

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

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

1 members, the member's employees, directors, professional associations
2 and affiliates ~~upon the assessment plan.~~

3 (d) *In addition to other requirements of law, any plan or agreement*
4 *for the sale, merger, consolidation or change of control of any company*
5 *organized under the provisions of this act shall not be effective unless such*
6 *plan or agreement has been approved by resolution of the governing board*
7 *of directors or board of trustees of the association which formed such*
8 *company.*

9 Sec. 3. K.S.A. 40-12a06 is hereby amended to read as follows: 40-
10 12a06. (a) Any company organized under the provisions of this act shall be
11 empowered to make contracts of insurance as provided herein and to cede
12 to any insurer or accept from any insurer reinsurance on any portion of any
13 such risk for the following kinds of insurance:

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

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

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

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

40 Sec. 4. K.S.A. 40-12a09 is hereby amended to read as follows: 40-
41 12a09. Each company organized pursuant to this act shall file an annual
42 statement each year in accordance with the requirements for domestic
43 insurers writing the same kind of insurance. ~~Any company organized~~

1 ~~pursuant to this section which states its liabilities for losses and loss-~~
2 ~~adjustment expenses on a present value basis on the effective date of this~~
3 ~~act shall be allowed a reasonable period of time to discontinue such~~
4 ~~practice in accordance with a plan approved by the commissioner.~~

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

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

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

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

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

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

19 (f) "Health care provider" means a person licensed to practice any
20 branch of the healing arts by the state board of healing arts ~~with the~~
21 ~~exception of physician assistants,~~ a person who holds a temporary permit
22 to practice any branch of the healing arts issued by the state board of
23 healing arts, a person engaged in a postgraduate training program
24 approved by the state board of healing arts, a medical care facility licensed
25 by the ~~department of health and environment,~~ a ~~health maintenance~~
26 ~~organization issued a certificate of authority by the commissioner of~~
27 ~~insurance~~ *state of Kansas,* a podiatrist licensed by the state board of
28 healing arts, ~~an optometrist licensed by the board of examiners in~~
29 ~~optometry,~~ a pharmacist licensed by the state board of ~~pharmacy,~~ **a health**
30 **maintenance organization issued a certificate of authority by the**
31 **commissioner of insurance, an optometrist licensed by the board of**
32 **examiners in optometry, a pharmacist licensed by the state board of**
33 **pharmacy,** a licensed professional nurse who is authorized to practice as a
34 registered nurse anesthetist, a licensed professional nurse who has been
35 granted a temporary authorization to practice nurse anesthesia under
36 K.S.A. 65-1153, and amendments thereto, a professional corporation
37 organized pursuant to the professional corporation law of Kansas by
38 persons who are authorized by such law to form such a corporation and
39 who are health care providers as defined by this subsection, a Kansas
40 limited liability company organized for the purpose of rendering
41 professional services by its members who are health care providers as
42 defined by this subsection and who are legally authorized to render the
43 professional services for which the limited liability company is organized,

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

43 (g) "Inactive health care provider" means a person or other entity who

1 purchased basic coverage or qualified as a self-insurer on or subsequent to
2 the effective date of this act but who, at the time a claim is made for
3 personal injury or death arising out of the rendering of or the failure to
4 render professional services by such health care provider, does not have
5 basic coverage or self-insurance in effect solely because such person is no
6 longer engaged in rendering professional service as a health care provider.

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

13 (i) "Plan" means the operating and administrative rules and
14 procedures developed by insurers and rating organizations or the
15 commissioner to make professional liability insurance available to health
16 care providers.

17 (j) "Professional liability insurance" means insurance providing
18 coverage for legal liability arising out of the performance of professional
19 services rendered or which should have been rendered by a health care
20 provider.

21 (k) "Rating organization" means a corporation, an unincorporated
22 association, a partnership or an individual licensed pursuant to K.S.A. 40-
23 956, and amendments thereto, to make rates for professional liability
24 insurance.

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

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

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

41 (o) "Mental health clinic" means a mental health clinic licensed by
42 the ~~secretary of social and rehabilitation services~~ *state of Kansas* under
43 K.S.A. 75-3307b, and amendments thereto, except that as used in the

1 health care provider insurance availability act such term, as it relates to
2 insurance coverage under the health care provider insurance availability
3 act, also includes any director, trustee, officer or administrator of a mental
4 health clinic.

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

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

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

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

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

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

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

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

41 (v) *"Board of directors" means the governing board created by K.S.A.*
42 *40-3413, and amendments thereto.*

43 (w) *"Locum tenens contract" means a temporary agreement not*

1 *exceeding 182 days per calendar year that employs a health care provider*
2 *to actively render professional services in this state.*

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

5 Sec. 6. K.S.A. 40-3402 is hereby amended to read as follows: 40-
6 3402. (a) A policy of professional liability insurance approved by the
7 commissioner and issued by an insurer duly authorized to transact business
8 in this state in which the limit of the insurer's liability is not less than
9 \$200,000 per claim, subject to not less than a \$600,000 annual aggregate
10 for all claims made during the policy period, shall be maintained in effect
11 by each resident health care provider as a condition ~~to rendering of active~~
12 *licensure or other statutory authorization to render professional service as*
13 *a health care provider in this state, unless such health care provider is a*
14 *self-insurer. This provision shall not apply to optometrists and pharmacists*
15 *on or after July 1, 1991 nor to physical therapists on and after July 1, 1995*
16 *nor to health maintenance organizations on or after July 1, 1997. Such*
17 *policy shall provide as a minimum coverage for claims made during the*
18 *term of the policy which were incurred during the term of such policy or*
19 *during the prior term of a similar policy. Any insurer offering such policy*
20 *of professional liability insurance to any health care provider may offer to*
21 *such health care provider a policy as prescribed in this section with*
22 *deductible options. Such deductible shall be within such policy limits.*

