurance agent actively engaged in the~~
6 ~~solicitation of casualty insurance and one member shall be a health care~~
7 ~~provider. The members shall be appointed for a term of two years.~~

8 (f) An insurer participating in the plan approved by the commissioner
9 may pay a commission with respect to insurance written under the plan to
10 an insurance agent licensed for any other insurer participating in the plan
11 or to any insurer participating in the plan. Such commission shall be
12 reasonably equivalent to the usual customary commission paid on similar
13 types of policies issued in the voluntary market.

14 Sec. 16. K.S.A. 2013 Supp. 40-3414 is hereby amended to read as
15 follows: 40-3414. (a) Any health care provider, or any health care system
16 organized and existing under the laws of this state which owns and
17 operates two or more medical care facilities licensed by the ~~department of~~
18 ~~health and environment~~ *state of Kansas*, whose aggregate annual insurance
19 premium is or would be \$100,000 or more for basic coverage calculated in
20 accordance with rating procedures approved by the commissioner pursuant
21 to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer
22 by obtaining a certificate of self-insurance from the board of governors.
23 Upon application of any such health care provider or health care system,
24 on a form prescribed by the board of governors, the board of governors
25 may issue a certificate of self-insurance if the board of governors is
26 satisfied that the applicant is possessed and will continue to be possessed
27 of ability to pay any judgment for which liability exists equal to the
28 amount of basic coverage required of a health care provider obtained
29 against such applicant arising from the applicant's rendering of
30 professional services as a health care provider. In making such
31 determination the board of governors shall consider (1) the financial
32 condition of the applicant, (2) the procedures adopted and followed by the
33 applicant to process and handle claims and potential claims, (3) the
34 amount and liquidity of assets reserved for the settlement of claims or
35 potential claims and (4) any other relevant factors. The certificate of self-
36 insurance may contain reasonable conditions prescribed by the board of
37 governors. Upon notice and a hearing in accordance with the provisions of
38 the Kansas administrative procedure act, the board of governors may
39 cancel a certificate of self-insurance upon reasonable grounds therefor.
40 Failure to pay any judgment for which the self-insurer is liable arising
41 from the self-insurer's rendering of professional services as a health care
42 provider, the failure to comply with any provision of this act or the failure
43 to comply with any conditions contained in the certificate of self-insurance

1 shall be reasonable grounds for the cancellation of such certificate of self-
2 insurance. The provisions of this subsection shall not apply to the Kansas
3 soldiers' home, the Kansas veterans' home or to any person who is a self-
4 insurer pursuant to subsection (d) or (e).

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

8 (c) The Kansas soldiers' home and the Kansas veterans' home shall be
9 self-insurers and shall pay the applicable surcharge set forth in subsection
10 (c) of K.S.A. 40-3402, and amendments thereto.

11 (d) Persons engaged in residency training as provided in subsections
12 (r)(1) and (2) of K.S.A. 40-3401, and amendments thereto, shall be self-
13 insured by the state of Kansas for occurrences arising during such training,
14 and such person shall be deemed a self-insurer for the purposes of the
15 health care provider insurance availability act. Such self-insurance shall
16 be applicable to a person engaged in residency training only when such
17 person is engaged in medical activities which do not include
18 extracurricular, extra-institutional medical service for which such person
19 receives extra compensation and which have not been approved as
20 provided in subsections (r)(1) and (2) of K.S.A. 40-3401, and amendments
21 thereto.

22 (e) (1) A person engaged in a postgraduate training program approved
23 by the state board of healing arts at a medical care facility or mental health
24 center in this state may be self-insured by such medical care facility or
25 mental health center in accordance with this subsection (e) and in
26 accordance with such terms and conditions of eligibility therefor as may be
27 specified by the medical care facility or mental health center and approved
28 by the board of governors. A person self-insured under this subsection (e)
29 by a medical care facility or mental health center shall be deemed a self-
30 insurer for purposes of the health care provider insurance availability act.
31 Upon application by a medical care facility or mental health center, on a
32 form prescribed by the board of governors, the board of governors may
33 authorize such medical care facility or mental health center to self-insure
34 persons engaged in postgraduate training programs approved by the state
35 board of healing arts at such medical care facility or mental health center if
36 the board of governors is satisfied that the medical care facility or mental
37 health center is possessed and will continue to be possessed of ability to
38 pay any judgment for which liability exists equal to the amount of basic
39 coverage required of a health care provider obtained against a person
40 engaged in such a postgraduate training program and arising from such
41 person's rendering of or failure to render professional services as a health
42 care provider.

