

Approved: February 10, 1997
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on February 3, 1997 in Room 529-S of the Capitol.

All members were present except:

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Lee Wright, Farmers Insurance Group
Whitney Damron, Kansas Psychological Association
Brad Smoot, Blue Cross/Blue Shield
Bob Hayes, Health Care Stabilization Fund
Davis Barrier, VALIC
Senator Janis Lee
Sue Anderson, Community Bankers Association
Tom Wilder, Kansas Insurance Department
Tom Bell, Kansas Hospital Association
Sue Ann Schultz, Bank IV
John Peterson, Government Consulting
Jim Maag, Kansas Bankers Association

Others attending: See attached list

Lee Wright, representing Farmers Group Insurance, requested the introduction of legislation which would allow employees of insurance companies who are not licensed agents to contact customers regarding expiration dates and other insurance data (Attachment 1).

Senator Prager moved for the introduction of this bill. Senator Barone seconded the motion. The motion carried.

Whitney Damron appeared for the Kansas Psychological Association and many other health care providers, to request the introduction of point of service legislation which would guarantee a patient's right to seek health care services from the qualified health care provider of the patient's choice (Attachment 2).

Senator Feleciano moved for the introduction of the proposed legislation. Senator Praeger seconded the motion. The motion carried.

Brad Smoot of Blue Cross Blue Shield requested the introduction of legislation which would allow a merger of Kansas Blue Cross/Blue Shield (a mutual company) with a non-mutual company domiciled in Kansas. The actual bill was not presented to the Committee at that time.

Senator Feleciano moved for the introduction of the proposed legislation. Senator Brownlee seconded the motion. Motion carried.

Bob Hayes, Health Care Stabilization Fund, requested the introduction of legislation for "housekeeping" purposes and technical changes necessary in the Act regarding the Fund (Attachment 3).

Senator Becker moved for the introduction of the bill. Senator Corbin seconded the motion. The motion carried.

Davis Barrier, Variable Annuity Life Insurance Company, requested an amendment which would impact the TIAA/KREP fund, a retirement plan for university professors (Attachment 4).

Senator Praeger moved for the introduction of the proposed legislation. Motion was seconded by Senator Becker. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on February 3, 1997.

Hearing continued on SB 86 - Public funds depositories

Senator Janis Lee appeared as an opponent to the bill which would deny The Pony Express Bank in her district to be a depository for municipal, school, or other public funds (Attachment 5). The affected bank is The Farmers State Bank in Lucas, Kansas, and is the only financial institution in the community. This bank is a branch of a Missouri bank which does not have a charter in Kansas nor is its home office located here. The city and school have been very inconvenienced by this law. Funds generated within the community are being deposited in out of town banks. She urged the Committee to pass the amendment which would permit financial institutions with home or branch offices located in the State of Kansas to hold public funds deposits. Some banks within her district do not support this amendment.

Sue Anderson spoke in support of the bill on behalf of the Community Bankers Association of Kansas (Attachment 6). By not allowing out of state chartered and based banks to participate as depositories of public funds, such funds are "locally recycled" creating additional economic benefits to the area. The Committee asked if the Community Bankers would be interested in establishing a threshold according to bank/loan ratios since the larger banks appear to have a much higher ratio than do the locally owned banks. Some Committee members expressed reluctance to deny banks who had been active in the community by providing jobs and money, the right to do business in Kansas because they were not chartered here I.e. you don't have to hold a Kansas driver's license to drive in Kansas but you are subject to their laws. Kansas is now ranked 32-33 of all the states in providing loans to individuals and new businesses according to the latest report by Kansas, Inc.

Tom Wilder, Kansas Insurance Department, requested that if a common definition of "bank" is agreed to by the Committee, an amendment be added to the legislation which would clarify where insurance companies can deposit funds (Attachment 7).

Tom Bell of the Kansas Hospital Association, spoke on behalf of the proposed legislation which would allow the deposit of public funds in banks not having their main offices in Kansas (Attachment 8). Over one-half of the hospitals in Kansas are owned by a government unit such as a county, city, or hospital district which would not be allowed to make deposits in such banks if the suggested amendment is passed.