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

35 (2) In the event of termination of basic coverage by cancellation,
36 nonrenewal, expiration or otherwise by either the insurer or named
37 insured, notice of such termination shall be furnished by the insurer to the
38 board of governors, the state agency which licenses, registers or certifies
39 the named insured and the named insured. Such notice shall be provided
40 no less than 30 days prior to the effective date of any termination initiated
41 by the insurer or within 10 *business* days after the date coverage is
42 terminated at the request of the named insured and shall include the name
43 and address of the health care provider or providers for whom basic

1 coverage is terminated and the date basic coverage will cease to be in
2 effect. No basic coverage shall be terminated by cancellation or failure to
3 renew by the insurer unless such insurer provides a notice of termination
4 as required by this subsection.

5 (3) Any professional liability insurance policy issued, delivered or in
6 effect in this state on and after July 1, 1976, shall contain or be endorsed to
7 provide basic coverage as required by subsection (a) of this section.
8 Notwithstanding any omitted or inconsistent language, any contract of
9 professional liability insurance shall be construed to obligate the insurer to
10 meet all the mandatory requirements and obligations of this act. The
11 liability of an insurer for claims made prior to July 1, 1984, shall not
12 exceed those limits of insurance provided by such policy prior to July 1,
13 1984.

14 (b) ~~Unless A nonresident health care provider is a self-insurer, such~~
15 ~~health care provider~~ shall not *be licensed to actively* render professional
16 service as a health care provider in this state unless such health care
17 provider maintains *continuous* coverage in effect as prescribed by
18 subsection (a), except such coverage may be provided by a nonadmitted
19 insurer who has filed the form required by subsection (b)(1). This
20 provision shall not apply to optometrists and pharmacists on or after July
21 1, 1991 nor to physical therapists on and after July 1, 1995.

22 (1) Every insurance company authorized to transact business in this
23 state, that is authorized to issue professional liability insurance in any
24 jurisdiction, shall file with the commissioner, as a condition of its
25 continued transaction of business within this state, a form prescribed by
26 the commissioner declaring that its professional liability insurance
27 policies, wherever issued, shall be deemed to provide at least the insurance
28 required by this subsection when the insured is rendering professional
29 services as a nonresident health care provider in this state. Any
30 nonadmitted insurer may file such a form.

31 (2) Every nonresident health care provider who is required to
32 maintain basic coverage pursuant to this subsection shall pay the surcharge
33 levied by the board of governors pursuant to subsection (a) of K.S.A. 40-
34 3404, and amendments thereto, directly to the board of governors and shall
35 furnish to the board of governors the information required in subsection (a)
36 (1).

37 (c) Every health care provider that is a self-insurer, the university of
38 Kansas medical center for persons engaged in residency training, as
39 described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto,
40 the employers of persons engaged in residency training, as described in
41 subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, the private
42 practice corporations or foundations and their full-time physician faculty
43 employed by the university of Kansas medical center or a medical care

1 facility or mental health center for self-insurers under subsection (e) of
2 K.S.A. 40-3414, and amendments thereto, shall pay the surcharge levied
3 by the board of governors pursuant to subsection (a) of K.S.A. 40-3404,
4 and amendments thereto, directly to the board of governors and shall
5 furnish to the board of governors the information required in subsection (a)
6 (1) and (a)(2).

7 (d) In lieu of a claims made policy otherwise required under this
8 section, a person engaged in residency training who is providing services
9 as a health care provider but while providing such services is not covered
10 by the self-insurance provisions of subsection (d) of K.S.A. 40-3414, and
11 amendments thereto, may obtain basic coverage under an occurrence form
12 policy if such policy provides professional liability insurance coverage and
13 limits which are substantially the same as the professional liability
14 insurance coverage and limits required by subsection (a) of K.S.A. 40-
15 3402, and amendments thereto. Where such occurrence form policy is in
16 effect, the provisions of the health care provider insurance availability act
17 referring to claims made policies shall be construed to mean occurrence
18 form policies.

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

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

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

43 (A) Administer the fund and exercise and perform other powers,

1 duties and functions required of the board under the health care provider
2 insurance availability act;

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

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

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

28 (2) The board shall consist of ~~10~~ *11* persons appointed by the
29 commissioner of insurance, as provided by this subsection (b) and as
30 follows:

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

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

37 (C) two members who are licensed to practice medicine and surgery
38 in Kansas who are doctors of osteopathic medicine and who are on a list of
39 nominees submitted to the commissioner by the Kansas association of
40 osteopathic medicine;

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

1 (E) one member who is a licensed professional nurse authorized to
2 practice as a registered nurse anesthetist who is on a list of nominees
3 submitted to the commissioner by the Kansas association of nurse
4 anesthetists.

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

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

25 (4) The board of governors shall organize ~~on~~ *in* July ~~1~~ of each year
26 and shall elect a chairperson and vice-chairperson from among its
27 membership. Meetings shall be called by the chairperson or by a written
28 notice signed by three members of the board.

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

33 (6) (A) The board shall appoint an executive director who shall be in
34 the unclassified service under the Kansas civil service act and may ~~appoint~~
35 ~~such~~ *employ* attorneys, legal assistants, claims managers and compliance
36 ~~auditors and other employees~~ who shall also be in the unclassified service
37 under the Kansas civil service act. Such executive director, attorneys, legal
38 ~~assistants, claims managers and compliance auditors and other employees~~
39 shall receive compensation fixed by the board, in accordance with
40 appropriation acts of the legislature, not subject to approval of the
41 governor.

