

STATE OF KANSAS



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GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF HOUSE BILL 2325

In August, Kansans voted against politicians in Topeka placing extreme restrictions on a woman's freedom to make her own personal healthcare decisions.

This bill goes against the will of the voters by depriving women of access to their constitutional right. It is also misleading. The truth is, no taxpayer dollars go to the Health Care Stabilization Fund.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto House Bill 2325.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR

A handwritten signature in blue ink, appearing to read "Laura Kelly", written over a horizontal line.

DATED

A handwritten date in blue ink, "April 24, 2023", written over a horizontal line.

HOUSE BILL No. 2325

AN ACT concerning insurance; relating to the healthcare provider insurance availability act; adding maternity center to the definition of "healthcare provider" contained therein; designating certain healthcare providers as being ineligible to purchase professional liability insurance from the healthcare stabilization fund; requiring such healthcare providers to maintain continuous professional liability coverage equivalent to that provided by the healthcare stabilization fund as a condition of licensure; amending K.S.A. 40-3401 and 40-3403a and repealing the existing sections.

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

Section 1. K.S.A. 40-3401 is hereby amended to read as follows: 40-3401. As used in this act:

- (a) "Applicant" means any healthcare provider.
- (b) "Basic coverage" means a policy of professional liability insurance required to be maintained by each healthcare provider pursuant to the provisions of K.S.A. 40-3402(a) or (b), and amendments thereto.
- (c) "Commissioner" means the commissioner of insurance.
- (d) "Fiscal year" means the year commencing on the effective date of this act and each year, commencing on the first day of July thereafter.
- (e) "Fund" means the healthcare stabilization fund established pursuant to K.S.A. 40-3403(a), and amendments thereto.
- (f) (1) "Healthcare provider" means a:
  - (A) Person licensed to practice any branch of the healing arts by the state board of healing arts, ~~a~~;
  - (B) person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, ~~a~~;
  - (C) person engaged in a postgraduate training program approved by the state board of healing arts, ~~a~~;
  - (D) medical care facility licensed by the state of Kansas, ~~a~~;
  - (E) podiatrist licensed by the state board of healing arts, ~~a~~;
  - (F) health maintenance organization issued a certificate of authority by the commissioner, ~~an~~;
  - (G) optometrist licensed by the board of examiners in optometry, ~~a~~;
  - ;
  - (H) pharmacist licensed by the state board of pharmacy, ~~a~~;
  - (I) licensed professional nurse who is authorized to practice as a registered nurse anesthetist, ~~a~~;
  - (J) licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153, and amendments thereto, ~~a~~;
  - (K) professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are healthcare providers as defined by this subsection, ~~a~~;
  - (L) Kansas limited liability company organized for the purpose of rendering professional services by its members who are healthcare providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, ~~a~~;
  - (M) partnership of persons who are healthcare providers under this subsection, ~~a~~;
  - (N) Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are healthcare providers as defined by this subsection, ~~a~~;
  - (O) nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine, ~~a~~;
  - (P) dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899, and amendments thereto, ~~a~~;
  - (Q) psychiatric hospital licensed prior to January 1, 1988, and continuously thereafter under K.S.A. 2015 Supp. 75-3307b, prior to its repeal, and K.S.A. 39-2001 et seq., and amendments thereto, or a mental health center or mental health clinic licensed by the state of Kansas. ~~On and after January 1, 2015, "healthcare provider" also means~~

~~a~~;

(R) physician assistant licensed by the state board of healing arts;

~~a~~;

(S) licensed advanced practice registered nurse who is authorized by the board of nursing to practice as an advanced practice registered nurse in the classification of a nurse-midwife;~~a~~;

(T) *maternity center, if such maternity center has been granted accreditation by the commission for accreditation of birth centers and if such maternity center is a maternity center as defined in K.S.A. 65-503, and amendments thereto;*

(U) licensed advanced practice registered nurse who has been granted a temporary authorization by the board of nursing to practice as an advanced practice registered nurse in the classification of a nurse-midwife;~~a~~;

(V) nursing facility licensed by the state of Kansas;~~an~~;

(W) assisted living facility licensed by the state of Kansas; or

(X) a residential healthcare facility licensed by the state of Kansas.

(2) "Healthcare provider" does not include:~~(1)~~

(A) Any state institution for people with intellectual disability;~~(2)~~

(B) any state psychiatric hospital;~~(3)~~

(C) any person holding an exempt license issued by the state board of healing arts or the board of nursing;~~(4)~~

(D) any person holding a visiting clinical professor license from the state board of healing arts;~~(5)~~

(E) any person holding an inactive license issued by the state board of healing arts;~~(6)~~

(F) any person holding a federally active license issued by the state board of healing arts;~~(7)~~

(G) an advanced practice registered nurse who is authorized by the board of nursing to practice as an advanced practice registered nurse in the classification of nurse-midwife or nurse anesthetist and who practices solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies or who provides professional services as a charitable healthcare provider as defined under K.S.A. 75-6102, and amendments thereto;~~or (8)~~

(H) a physician assistant licensed by the state board of healing arts who practices solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies or who provides professional services as a charitable healthcare provider as defined under K.S.A. 75-6102, and amendments thereto; *or*

(I) *any facility where elective abortions, as defined in K.S.A. 65-4a01, and amendments thereto, are performed.*

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

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

(i) "Plan" means the operating and administrative rules and procedures developed by insurers and rating organizations or the commissioner to make professional liability insurance available to healthcare providers.

(j) "Professional liability insurance" means insurance providing

coverage for legal liability arising out of the performance of professional services rendered or that should have been rendered by a healthcare provider.

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

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

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

(n) "Mental health center" means a mental health center licensed by the state of Kansas under K.S.A. 39-2001 et seq., and amendments thereto, except that as used in the healthcare provider insurance availability act such term, as it relates to insurance coverage under the healthcare provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health center.

(o) "Mental health clinic" means a mental health clinic licensed by the state of Kansas under K.S.A. 39-2001 et seq., and amendments thereto, except that as used in the healthcare provider insurance availability act such term, as it relates to insurance coverage under the healthcare provider insurance availability act, also includes any director, trustee, officer or administrator of a mental health clinic.

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

(q) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital and Rainbow mental health facility.

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

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

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

(s) "Full-time physician faculty employed by the university of Kansas medical center" means a person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center when such person is providing healthcare. A person licensed to practice medicine and surgery who holds a full-time appointment at the university of Kansas medical center may also be employed part-time by the United States department of veterans affairs

if such employment is approved by the executive vice-chancellor of the university of Kansas medical center.

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

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

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

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

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

(y) "Healthcare facility" means a nursing facility, an assisted living facility or a residential healthcare facility as all such terms are defined in K.S.A. 39-923, and amendments thereto.

(z) "Charitable healthcare provider" means the same as defined in K.S.A. 75-6102, and amendments thereto.

Sec. 2. K.S.A. 40-3403a is hereby amended to read as follows: 40-3403a. Any ~~health care~~ *healthcare* provider whose fund coverage has been terminated under ~~subsection (i) of~~ K.S.A. 40-3403(i), and amendments thereto, *and any facility described in K.S.A. 40-4301(f)(2) (I), and amendments thereto*, shall, as a condition of licensure, maintain continuous professional liability insurance coverage equivalent to that provided by the fund and shall submit to the board of governors satisfactory proof of such coverage, as required by the board.

Sec. 3. K.S.A. 40-3401 and 40-3403a are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*