Sue Ann Schultz, General Counsel for Bank IV, appeared as a proponent of the bill as amended by the Kansas League of Municipalities (Attachment 9). The placement of public funds is a competitive bid process and the bill as amended would allow all qualified and interested bidders to bid on public deposits thereby saving the tax-payers money. Their bank paid \$10 million in privilege, property, and personal income taxes this past year, has a 70.4% loan/deposit ratio, a payroll of \$52 million, and have proven through their community involvement that where a charter is located has nothing to do with commitment. They have received a 90% CRA rating from the National Controller of Currency. Their has been an announcement of a new branch of their bank in the downtown Wichita area which will create more than 400 jobs in that area.

John Peterson, Governmental Consulting, reminded the Committee of the legislation passed last year which dealt with privilege tax and the three factor weighted ratio regarding the taxation issue.

Jim Maag, Kansas State Bankers Association, presented a letter from Charles B. Henson, explaining the use of security entitlement, financial asstes, securities account, security agreement, security interest, perfection and control (Attachment 10).

Senator Steffes appointed a Subcommittee of Senator Corbin, Senator Biggs, and himself to continue studying the bill and report to the Committee at a later date.

The hearing on SB 86 was continued.

The meeting was adjourned at 10:03 a.m. The next meeting is scheduled for February 4, 1997.

SENATE FINANCIAL INSTITUTIONS & INSURANCE
COMMITTEE GUEST LIST

DATE: Feb. 3, 1997

NAME	REPRESENTING
Roger Brazier	State Treasurer's Office
Martin Hanna	Hawaii's Capital Report
Judi Stork	OSBC
Johana Dixon	State Treasury
Jed Miller	State Treasurer's office
Tom Wilder	Kansas Insurance Dept
Bob Williams	Ks. Pharmacists Assoc
Whitney Gamron	Ks Psychological Assn,
BOB HAYES	HCSF
Lou Callahan	Kammco
Norm Wilks	KASB
Jim Miller	KBA
David Barrer	VALIC
Don O	KPHA
Bob Anderson	"
Lee Wright	Farmers Ins. Group
Charles Benson	KBA
John Petersen	Kc Government Consulting
Bruce Smith	BTF

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AN ACT concerning conditions under which
Insurance may be written; Amending K.S.A. 40-214.

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

Section 1. It shall be unlawful for any person,
company, corporation or fraternal benefit society
to transact the business of insurance, indemnity
or suretyship, or do any act toward transacting
such business, unless such person, company,
corporation or fraternal benefit society shall
have been duly authorized under the laws of this
state to transact such business and shall have
received proper written authority from the
commissioner of insurance in conformity with the
provisions of the laws of this state relative to
insurance, indemnity and suretyship, and further,
it shall be unlawful for any insurance company to
effect contracts of insurance in this state on
the life or person of residents of this state or
on property located in this state except through
persons duly licensed and certified in accordance
with the insurance laws of this state and subject
to the provisions of K.S.A. 40-245 and amendments
thereto. Personal telephone contact for the purpose of
requesting the expiration date and insurer of a current
contract or contracts of insurance shall not be considered
an act toward transacting the business of insurance for
purposes of this section. Neither the enrollment of
individuals under a group policy nor the inclusion of
insurance in a credit transaction under an
arrangement for its purchase by the creditor in
compliance with the applicable provisions of the
uniform consumer credit code shall constitute the
effecting of a contract of insurance.

It shall be unlawful for any insurance
company organized under the laws of this state to
do business in any other state or territory of
the United States without being first legally
admitted and authorized to do business under the
laws of such state or territory, and the
insurance commissioner may revoke the license of
any insurance company organized under the laws of

*Senate F.D. & D
Attachment 1
Feb. 3, 1997*

1 this state and doing business in another state or
2 territory without being first authorized so to
3 do, and may require said company to pay the taxes
4 upon the business so unlawfully written to the
5 state or territory in which the business was
6 written as provided by the laws of said state or
7 territory. A company shall be considered admitted
8 and authorized for the purposes of this section
9 when it has been legally authorized to operate in
10 such other state or territory as a nonadmitted
11 insurer.