42 (B) The board may ~~appoint such additional employees, and~~ provide
43 all office space, services, equipment, materials and supplies, and all

1 budgeting, personnel, purchasing and related management functions
2 required by the board in the exercise of the powers, duties and functions
3 imposed or authorized by the health care provider insurance availability
4 act or may enter into a contract with the commissioner of insurance for the
5 provision, by the commissioner, of all or any part thereof.

6 (7) The commissioner shall:

7 (A) Provide technical and administrative assistance to the board of
8 governors with respect to administration of the fund upon request of the
9 board;

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

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

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

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

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

1 provider or resident self-insurer at the time such act occurred;

2 (5) subject to subsection (b) of K.S.A. 40-3411, and amendments
3 thereto, reasonable and necessary expenses for attorney fees, *depositions,*
4 *expert witnesses and other costs* incurred in defending the fund against
5 claims, *which expenditures shall not be subject to the provisions of K.S.A.*
6 *75-3738 through 75-3744, and amendments thereto;*

7 (6) any amounts expended for reinsurance obtained to protect the best
8 interests of the fund purchased by the board of governors, which purchase
9 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and
10 amendments thereto, but shall not be subject to the provisions of K.S.A.
11 75-4101, and amendments thereto;

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

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

19 (9) reasonable and necessary expenses incurred by the board of
20 governors in the administration of the fund or in the performance of other
21 powers, duties or functions of the board under the health care provider
22 insurance availability act;

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

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

36 (12) notwithstanding the provisions of subsection (m), any amount
37 due from a judgment or settlement for an injury or death arising out of the
38 rendering of or failure to render professional services by a person engaged
39 or who was engaged in residency training or the private practice
40 corporations or foundations and their full-time physician faculty employed
41 by the university of Kansas medical center or any nonprofit corporation
42 organized to administer the graduate medical education programs of
43 community hospitals or medical care facilities affiliated with the university

1 of Kansas school of medicine;

2 (13) subject to the provisions of K.S.A. 65-429, and amendments
3 thereto, reasonable and necessary expenses for the development and
4 promotion of risk management education programs and for the medical
5 care facility licensure and risk management survey functions carried out
6 under K.S.A. 65-429, and amendments thereto;

7 (14) notwithstanding the provisions of subsection (m), any amount,
8 but not less than the required basic coverage limits, owed pursuant to a
9 judgment or settlement for any injury or death arising out of the rendering
10 of or failure to render professional services by a person, other than a
11 person described in ~~clause~~ *paragraph* (12) of this subsection (c), who was
12 engaged in a postgraduate program of residency training approved by the
13 state board of healing arts but who, at the time the claim was made, was no
14 longer engaged in such residency program;

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

19 (16) expenses incurred by the commissioner in the performance of
20 duties and functions imposed upon the commissioner by the health care
21 provider insurance availability act, and expenses incurred by the
22 commissioner in the performance of duties and functions under contracts
23 entered into between the board and the commissioner as authorized by this
24 section; and

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

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

38 (e) In no event shall the fund be liable to pay in excess of \$3,000,000
39 pursuant to any one judgment or settlement against any one health care
40 provider relating to any injury or death arising out of the rendering of or
41 the failure to render professional services on and after July 1, 1984, and
42 before July 1, 1989, subject to an aggregate limitation for all judgments or
43 settlements arising from all claims made in any one fiscal year in the

1 amount of \$6,000,000 for each health care provider.

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

8 (g) A health care provider shall be deemed to have qualified for
9 coverage under the fund:

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

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

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

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

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

37 (j) (1) Subject to the provisions of paragraph (7) of this subsection (j),
38 upon the payment of moneys from the health care stabilization fund
39 pursuant to subsection (c)(11), the board of governors shall certify to the
40 ~~director of accounts and reports~~ *secretary of administration* the amount of
41 such payment, and the ~~director of accounts and reports~~ *secretary of*
42 *administration* shall transfer an amount equal to the amount certified,
43 reduced by any amount transferred pursuant to paragraph (3) or (4) of this

1 subsection (j), from the state general fund to the health care stabilization
2 fund.

3 (2) Subject to the provisions of paragraph (7) of this subsection (j),
4 upon the payment of moneys from the health care stabilization fund
5 pursuant to subsection (c)(12), the board of governors shall certify to the
6 ~~director of accounts and reports~~ *secretary of administration* the amount of
7 such payment which is equal to the basic coverage liability of self-
8 insurers, and the ~~director of accounts and reports~~ *secretary of*
9 *administration* shall transfer an amount equal to the amount certified,
10 reduced by any amount transferred pursuant to paragraph (3) or (4) of this
11 subsection (j), from the state general fund to the health care stabilization
12 fund.

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

38 (4) The graduate medical education administration reserve fund is
39 hereby established in the state treasury. If the balance in such reserve fund
40 is less than \$40,000 on July 1 of any year, the nonprofit corporations
41 organized to administer the graduate medical education programs of
42 community hospitals or medical care facilities affiliated with the university
43 of Kansas school of medicine shall remit the amount necessary to increase

1 such balance to \$40,000 to the state treasurer for credit to such reserve
2 fund as soon after such July 1 date as is practicable. Upon receipt of each
3 such remittance, the state treasurer shall credit the same to such reserve
4 fund. When compliance with the foregoing provisions of this paragraph
5 have been achieved on or after July 1 of any year in which the same are
6 applicable, the state treasurer shall certify to the board of governors that
7 such reserve fund has been funded for the year in the manner required by
8 law. Moneys in such reserve fund may be invested or reinvested in
9 accordance with the provisions of K.S.A. 40-3406, and amendments
10 thereto, and any income or interest earned by such investments shall be
11 credited to such reserve fund. Upon payment of moneys from the health
12 care stabilization fund pursuant to subsection (c)(11) or (c)(12) with
13 respect to any nonprofit corporations organized to administer the graduate
14 medical education programs of community hospitals or medical care
15 facilities affiliated with the university of Kansas school of medicine the
16 ~~director of accounts and reports~~ *secretary of administration* shall transfer
17 an amount equal to the amount paid from the graduate medical education
18 administration reserve fund to the health care stabilization fund or, if the
19 balance in such reserve fund is less than the amount so paid, an amount
20 equal to the balance in such reserve fund.