43 (2) In making such determination the board of governors shall

1 consider: (A) the financial condition of the medical care facility or mental
2 health center; ; (B) the procedures adopted by the medical care facility or
3 mental health center to process and handle claims and potential claims; ;
4 (C) the amount and liquidity of assets reserved for the settlement of claims
5 or potential claims by the medical care facility or mental health center; and
6 (D) any other factors the board of governors deems relevant. The board of
7 governors may specify such conditions for the approval of an application
8 as the board of governors deems necessary. Upon approval of an
9 application, the board of governors shall issue a certificate of self-
10 insurance to each person engaged in such postgraduate training program at
11 the medical care facility or mental health center who is self-insured by
12 such medical care facility or mental health center.

13 (3) Upon notice and a hearing in accordance with the provisions of
14 the Kansas administrative procedure act, the board of governors may
15 cancel, upon reasonable grounds therefor, a certificate of self-insurance
16 issued pursuant to this subsection (e) or the authority of a medical care
17 facility or mental health center to self-insure persons engaged in such
18 postgraduate training programs at the medical care facility or mental
19 health center. Failure of a person engaged in such postgraduate training
20 program to comply with the terms and conditions of eligibility to be self-
21 insured by the medical care facility or mental health center, the failure of a
22 medical care facility or mental health center to pay any judgment for
23 which such medical care facility or mental health center is liable as self-
24 insurer of such person, the failure to comply with any provisions of the
25 health care provider insurance availability act or the failure to comply with
26 any conditions for approval of the application or any conditions contained
27 in the certificate of self-insurance shall be reasonable grounds for
28 cancellation of such certificate of self-insurance or the authority of a
29 medical care facility or mental health center to self-insure such persons.

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

34 (5) As used in this subsection (e), "medical care facility" does not
35 include the university of Kansas medical center or those community
36 hospitals or medical care facilities described in subsection (r)(2) of K.S.A.
37 40-3401, and amendments thereto.

38 (f) For the purposes of subsection (a), "health care provider" may
39 include each health care provider in any group of health care providers
40 who practice as a group to provide physician services only for a health
41 maintenance organization, any professional corporations, partnerships or
42 not-for-profit corporations formed by such group and the health
43 maintenance organization itself. The premiums for each such provider,

1 health maintenance organization and group corporation or partnership may
2 be aggregated for the purpose of being eligible for and subject to the
3 statutory requirements for self-insurance as set forth in this section.

4 (g) The provisions of subsections (a) and (f), relating to health care
5 systems, shall not affect the responsibility of individual health care
6 providers as defined in subsection (f) of K.S.A. 40-3401, and amendments
7 thereto, or organizations whose premiums are aggregated for purposes of
8 being eligible for self-insurance from individually meeting the
9 requirements imposed by K.S.A. 40-3402, and amendments thereto, with
10 respect to the ability to respond to injury or damages to the extent
11 specified therein and K.S.A. 40-3404, and amendments thereto, with
12 respect to the payment of the health care stabilization fund surcharge.

13 (h) Each private practice corporation or foundation and their full-time
14 physician faculty employed by the university of Kansas medical center and
15 each nonprofit corporation organized to administer the graduate medical
16 education programs of community hospitals or medical care facilities
17 affiliated with the university of Kansas school of medicine shall be
18 deemed a self-insurer for the purposes of the health care provider
19 insurance availability act. The private practice corporation or foundation
20 of which the full-time physician faculty is a member and each nonprofit
21 corporation organized to administer the graduate medical education
22 programs of community hospitals or medical care facilities affiliated with
23 the university of Kansas school of medicine shall pay the applicable
24 surcharge set forth in subsection (a) of K.S.A. 40-3404, and amendments
25 thereto, on behalf of the private practice corporation or foundation and
26 their full-time physician faculty employed by the university of Kansas
27 medical center or on behalf of a nonprofit corporation organized to
28 administer the graduate medical education programs of community
29 hospitals or medical care facilities affiliated with the university of Kansas
30 school of medicine.

31 (i) (1) Subject to the provisions of paragraph (4), for the purposes of
32 the health care provider insurance availability act, each nonprofit
33 corporation organized to administer the graduate medical education
34 programs of community hospitals or medical care facilities affiliated with
35 the university of Kansas school of medicine shall be deemed to have been
36 a health care provider as defined in K.S.A. 40-3401, and amendments
37 thereto, from and after July 1, 1997.

38 (2) Subject to the provisions of paragraph (4), for the purposes of the
39 health care provider insurance availability act, each nonprofit corporation
40 organized to administer the graduate medical education programs of
41 community hospitals or medical care facilities affiliated with the university
42 of Kansas school of medicine shall be deemed to have been a self insurer
43 within the meaning of subsection (h) of this section, and amendments

1 thereto, from and after July 1, 1997.