12 Section 2. K.S.A. 40-214 is hereby repealed.

13 Section 3. This act shall take effect and be in
14 force from and after its publication in the statute
15 book.

TO: Chairman Don Steffes
and the Senate Committee on Financial Institutions and Insurance

FROM: Association of Community Mental Health Centers of Kansas, Inc.
Kansas Association of Osteopathic Medicine
Kansas Chapter/National Association of Social Workers
Kansas Chiropractic Association
Kansas Dental Association
Kansas Occupational Therapy Association
Kansas Optometric Association
Kansas Pharmacists Association
Kansas Psychological Association
Kansas State Nurses Association
The Silver Haired Legislature

RE: Bill Introduction - Point-of-Service Legislation

DATE: February 3, 1997

Chairman Steffes and Members of the Senate Committee on Financial Institutions and Insurance:

On behalf of my client, the Kansas Psychological Association, and the other health care providers and interested parties listed above, I appear before you this morning to request introduction of a Point-of-Service bill which would guarantee a patient's right to seek health care services from the qualified health care provider of the patient's choice.

Included with this introductory statement is a copy of our Point-of-Service bill draft and the Mission Statement of the Kansas Patient Choice Protection Coalition which includes a listing of our supporters and their respective offices.

On behalf of the Kansas Patient Choice Protection Coalition, I respectfully request introduction of our bill draft and look forward to the opportunity to present testimony to you at the appropriate time. Thank you.

Whitney Damron
Whitney B. Damron, P.A.
100 East Ninth Street - Second Floor
Topeka, Kansas 66612-1213
(913) 354-1354

Senate F.D.D.
Attachment 2
3/3/97

The Kansas Patient Choice Protection Coalition

- Mission Statement -

The Kansas Patient Protection Initiative Coalition members listed herein do hereby express their support for Point-of-Service legislation which would guarantee a patient's right to seek health care services from the qualified health care provider of the patient's choice.

We believe a patient's choice of a health care provider is a highly personal decision which directly affects the effectiveness of communication between patient and provider. Effective communication between patient and provider is essential to obtain optimum results from the health care services provided to the patient.

We hereby subscribe to a Patient's Bill of Rights as follows:

- A patient's access to affordable, quality health care services from the provider of the patient's choice should be the cornerstone of our health care delivery system.
- HMO/Managed Care Plans issued in Kansas should include a Point-of-Service option which allows a patient to seek health care services from qualified health care providers who are not affiliated with the patient's HMO/Managed Care Plan.
- A patient's right to choose his or her own health care provider should not be restricted because of participation in an HMO/Managed Care Plan.
- Health care in rural areas of Kansas present unique problems and issues which should be addressed to assure the availability of quality health care in those areas of our state.
- HMO/Managed Care Plans should permit patients the right to seek treatment and services from the qualified health care providers of their choice when those patients are willing to pay, if necessary, a higher, reasonable copay.
- Financial incentives and economic considerations should not interfere with sound and prudent health care decisions made between qualified health care providers and their patients.

Supported and Subscribed to by:

Kansas Psychological Association
400 SW Croix
Topeka, Kansas 66611
(913) 267-7435

Kansas Optometric Association
1266 SW Topeka Blvd.
Topeka, Kansas 66612
(913) 232-0225

Kansas Pharmacists Association
1308 SW 10th Street
Topeka, Kansas 66604
(913) 232-0439

Kansas Dental Association
5200 Huntoon
Topeka, Kansas 66604
(913) 272-7360

Kansas Occupational Therapy Assn.
214 SW 7th Street
Topeka, Kansas 66603
(913) 233-4111

Kansas Assn. of Osteopathic Medicine
1260 SW Topeka Blvd.
Topeka, Kansas 66612
(913) 234-5563

Kansas State Nurses Association
700 SW Jackson - Suite 601
Topeka, Kansas 66603
(913) 233-8628

Kansas Chiropractic Association
1334 SW Topeka Blvd.
Topeka, Kansas 66612
(913) 233-0697

Association of Community Mental
Health Centers of Kansas, Inc.
700 SW Harrison - Suite 1420
Topeka, Kansas 66603
(913) 234-4773

Kansas Chapter/National Association
of Social Workers
700 SW Jackson - Suite 901
Topeka, Kansas 66601
(913) 354-4803

The Silver Haired Legislature
Alex Scott, M.D.
Junction City, Kansas
(913) 238-3760

For more information on the Kansas Patient Choice Protection Coalition,
please contact the provider group of your choice listed above or:

Whitney Damron at (913) 354-1354 - Topeka, Kansas

10 A B C

SENATE BILL NO. _____
By Committee on Financial
Institutions and Insurance

AN ACT relating to health care services; providing health care consumers with access to out-of-network providers; amending K.S.A. 1996 Supp. 40-2,103, 40-1909, 40-19a10, 40-19b10, 40-19c09 and 40-19d10, and repealing the existing sections.