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

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

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

1 pursuant to this paragraph for the fiscal years ending June 30, 2010, June
2 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred
3 pursuant to this paragraph shall not accrue interest thereon.

4 (k) Notwithstanding any other provision of the health care provider
5 insurance availability act, no psychiatric hospital licensed under K.S.A.
6 75-3307b, and amendments thereto, shall be assessed a premium surcharge
7 or be entitled to coverage under the fund if such hospital has not paid any
8 premium surcharge pursuant to K.S.A. 40-3404, and amendments thereto,
9 prior to January 1, 1988.

10 (l) On or after July 1, 1989, every health care provider shall make an
11 election to be covered by one of the following options provided in this
12 subsection (l) which shall limit the liability of the fund with respect to
13 judgments or settlements relating to injury or death arising out of the
14 rendering of or failure to render professional services on or after July 1,
15 1989. Such election shall be made at the time the health care provider
16 renews the basic coverage in effect on July 1, 1989, or, if basic coverage is
17 not in effect, such election shall be made at the time such coverage is
18 acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of
19 the election shall be provided by the insurer providing the basic coverage
20 in the manner and form prescribed by the board of governors and shall
21 continue to be effective from year to year unless modified by a subsequent
22 election made prior to the anniversary date of the policy. The health care
23 provider may at any subsequent election reduce the dollar amount of the
24 coverage for the next and subsequent fiscal years, but may not increase the
25 same, unless specifically authorized by the board of governors. Any
26 election of fund coverage limits, whenever made, shall be with respect to
27 judgments or settlements relating to injury or death arising out of the
28 rendering of or failure to render professional services on or after the
29 effective date of such election of fund coverage limits. Such election shall
30 be made for persons engaged in residency training and persons engaged in
31 other postgraduate training programs approved by the state board of
32 healing arts at medical care facilities or mental health centers in this state
33 by the agency or institution paying the surcharge levied under K.S.A. 40-
34 3404, and amendments thereto, for such persons. The election of fund
35 coverage limits for a nonprofit corporation organized to administer the
36 graduate medical education programs of community hospitals or medical
37 care facilities affiliated with the university of Kansas school of medicine
38 shall be deemed to be effective at the highest option. Such options shall be
39 as follows:

40 (1) *OPTION 1.* The fund shall not be liable to pay in excess of
41 \$100,000 pursuant to any one judgment or settlement for any party against
42 such health care provider, subject to an aggregate limitation for all
43 judgments or settlements arising from all claims made in the fiscal year in

1 an amount of \$300,000 for such provider.

2 (2) *OPTION 2.* The fund shall not be liable to pay in excess of
3 \$300,000 pursuant to any one judgment or settlement for any party against
4 such health care provider, subject to an aggregate limitation for all
5 judgments or settlements arising from all claims made in the fiscal year in
6 an amount of \$900,000 for such provider.

7 (3) *OPTION 3.* The fund shall not be liable to pay in excess of
8 \$800,000 pursuant to any one judgment or settlement for any party against
9 such health care provider, subject to an aggregate limitation for all
10 judgments or settlements arising from all claims made in the fiscal year in
11 an amount of \$2,400,000 for such health care provider.

12 (m) The fund shall not be liable for any amounts due from a judgment
13 or settlement against resident or nonresident inactive health care providers
14 who first qualify as an inactive health care provider on or after July 1,
15 1989, unless such health care provider has been in compliance with K.S.A.
16 40-3402, and amendments thereto, for a period of not less than five years.
17 If a health care provider has not been in compliance for five years, such
18 health care provider may make application and payment for the coverage
19 for the period while they are nonresident health care providers, nonresident
20 self-insurers or resident or nonresident inactive health care providers to the
21 fund. Such payment shall be made within 30 days after the health care
22 provider ceases being an active health care provider and shall be made in
23 an amount determined by the board of governors to be sufficient to fund
24 anticipated claims based upon reasonably prudent actuarial principles. The
25 provisions of this subsection shall not be applicable to any health care
26 provider which becomes inactive through death or retirement, or through
27 disability or circumstances beyond such health care provider's control, if
28 such health care provider notifies the board of governors and receives
29 approval for an exemption from the provisions of this subsection. Any
30 period spent in a postgraduate program of residency training approved by
31 the state board of healing arts shall not be included in computation of time
32 spent in compliance with the provisions of K.S.A. 40-3402, and
33 amendments thereto. *The provisions of this subsection shall expire on July*
34 *1, 2014.*

35 (n) ~~Notwithstanding the provisions of subsection (m) or any other~~
36 ~~provision in article 34 of chapter 40 of the Kansas Statutes Annotated to~~
37 ~~the contrary, the fund shall not be liable for any claim made on or after~~
38 ~~July 1, 1991, against a licensed optometrist or pharmacist relating to any~~
39 ~~injury or death arising out of the rendering of or failure to render~~
40 ~~professional services by such optometrist or pharmacist prior to July 1,~~
41 ~~1991, unless such optometrist or pharmacist qualified as an inactive health~~
42 ~~care provider prior to July 1, 1991~~ *In the event of a claim against a health*
43 *care provider for personal injury or death arising out of the rendering of*