2 (3) Subject to the provisions of paragraph (4), for the purposes of the
3 health care provider insurance availability act, the election of fund
4 coverage limits for each nonprofit corporation organized to administer the
5 graduate medical education programs of community hospitals or medical
6 care facilities affiliated with the university of Kansas school of medicine
7 shall be deemed to have been effective at the highest option, as provided in
8 subsection (l) of K.S.A. 40-3403, and amendments thereto, from and after
9 July 1, 1997.

10 (4) No nonprofit corporation organized to administer the graduate
11 medical education programs of community hospitals or medical care
12 facilities affiliated with the university of Kansas school of medicine shall
13 be required to pay to the fund any annual premium surcharge for any
14 period prior to the effective date of this act. Any annual premium
15 surcharge for the period commencing on the effective date of this act and
16 ending on June 30, 2001, shall be prorated.

17 Sec. 17. K.S.A. 40-3416 is hereby amended to read as follows: 40-
18 3416. When the board of governors is informed or reasonably suspects that
19 a health care provider ~~is rendering~~ *licensed to render* professional services
20 *is* in violation of K.S.A. 40-3402, and amendments thereto, such board
21 shall report the suspected violation to the state agency which licenses,
22 registers or certifies such health care provider. Upon receipt of such report
23 or other evidence of a violation of K.S.A. 40-3402, and amendments
24 thereto, the state agency shall make such investigation as it deems
25 necessary and take such other official action as deemed appropriate. If a
26 violation is found to exist, the state agency shall promptly notify the
27 attorney general of this state. Upon such notice the attorney general or
28 county attorney of the proper county shall, in the name of the state,
29 institute and maintain an action to enjoin the health care provider from
30 rendering professional services in this state in the district court of the
31 district in which such health care provider is rendering professional
32 services.

33 Sec. 18. K.S.A. 40-3419 is hereby amended to read as follows: 40-
34 3419. K.S.A. 40-3401 ~~to 40-3419, inclusive et seq., and amendments~~
35 *thereto*, shall be known and may be cited as the health care provider
36 insurance availability act.

37 Sec. 19. K.S.A. 2013 Supp. 40-3421 is hereby amended to read as
38 follows: 40-3421. (a) Any insurer providing professional liability
39 insurance coverage to a health care provider, as defined by K.S.A. 40-
40 3401, and amendments thereto, who is licensed in Kansas shall report to
41 the appropriate state health care provider regulatory agency and the board
42 of governors on forms prescribed by the board of governors any written or
43 oral claim or action for damages for medical malpractice. The report shall

1 be filed no later than 30 days following the insurer's receipt of notice of
2 the claim or action and shall contain:

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

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

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

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

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

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

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

25 (+) a civil fine assessed by the board of governors in an amount not
26 exceeding \$1,000 for each day after the thirty-day period for reporting that
27 the information is not reported; and

28 ~~(2) suspension, revocation, denial of renewal or cancellation of the~~
29 ~~insurer's certificate of authority to do business in this state or certificate of~~
30 ~~self-insurance. In the event that a civil fine is assessed pursuant to this~~
31 ~~subsection, the reason for and the amount of such fine shall be reported to~~
32 ~~the commissioner. The board of governors shall remit any moneys~~
33 ~~collected from fines assessed pursuant to this subsection to the state~~
34 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~
35 ~~amendments thereto. Upon receipt of each such remittance, the state~~
36 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
37 ~~of the state general fund.~~

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

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

1 association operating pursuant to K.S.A. 40-3413, and amendments
2 thereto.

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

6 (h) The requirements of this section shall not be applicable with
7 respect to any occurrence on or after July 1, 1995, giving rise to any claim
8 or action against any physical therapist.

9 Sec. 20. K.S.A. 40-3422 is hereby amended to read as follows: 40-
10 3422. In any medical malpractice liability action, as defined by K.S.A. 60-
11 3401, and amendments thereto, the proceedings shall be stayed on appeal
12 by the filing of a supersedeas bond in the ~~full~~ amount of the judgment
13 ~~against the health care provider for which the fund is liable. Such~~
14 ~~supersedas~~ **supersedeas** bond shall be signed by the chairperson of the
15 board of governors, or the chairperson's designee, as administrator of the
16 health care stabilization fund without surety or other security.

17 Sec. 21. K.S.A. 40-12a02, 40-12a06, 40-12a09, 40-3402, 40-3403a,
18 40-3403b, 40-3407, 40-3408, 40-3411, 40-3412, 40-3413, 40-3416, 40-
19 3419 and 40-3422 and K.S.A. 2013 Supp. 40-3401, 40-3403, 40-3404, 40-
20 3414 and 40-3421 are hereby repealed.

21 Sec. 22. This act shall take effect and be in force from and after its
22 publication in the statute book.