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

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

(1) "Health care consumer" means any person and any covered dependent of such person who is: (A) an insured under any individual health insurance policy; (B) enrolled as a beneficiary of a group health insurance policy; or (C) an enrollee of a health maintenance organization;

(2) "Health care products" means medical equipment, appliances, drugs, medicines and medical supplies;

(3) "Health care services" means basic health care services and other services, which may include, but are not limited to, medical, surgical and dental care; psychological, obstetrical, osteopathic, optometric, optical, podiatric, nursing, physical therapy services, occupational therapy services, chiropractic services and pharmacy services; health education, preventive medical, rehabilitative and home health services; inpatient and outpatient hospital services, extended care, nursing home care, convalescent institutional care,

laboratory and ambulance services; the dispensing or furnishing of health care products; and any other care, service or treatment for the prevention, control or elimination of disease, the correction of defects or the maintenance of the physical or mental well-being of human beings;

(4) "Person" means any natural or artificial person, including but not limited to individuals, partnerships, associations, trusts or corporations;

(5) "Network provider" means a provider which has entered into an agreement with a third-party payor or an agent thereof to provide health care services to health care consumers;

(6) "Provider" means any physician, hospital or other person which is licensed or otherwise authorized in this state to furnish health care services; and

(7) "Third-party payor" means any insurer or corporation which issues individual and group health insurance policies providing coverage on an expense-incurred basis, individual and group service or indemnity-type contracts issued by a profit or nonprofit corporation and all contracts issued by health maintenance organizations organized or authorized to transact business in this state.

(b) Any health care consumer who is authorized to obtain health care services pursuant to health care coverage afforded by any third-party payor which has entered into an agreement with network providers, may obtain such health care services from a network provider or another provider selected by the

health care consumer. If such health care services are rendered by a non-network provider, payment by the third-party payor for the health care services so provided shall be in an amount not less than 90% of the amount which would be paid if the services were provided by a network provider, except that, where the agreement between the third-party payor and the network provider specifies separate amounts which will be paid for prescription legend drugs and the corresponding pharmacy services rendered in connection with the dispensing of such drugs, the payment for the prescription legend drugs shall be in an amount equal to the amount allowed by such agreement for the prescription legend drugs, if dispensed by a network provider, and the amount paid for the corresponding pharmacy services shall be in an amount not less than 90% of the amount which would be paid for such services if rendered by a network provider.

Sec. 2. K.S.A. 1996 Supp. 40-2,103 is hereby amended to read as follows: 40-2,103. The requirements of K.S.A. 40-2,100, 40-2,101, 40-2,102, 40-2,104, 40-2,105, 40-2,114 and 40-2250, and amendments thereto ~~and~~ K.S.A. 1996 Supp. 40-2,160 and section 1 of this act shall apply to all insurance policies, subscriber contracts or certificates of insurance delivered, renewed or issued for delivery within or outside of this state or used within this state by or for an individual who resides or is employed in this state.

Sec. 3. K.S.A. 1996 Supp. 40-1909 is hereby amended to read as follows: 40-1909. (a) Such corporations shall be

subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, ~~40-230~~, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,114, 40-2,116, 40-2,117, 40-2a01 to 40-2a19, inclusive, 40-2216 to 40-2221, inclusive, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, and amendments thereto, and to the provisions of K.S.A. 1996 Supp. 40-2,153 ~~and~~, 40-2,154 and 40-2,160, and amendments thereto, and ~~K.S.A. 1996 Supp. 40-2,160~~ to the provisions of section 1 of this act, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 4. K.S.A. 1996 Supp. 40-19a10 is hereby amended to read as follows: 40-19a10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, ~~40-230~~, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 *et seq.*, 40-2215 to 40-2220, inclusive, 40-2253, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, and amendments thereto, ~~and to the provisions of K.S.A. 1995 1996 Supp. 40-2,154, and amendments thereto, and to the provisions of~~ section 1 of this act, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 5. K.S.A. 1996 Supp. 40-19b10 is hereby amended to read as follows: 40-19b10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-