1 *or the failure to render professional services by such health care provider,*
2 *the liability of the fund shall be limited to the amount of coverage selected*
3 *by the health care provider at the time of the incident giving rise to the*
4 *claim.*

5 ~~(o) 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, 1995, against a physical therapist registered by the state board of~~
9 ~~healing arts relating to any injury or death arising out of the rendering of~~
10 ~~or failure to render professional services by such physical therapist prior to~~
11 ~~July 1, 1995, unless such physical therapist qualified as an inactive health~~
12 ~~care provider prior to July 1, 1995.~~

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

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

37 Sec. 8. K.S.A. 40-3403a is hereby amended to read as follows: 40-
38 3403a. Any health care provider whose fund coverage has been terminated
39 under subsection (i) of K.S.A. 40-3403 ,and amendments thereto, shall, as
40 a condition of licensure, maintain *continuous* professional liability
41 insurance coverage equivalent to that provided by the fund and shall
42 submit to the board of governors satisfactory proof of such coverage, as
43 required by the ~~commissioner~~ *board*.

1 Sec. 9. K.S.A. 40-3403b is hereby amended to read as follows: 40-
2 3403b. (a) There is hereby created a health care stabilization fund
3 oversight committee to consist of eleven members, one of whom shall be
4 the chairperson of the board of governors or another member of the board
5 of governors designated by the chairperson, one of whom shall be
6 appointed by the president of the state senate, one of whom shall be
7 appointed by the minority leader of the state senate, one of whom shall be
8 appointed by the speaker of the state house of representatives, one of
9 whom shall be appointed by the minority leader of the state house of
10 representatives and six of whom shall be persons appointed by the
11 legislative coordinating council. The four members appointed by the
12 president and minority leader of the state senate and the speaker and
13 minority leader of the state house of representatives shall be members of
14 the state legislature. Of the six members appointed by the legislative
15 coordinating council, four shall either be health care providers or be
16 employed by health care providers, one shall be a representative of the
17 insurance industry and one shall be appointed from the public at large who
18 is not affiliated with any health care provider or the insurance industry, but
19 none of such six members shall be members of the state legislature.
20 Members serving on the committee on July 1, ~~1994~~ 2014, shall continue to
21 serve at the pleasure of the appointing authority.

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

35 (c) The board of governors shall provide any consulting actuarial firm
36 contracting with the legislative coordinating council with such information
37 or materials pertaining to the health care stabilization fund deemed
38 necessary by the actuarial firm for performing the requirements of any
39 actuarial reviews for the health care stabilization fund oversight committee
40 notwithstanding any confidentiality prohibition, restriction or limitation
41 imposed on such information or materials by any other law. The
42 consulting actuarial firm and all employees and former employees thereof
43 shall be subject to the same duty of confidentiality imposed by law on

1 other persons or state agencies with regard to information and materials so
2 provided and shall be subject to any civil or criminal penalties imposed by
3 law for violations of such duty of confidentiality. Any reports of the
4 consulting actuarial firm shall be made in a manner which will not reveal
5 directly or indirectly the name of any persons or entities or individual
6 reserve information involved in claims or actions for damages for personal
7 injury or loss due to error, omission or negligence in the performance of
8 professional services by health care providers. Information provided to the
9 actuary shall not be subject to discovery, subpoena or other means of legal
10 compulsion in any civil proceedings and shall be returned by the actuary to
11 the health care stabilization fund.

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

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

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

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

1 residents employed as of July 1 of each year. The annual premium
2 surcharge upon any nonprofit corporation organized to administer the
3 graduate medical education programs of community hospitals or medical
4 care facilities affiliated with the university of Kansas school of medicine
5 shall be based upon an assumed aggregate premium of \$10,000. The
6 surcharge on such assumed aggregate premium shall be apportioned
7 among all such nonprofit corporations.

8 (b) In the case of a resident health care provider who is not a self-
9 insurer, the premium surcharge shall be collected in addition to the annual
10 premium for the basic coverage by the insurer and shall not be subject to
11 the provisions of K.S.A. 40-252, 40-955 and 40-2801 et seq., and
12 amendments thereto. The amount of the premium surcharge shall be
13 shown separately on the policy or an endorsement thereto and shall be
14 specifically identified as such. Such premium surcharge shall be due and
15 payable by the insurer to the board of governors within 30 days after the
16 annual premium for the basic coverage is received by the insurer, ~~but in~~
17 ~~the event basic coverage is in effect at the time this act becomes effective,~~
18 ~~such surcharge shall be based upon the unearned premium until policy~~
19 ~~expiration and annually thereafter.~~ Within 15 days immediately following
20 the effective date of this act, the board of governors shall send to each
21 insurer information necessary for their compliance with this subsection.
22 The certificate of authority of any insurer who fails to comply with the
23 provisions of this subsection shall be suspended pursuant to K.S.A. 40-
24 222, and amendments thereto, until such insurer shall pay the annual
25 premium surcharge due and payable to the board of governors. In the case
26 of a nonresident health care provider or a self-insurer, the premium
27 surcharge shall be ~~collected in the manner prescribed in~~ *paid upon*
28 *submitting documentation of compliance with* K.S.A. 40-3402, and
29 amendments thereto.

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

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

1 (b) For investment purposes amounts shall be paid from the fund
2 upon vouchers approved by the chairperson of the pooled money
3 investment board.