229, ~~40-230~~, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 *et seq.*, 40-2215, 40-2253, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3312, inclusive, and amendments thereto, ~~and to the provisions of K.S.A. 1995 1996 Supp. 40-2,154, and amendments thereto, and to the provisions of section 1 of this act.~~ except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 6. K.S.A. 1996 Supp. 40-19c09 is hereby amended to read as follows: 40-19c09. (a) Corporations organized under the nonprofit medical and hospital service corporation act shall be subject to the provisions of the Kansas general corporation code, articles 60 to 74, inclusive, of chapter 17 of the Kansas Statutes Annotated, applicable to nonprofit corporations, to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226,

40-229, ~~40-230~~, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248, 40-249, 40-250, 40-251, 40-252, 40-254, 40-2,100, 40-2,101, 40-2,102, 40-2,103, 40-2,104, 40-2,105, 40-2,116, 40-2,117, 40-2a01 *et seq.*, 40-2111 to 40-2116, inclusive, 40-2215 to 40-2220, inclusive, 40-2221a, 40-2221b, 40-2229, 40-2230, 40-2250, 40-2251, 40-2253, 40-2254, 40-2401 to 40-2421, inclusive, and 40-3301 to 40-3313, inclusive, and amendments thereto, ~~and~~ to the provisions of K.S.A. 1996 Supp. 40-2,153 ~~and~~ 40-2,154 and 40-2,160, and amendments thereto, and ~~K.S.A. 1996 Supp. 40-2,160~~ to the provisions of section 1 of this act, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 7. K.S.A. 1996 Supp. 40-19d10 is hereby amended to read as follows: 40-19d10. (a) Such corporations shall be subject to the provisions of K.S.A. 40-214, 40-215, 40-216, 40-218, 40-219, 40-222, 40-223, 40-224, 40-225, 40-226, 40-229, ~~40-230~~, 40-231, 40-235, 40-236, 40-237, 40-247, 40-248,

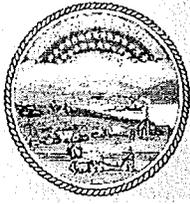
40-249, 40-250, 40-251, 40-252, 40-254, 40-2,102, 40-2a01 *et seq.*, 40-2215 to 40-2220, inclusive, 40-2253, 40-2401 to 40-2421, inclusive, 40-3301 to 40-3313, inclusive, and amendments thereto, ~~and~~ to the provisions of K.S.A. ~~1995~~ 1996 Supp. 40-2,154, and amendments thereto, and to the provisions of section 1 of this act, except as the context otherwise requires, and shall not be subject to any other provisions of the insurance code except as expressly provided in this act.

(b) No policy, agreement, contract or certificate issued by a corporation to which this section applies shall contain a provision which excludes, limits or otherwise restricts coverage because medicaid benefits as permitted by title XIX of the social security act of 1965 are or may be available for the same accident or illness.

(c) Violation of subsection (b) shall be subject to the penalties prescribed by K.S.A. 40-2407 and 40-2411, and amendments thereto.

Sec. 8. K.S.A. 1996 Supp. 40-2,103, 40-1909, 40-19a10, 40-19b10, 40-19c09 and 40-19d10 are hereby repealed.

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



Health Care Stabilization Fund

Robert D. Hayes, Executive Director
300 S.W. 8th Avenue, Second Floor
Topeka, Kansas 66603-3912

Compliance Section
Claims Section
Fax

913-291-3475
913-291-3777
913-291-3550

February 3, 1997

FINANCIAL INSTITUTIONS AND INSURANCE SENATE COMMITTEE

Bill Introduction
By The
Health Care Stabilization Fund

Request To Revise The Health Care Provider Insurance Availability Act K.S.A. 40-3401, et seq.

Presented By
Robert D. Hayes, Executive Director
Health Care Stabilization Fund

On behalf of the Health Care Stabilization Fund Board of Governors, we request the Committee to introduce a bill which would revise certain provisions of the existing Fund law. A majority of the revisions proposed in the attached draft are merely housekeeping type changes. Other proposed changes relate to technical aspects of the operation of the Health Care Stabilization Fund which we do not believe are controversial in nature.