4 (c) (1) *Payments from the fund for attorney fees, expert witness*
5 *fees, and other costs related to claims, including invoices, statements*
6 *and other documentation thereof, shall not be subject to K.S.A. 45-218,*
7 *and amendments thereto.*

8 (2) *The provisions of this subsection shall expire on June 30, 2019,*
9 *unless the legislature acts to reenact such provisions. The provisions of*
10 *this section shall be reviewed by the legislature prior to July 1, 2019.*

11 Sec. 12. K.S.A. 40-3408 is hereby amended to read as follows: 40-
12 3408. (a) The insurer of a health care provider covered by the fund or self-
13 insurer shall be liable only for the first \$200,000 of a claim for personal
14 injury or death arising out of the rendering of or the failure to render
15 professional services by such health care provider, subject to an annual
16 aggregate of \$600,000 for all such claims against the health care provider.
17 However, if any liability insurance in excess of such amounts is applicable
18 to any claim or would be applicable in the absence of this act, any
19 payments from the fund shall be excess over such amounts paid, payable
20 or that would have been payable in the absence of this act. ~~The liability of~~
21 ~~an insurer for claims made prior to July 1, 1984, shall not exceed those~~
22 ~~limits of insurance provided by such policy prior to July 1, 1984.~~

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

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

31 (1) From the rendering of or the failure to render professional
32 services by any other health care provider who is required by K.S.A. 40-
33 3402, and amendments thereto, to maintain professional liability insurance
34 in effect as a condition to rendering professional services as a health care
35 provider in this state; or

36 (2) based upon or relating to the health care provider's sexual acts or
37 activity, but in such cases the insurer may provide reasonable and
38 necessary expenses for attorney fees incurred in defending against such
39 claim. The insurer may recover all or a portion of such expenses for
40 attorney fees if an adverse judgment is returned against the health care
41 provider for damages resulting from the health care provider's sexual acts
42 or activity.

43 (d) *The fund shall not be liable for payment of any claim excluded by*

1 *an insurer pursuant to this section or any claim otherwise excluded from*
2 *coverage under a health care provider's professional liability insurance.*

3 Sec. 13. K.S.A. 40-3411 is hereby amended to read as follows: 40-
4 3411. (a) In any claim in which the insurer of a health care provider or
5 inactive health care provider covered by the fund has agreed to settle its
6 liability on a claim against its insured or when the self-insurer has agreed
7 to settle liability on a claim and the claimant's demand is in an amount in
8 excess of such settlement, to which the board of governors does not agree,
9 or where the claim is against an inactive health care provider covered by
10 the fund who does not have liability insurance in effect which is applicable
11 to the claim and the claimant and board of governors cannot agree upon a
12 settlement, an action must be commenced by the claimant against the
13 health care provider or inactive health care provider in a court of
14 appropriate jurisdiction for such damages as are reasonable in the
15 premises. If an action is already pending against the health care provider
16 or inactive health care provider, the pending action shall be conducted in
17 all respects as if the insurer or self-insurer had not agreed to settle.

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

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

43 ~~(d) The costs of the action shall be assessed against the fund if the~~

1 ~~recovery is in excess of the amount offered by the board of governors to~~
2 ~~settle the case and against the claimant if the recovery is less than such~~
3 ~~amount.~~

4 Sec. 14. K.S.A. 40-3412 is hereby amended to read as follows: 40-
5 3412. (a) Any action for personal injury or death arising out of the
6 rendering of or the failure to render professional services by any health
7 care provider or inactive health care provider shall be maintained against
8 such health care provider or inactive health care provider. No claimant
9 shall have any right of action directly against the fund. No claimant shall
10 have any right of action under this act directly against an insurer.

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

13 (c) Nothing ~~herein~~ *in this act* shall be construed to impose any
14 liability in the fund in excess of that specifically provided for ~~herein~~ *in this*
15 *act* for negligent failure to settle a claim or for failure to settle a claim in
16 good faith.

17 (d) The fund shall have no obligations whatsoever for payment for
18 punitive damages.

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

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

26 Sec. 15. K.S.A. 40-3413 is hereby amended to read as follows: 40-
27 3413. (a) Every insurer and every rating organization shall cooperate in the
28 preparation of a plan or plans for the equitable apportionment among such
29 insurers of applicants for professional liability insurance and such other
30 liability insurance as may be included in or added to the plan, who are in
31 good faith entitled to such insurance but are unable to procure the same
32 through ordinary methods. Such plan or plans shall be prepared and filed
33 with the commissioner and the board of governors within a reasonable
34 time but not exceeding 60 calendar days from the effective date of this act.
35 Such plan or plans shall provide:

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

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

41 (3) a method whereby periodically the plan shall compare the
42 premiums earned to the losses and expenses sustained by the plan. If there
43 is any surplus of premiums over losses and expenses received for that year

1 such surplus shall be transferred to the fund. If there is any excess of
2 losses and expenses over premiums earned such losses shall be transferred
3 from the fund, however such transfers shall not occur more often than once
4 each three months;

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

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

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

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

16 (2) *two members shall be representatives of domestic insurers;*

17 (3) *two members shall be health care providers;*

18 (4) *one member shall be a licensed insurance agent actively engaged*
19 *in the solicitation of casualty insurance;*

20 (5) *one member shall be the chairperson of the board of governors or*
21 *the chairperson's designee; and*

22 (6) *one member shall be a representative of the general public.*

23 (c) The commissioner and board of ~~governors~~ directors shall review
24 the plan as soon as reasonably possible after filing in order to determine
25 whether it meets the requirements set forth in subsection (a). As soon as
26 reasonably possible after the plan has been filed the commissioner,
27 consistent with the recommendations of the board of ~~governors~~ directors,
28 shall in writing approve or disapprove the plan. Any plan shall be deemed
29 approved unless disapproved within 30 days. Subsequent to the waiting
30 period the commissioner may disapprove any plan on the ground that it
31 does not meet the requirements set forth in subsection (a), but only after a
32 hearing held upon not less than 10 days' written notice to every insurer and
33 rating organization affected specifying in what respect the commissioner
34 finds that such plan fails to meet such requirements, and stating when
35 within a reasonable period thereafter such plan shall be deemed no longer
36 effective. Such order shall not affect any assignment made or policy
37 issued or made prior to the expiration of the period set forth in the order.
38 Amendments to such plan or plans shall be prepared, and filed and
39 reviewed in the same manner as herein provided with respect to the
40 original plan or plans.

41 (e) (d) If no plan meeting the standards set forth in subsection (a) is
42 submitted to the commissioner and board of ~~governors~~ directors within 60
43 calendar days from the effective date of this act or within the period stated

1 in any order disapproving an existing plan, the commissioner with the
2 assistance of the board of ~~governors~~ *directors* shall after a hearing, if
3 necessary to carry out the purpose of this act, prepare and promulgate a
4 plan meeting such requirements.

5 ~~(d)~~ (e) If, after a hearing conducted in accordance with the provisions
6 of the Kansas administrative procedure act, the commissioner and board of
7 ~~governors~~ *directors* find that any activity or practice of any insurer or
8 rating organization in connection with the operation of such plan or plans
9 is unfair or unreasonable or otherwise inconsistent with the provisions of
10 this act, the commissioner and board of ~~governors~~ *directors* may issue a
11 written order specifying in what respects such activity or practice is unfair
12 or unreasonable or otherwise inconsistent with the provisions of this act
13 and requiring discontinuance of such activity or practice.

14 ~~(e)~~ For every such plan or plans, there shall be a governing board
15 which shall meet at least annually to review and prescribe operating rules.
16 Such board shall consist of nine members to be appointed by the
17 commissioner as follows: Three members shall be representatives of
18 foreign insurers, two members shall be representatives of domestic
19 insurers, two members shall be representatives of the general public, one
20 member shall be a licensed insurance agent actively engaged in the
21 solicitation of casualty insurance and one member shall be a health care
22 provider. The members shall be appointed for a term of two years.

23 (f) An insurer participating in the plan approved by the commissioner
24 may pay a commission with respect to insurance written under the plan to
25 an insurance agent licensed for any other insurer participating in the plan
26 or to any insurer participating in the plan. Such commission shall be
27 reasonably equivalent to the usual customary commission paid on similar
28 types of policies issued in the voluntary market.

29 ***(g) Notwithstanding the provisions of K.S.A. 40-3402, and***
30 ***amendments thereto, the plan shall make available policies of***
31 ***professional liability insurance covering prior acts. Such professional***
32 ***liability insurance policies shall have limits of coverage not exceeding***
33 ***\$1,000,000 per claim, subject to not more than \$3,000,000 annual***
34 ***aggregate liability for all claims made as a result of personal injury or***
35 ***death arising out of the rendering of or the failure to render***
36 ***professional services within this state on or before December 31, 2014.***
37 ***Such professional liability insurance policies shall be made available***
38 ***only to physician assistants licensed by the state board of healing arts,***
39 ***licensed advanced practice registered nurses authorized by the state***
40 ***board of nursing to practice as an advanced practice registered nurse in***
41 ***the classification of a nurse-midwife, nursing facilities licensed by the***
42 ***state of Kansas, assisted living facilities licensed by the state of Kansas***
43 ***and residential health care facilities licensed by the state of Kansas that***

1 ***will be in compliance with K.S.A. 40-3402, and amendments thereto, on***
2 ***January 1, 2015. The premiums for such professional liability insurance***
3 ***policies shall be based upon reasonably prudent actuarial principles.***
4 ***The provisions of this subsection shall expire on January 1, 2016.***

5 Sec. 16. K.S.A. 2013 Supp. 40-3414 is hereby amended to read as
6 follows: 40-3414. (a) Any health care provider, or any health care system
7 organized and existing under the laws of this state which owns and
8 operates two or more medical care facilities licensed by the ~~department of~~
9 ~~health and environment~~ *state of Kansas*, whose aggregate annual insurance
10 premium is or would be \$100,000 or more for basic coverage calculated in
11 accordance with rating procedures approved by the commissioner pursuant
12 to K.S.A. 40-3413, and amendments thereto, may qualify as a self-insurer
13 by obtaining a certificate of self-insurance from the board of governors.
14 Upon application of any such health care provider or health care system,
15 on a form prescribed by the board of governors, the board of governors
16 may issue a certificate of self-insurance if the board of governors is
17 satisfied that the applicant is possessed and will continue to be possessed
18 of ability to pay any judgment for which liability exists equal to the
19 amount of basic coverage required of a health care provider obtained
20 against such applicant arising from the applicant's rendering of
21 professional services as a health care provider. In making such
22 determination the board of governors shall consider (1) the financial
23 condition of the applicant, (2) the procedures adopted and followed by the
24 applicant to process and handle claims and potential claims, (3) the
25 amount and liquidity of assets reserved for the settlement of claims or
26 potential claims and (4) any other relevant factors. The certificate of self-
27 insurance may contain reasonable conditions prescribed by the board of
28 governors. Upon notice and a hearing in accordance with the provisions of
29 the Kansas administrative procedure act, the board of governors may
30 cancel a certificate of self-insurance upon reasonable grounds therefor.
31 Failure to pay any judgment for which the self-insurer is liable arising
32 from the self-insurer's rendering of professional services as a health care
33 provider, the failure to comply with any provision of this act or the failure
34 to comply with any conditions contained in the certificate of self-insurance
35 shall be reasonable grounds for the cancellation of such certificate of self-
36 insurance. The provisions of this subsection shall not apply to the Kansas
37 soldiers' home, the Kansas veterans' home or to any person who is a self-
38 insurer pursuant to subsection (d) or (e).