Keith Hall
Gaylon Lowery
James Rider, D.O.

BOARD OF GOVERNORS
John W. Young, M.D., Chairperson
Mark Praeger, M.D. Vice Chairperson
Steve Preston, CRNA
Gene Schmidt

Senate I.D.D.
Attachment 3
2/3/97
William J. Walls, M.D.
Mark J. Hatesohl, D.C.
Ross Shook, D.O.

Health Care Provider Insurance Availability Act
With Proposed Legislative Changes
Page No. 1

40-3401.

40-3401. Definitions. As used in this act the following terms shall have the meanings respectively ascribed to them herein.

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

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

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

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

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

(f) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a medical care facility licensed by the department of health and environment, a health maintenance organization issued a certificate of authority by the commissioner of insurance, a podiatrist licensed by the state board of healing arts, an optometrist licensed by the board of examiners in optometry, a pharmacist licensed by the state board of pharmacy, a licensed professional nurse who is authorized to practice as a registered nurse anesthetist, a licensed professional nurse who has been granted a temporary authorization to practice nurse anesthesia under K.S.A. 65-1153 and amendments thereto, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection, a dentist certified by the state board of healing arts to administer anesthetics under K.S.A. 65-2899 and amendments thereto, a physical therapist registered by the state board of healing arts, a psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto, or a mental health center or mental health clinic licensed by the secretary of social and rehabilitation services, except that health care provider does not include (1) any state institution for the mentally retarded, (2) any state psychiatric hospital, (3) any person holding an exempt license issued by the state board of healing arts or (4) any person holding a visiting clinical professor license from the state board of healing arts.

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

(h) "Insurer" means any corporation, association, reciprocal exchange, inter-insurer and any other legal entity authorized to write bodily injury or property damage liability insurance in this state, including workers compensation and automobile liability insurance, pursuant to the provisions of the

Health Care Provider Insurance Availability Act
With Proposed Legislative Changes
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acts contained in article 9, 11, 12 or 16 of chapter 40 of Kansas Statutes Annotated.

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

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

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

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

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

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

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

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

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

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

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

(2) a person engaged in a postgraduate training program approved by the state board of healing arts who is employed by a nonprofit corporation organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine or who is employed by an affiliate of the university of Kansas school of medicine as

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defined in K.S.A. 76-367 and amendments thereto only when such person is engaged in medical activities which do not include extra-curricular, extra-institutional medical service for which such person receives extra compensation and which have not been approved by the chief operating officer of the nonprofit corporation or the chief operating officer of the affiliate and the executive vice-chancellor of the university of Kansas medical center.

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

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

History: L. 1976, ch. 231, 1; L. 1977, ch. 165, 1; L. 1979, ch. 186, 22; L. 1980, ch. 142, 1; L. 1981, ch. 199, 1; L. 1982, ch. 207, 1; L. 1984, ch. 177, 1; L. 1985, ch. 166, 1; L. 1986, ch. 183, 14; L. 1986, ch. 229, 24; L. 1986, ch. 231, 4; L. 1986, ch. 184, 1; L. 1986, ch. 181, 2; L. 1986, ch. 181, 3; L. 1986, ch. 181, 4; L. 1987, ch. 176, 1; L. 1987, ch. 177, 1; L. 1987, ch. 242, 1; L. 1987, ch. 178, 1; L. 1987, ch. 178, 2; L. 1988, ch. 246, 12; L. 1989, ch. 143, 1; L. 1990, ch. 174, 1; L. 1990, ch. 175, 1; L. 1991, ch. 139, 1; L. 1992, ch. 156, 2; Amended, L. 1994, ch. 181, 3; April 21.

40-3402.