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

42 (c) The Kansas soldiers' home and the Kansas veterans' home shall be
43 self-insurers and shall pay the applicable surcharge set forth in subsection

1 (c) of K.S.A. 40-3402, and amendments thereto.

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

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

34 (2) In making such determination the board of governors shall
35 consider: (A) the financial condition of the medical care facility or mental
36 health center; ; (B) the procedures adopted by the medical care facility or
37 mental health center to process and handle claims and potential claims; ;
38 (C) the amount and liquidity of assets reserved for the settlement of claims
39 or potential claims by the medical care facility or mental health center; and
40 (D) any other factors the board of governors deems relevant. The board of
41 governors may specify such conditions for the approval of an application
42 as the board of governors deems necessary. Upon approval of an
43 application, the board of governors shall issue a certificate of self-

1 insurance to each person engaged in such postgraduate training program at
2 the medical care facility or mental health center who is self-insured by
3 such medical care facility or mental health center.

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

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

25 (5) As used in this subsection (e), "medical care facility" does not
26 include the university of Kansas medical center or those community
27 hospitals or medical care facilities described in subsection (r)(2) of K.S.A.
28 40-3401, and amendments thereto.

29 (f) For the purposes of subsection (a), "health care provider" may
30 include each health care provider in any group of health care providers
31 who practice as a group to provide physician services only for a health
32 maintenance organization, any professional corporations, partnerships or
33 not-for-profit corporations formed by such group and the health
34 maintenance organization itself. The premiums for each such provider,
35 health maintenance organization and group corporation or partnership may
36 be aggregated for the purpose of being eligible for and subject to the
37 statutory requirements for self-insurance as set forth in this section.

38 (g) The provisions of subsections (a) and (f), relating to health care
39 systems, shall not affect the responsibility of individual health care
40 providers as defined in subsection (f) of K.S.A. 40-3401, and amendments
41 thereto, or organizations whose premiums are aggregated for purposes of
42 being eligible for self-insurance from individually meeting the
43 requirements imposed by K.S.A. 40-3402, and amendments thereto, with

1 respect to the ability to respond to injury or damages to the extent
2 specified therein and K.S.A. 40-3404, and amendments thereto, with
3 respect to the payment of the health care stabilization fund surcharge.

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

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

29 (2) Subject to the provisions of paragraph (4), for the purposes of the
30 health care provider insurance availability act, each nonprofit corporation
31 organized to administer the graduate medical education programs of
32 community hospitals or medical care facilities affiliated with the university
33 of Kansas school of medicine shall be deemed to have been a self insurer
34 within the meaning of subsection (h) of this section, and amendments
35 thereto, from and after July 1, 1997.

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

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

8 Sec. 17. K.S.A. 40-3416 is hereby amended to read as follows: 40-
9 3416. When the board of governors is informed or reasonably suspects that
10 a health care provider ~~is rendering~~ *licensed to render* professional services
11 *is* in violation of K.S.A. 40-3402, and amendments thereto, such board
12 shall report the suspected violation to the state agency which licenses,
13 registers or certifies such health care provider. Upon receipt of such report
14 or other evidence of a violation of K.S.A. 40-3402, and amendments
15 thereto, the state agency shall make such investigation as it deems
16 necessary and take such other official action as deemed appropriate. If a
17 violation is found to exist, the state agency shall promptly notify the
18 attorney general of this state. Upon such notice the attorney general or
19 county attorney of the proper county shall, in the name of the state,
20 institute and maintain an action to enjoin the health care provider from
21 rendering professional services in this state in the district court of the
22 district in which such health care provider is rendering professional
23 services.

24 Sec. 18. K.S.A. 40-3419 is hereby amended to read as follows: 40-
25 3419. K.S.A. 40-3401 ~~to 40-3419, inclusive et seq., and amendments~~
26 *thereto*, shall be known and may be cited as the health care provider
27 insurance availability act.

28 Sec. 19. K.S.A. 2013 Supp. 40-3421 is hereby amended to read as
29 follows: 40-3421. (a) Any insurer providing professional liability
30 insurance coverage to a health care provider, as defined by K.S.A. 40-
31 3401, and amendments thereto, who is licensed in Kansas shall report to
32 the appropriate state health care provider regulatory agency and the board
33 of governors on forms prescribed by the board of governors any written or
34 oral claim or action for damages for medical malpractice. The report shall
35 be filed no later than 30 days following the insurer's receipt of notice of
36 the claim or action and shall contain:

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

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

42 (b) Upon request of an agency to which a report is made under
43 subsection (a), the insurer making the report shall provide to the agency no

1 later than 30 days following receipt of the request or receipt of the
2 information, whichever is later:

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

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

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

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

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

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

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

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

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

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

43 Sec. 20. K.S.A. 40-3422 is hereby amended to read as follows: 40-

1 3422. In any medical malpractice liability action, as defined by K.S.A. 60-
2 3401, and amendments thereto, the proceedings shall be stayed on appeal
3 by the filing of a supersedeas bond in the ~~full~~ amount of the judgment
4 ~~against the health care provider for which the fund is liable. Such~~
5 ~~supersedas~~ **supersedeas** bond shall be signed by the chairperson of the
6 board of governors, or the chairperson's designee, as administrator of the
7 health care stabilization fund without surety or other security.

8 Sec. 21. K.S.A. 40-12a02, 40-12a06, 40-12a09, 40-3402, 40-3403a,
9 40-3403b, 40-3407, 40-3408, 40-3411, 40-3412, 40-3413, 40-3416, 40-
10 3419 and 40-3422 and K.S.A. 2013 Supp. 40-3401, 40-3403, 40-3404, 40-
11 3414 and 40-3421 are hereby repealed.

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