40-3402. Professional liability insurance to be maintained by health care providers as condition to rendering services in state, exception, limits of coverage; information to be furnished by insurer; termination of coverage, notice; contents of policies issued in state; duties of certain insurance companies; surcharge and information required of certain health care providers; occurrence form policy as alternative to required claims made policy for certain persons; expiration of section, conditions. (a) A policy of professional liability insurance approved by the commissioner and issued by an insurer duly authorized to transact business in this state in which the limit of the insurer's liability is not less than \$200,000 per ~~occurrence claim~~, subject to not less than a \$600,000 annual aggregate for all claims made, during the policy period, shall be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on or after July 1, 1995 *nor to health maintenance organizations on or after July 1, 1997*. Such policy shall provide as a minimum coverage for claims made during the term of the policy which were incurred during the term of such policy or during the prior term of a similar policy. Any insurer offering such policy of professional liability insurance to any health care provider may offer to such health care provider a policy as prescribed in this section with deductible options. Such deductible shall be within such policy limits.

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

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

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coverage shall be terminated by cancellation or failure to renew by the insurer unless such insurer provides a notice of termination as required by this subsection.

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

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

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

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

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

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

~~(e) The provisions of this section shall expire on July 1, 1994, if the health care stabilization fund oversight committee recommends provisions that are enacted on or before July 1, 1994, which: (1) Provide for the equitable apportionment of risk among insurers of applicants for professional liability insurance, who are unable to procure such insurance through ordinary methods after June 30, 1994; (2) provide for the apportionment, on a pro rata basis, of any balance remaining in the fund after all liabilities have been paid, to each health care provider who paid the applicable surcharge levied pursuant~~

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to K.S.A. 40-3404, and amendments thereto, during the period July 1, 1991, to June 30, 1994; and (3) provide a plan for addressing the professional liability insurance needs of faculty, residents and private practice foundations and corporations at the university of Kansas school of medicine after June 30, 1994.

History: L. 1976, ch. 231, 2; L. 1984, ch. 238, 2; L. 1985, ch. 166, 2; L. 1986, ch. 229, 26; L. 1986, ch. 179, 3; L. 1986, ch. 184, 2; L. 1989, ch. 143, 2; L. 1990, ch. 175, 2; L. 1991, ch. 139, 2; Amended, L. 1994, ch. 155, 1; L. 1995, ch. 145, 1; July 1.

40-3403.

40-3403. Health care stabilization fund, establishment and administration; board of governors; liability of fund; payments from fund; qualification of health care provider for coverage under fund, termination; liability of provider for acts of other providers; university of Kansas medical center private practice foundation reserve fund, establishment, transfers from; provider coverage options, election; eligibility of psychiatric hospitals and certain inactive providers for coverage; termination of fund liability for optometrists and pharmacists, purchase of coverage from fund for periods of prior compliance. (a) For the purpose of paying damages for personal injury or death arising out of the rendering of or the failure to render professional services by a health care provider, self-insurer or inactive health care provider subsequent to the time that such health care provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the health care stabilization fund. The fund shall be held in trust in a segregated fund in the state treasury. The board of governors shall administer the fund or contract for the administration of the fund with an insurance company authorized to do business in this state.

(b) (1) ~~On the effective date of this act, the board of governors in existence on the day preceding such effective date is hereby abolished. On the effective date of this act, there~~ There is hereby created a board of governors which shall be composed of such members and shall have such powers, duties and functions as are prescribed by this act. The board of governors shall:

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

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

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

(D) have the authority to grant exemptions from the provisions of subsection (m) of this section when a health care provider temporarily leaves the state for the purpose of obtaining additional education or training or to participate in religious, humanitarian or government service programs. Whenever a health care provider has previously left the state for one of the reasons specified in this paragraph and returns to the state and recommences practice, the board of governors may refund any amount paid by the health care provider pursuant to subsection (m) of this section if no claims have been filed against such health care provider during the provider's temporary absence from the state.

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

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

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

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

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

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

(3) ~~On and after the effective date of this act, whenever~~ Whenever a vacancy occurs in the membership of the board of governors created by this act, the commissioner shall appoint a successor of like qualifications from a list of three nominees submitted to the commissioner by the professional society or association prescribed by this section for the category of health care provider required for the vacant position on the board of governors. ~~Except as otherwise provided by this section, all~~ All appointments made shall be for a term of office of four years, but no member shall be appointed for more than two successive four-year terms. Each member shall serve until a successor is appointed and qualified. Whenever a vacancy occurs in the membership of the board of governors created by this act for any reason other than the expiration of a member's term of office, the commissioner shall appoint a successor of like qualifications to fill the unexpired term. In each case of a vacancy occurring in the membership of the board of governors, the commissioner shall notify the professional society or association which represents the category of health care provider required for the vacant position and request a list of three nominations of health care providers from which to make the appointment.

(4) (A) ~~The persons serving as members of the board of governors on the day preceding the effective date of this act, except the commissioner of insurance and the persons appointed from the public at large or to represent the unspecified category of health care providers under the provisions of this section as it existed on the day preceding the effective date of this act, shall be the initial members of the board of governors created by this act and shall hold such office in accordance with and subject to the provisions of this section. The commissioner shall designate the terms of office of such initial members of the board of governors created by this act as follows:~~

~~(i) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1995;~~

~~(ii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1996;~~

~~(iii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of medicine shall be designated for a term expiring on July 1, 1997;~~

~~(iv) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1995;~~

~~(v) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1996;~~

~~(vi) one member who is a representative of a Kansas hospital shall be designated for a term expiring on July 1, 1997;~~

~~(vii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of~~

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~~osteopathic medicine shall be designated for a term expiring on July 1, 1995;~~

~~—(viii) one member who is licensed to practice medicine and surgery in Kansas who is a doctor of osteopathic medicine shall be designated for a term expiring on July 1, 1996;~~

~~—(ix) the member who is licensed to practice chiropractic in Kansas shall be designated for a term expiring on July 1, 1995; and~~

~~(x) the member who is a licensed professional nurse authorized to practice as a registered nurse anesthetist in Kansas shall be designated for a term expiring on July 1, 1996.~~

~~(B) If there was a vacancy in the membership of the board of governors abolished by this act on the day preceding the effective date of this act, the commissioner shall appoint a person of like qualifications in accordance with this subsection (b) and shall designate the term of such member in accordance with this subsection (b) as though such member had been a member on the day preceding the effective date of this act. In any such case, the commissioner shall notify the professional society or association representing the category of health care provider required for the vacant position and request a list of nominations of health care providers from which to make the appointment.~~

~~(5) (4) The board of governors shall organize at its first meeting in January of 1995, and at its first meeting subsequent to July 1, 1995, and on July 1 of each year thereafter and shall elect a chairperson and vice-chairperson from among its membership. Meetings shall be called by the chairperson or by a written notice signed by three members of the board.~~

~~(6) (5) The board of governors, in addition to other duties imposed by this act, shall study and evaluate the operation of the fund and make such recommendations to the legislature as may be appropriate to ensure the viability of the fund.~~

~~(7) (6) On and after January 1, 1995, and prior to July 1, 1995, the board of governors shall be attached to the insurance department in accordance with this section and all staff, other than the executive director, budgeting, personnel, purchasing and related management functions of the board shall be provided by the commissioner of insurance. The commissioner shall include the budget estimates of the board of governors, as approved by the board, with the budget estimates for the insurance department which are submitted to the division of the budget under K.S.A. 75-3717 and amendments thereto. All vouchers for expenditures of the board shall be approved by the chairperson of the board or a person designated by the chairperson and, upon such approval, shall be paid from the fund. On and after January 1, 1995, the board shall appoint an executive director who shall be in the unclassified service of the Kansas civil service act. On and after July 1, 1995, the board may appoint such additional employees, and provide all office space, services, equipment, materials and supplies, and all budgeting, personnel, purchasing and related management functions required by the board in the exercise of the powers, duties and functions imposed or authorized by the health care provider insurance availability act or may enter into a contract with the commissioner of insurance for the provision, by the commissioner, of all or any part thereof.~~

~~(8) (7) The commissioner shall:~~

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

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

~~(C) On and after January 1, 1995, and prior to July 1, 1995, provide such staff, other than the executive director, office space, services, equipment, materials and supplies and all budgeting, personnel, purchasing and related management functions as may be required by the board in the exercise of its~~

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~~powers, duties and functions imposed or authorized by the health care provider insurance availability act, and on and after July 1, 1995, provide all or any part thereof required by any contract entered into between the board and the commissioner therefor.~~

~~(9) On the effective date of this act, all of the powers, duties, functions, records and property of the board of governors that is abolished by this section, which are prescribed for the board of governors by this act are hereby transferred to and conferred and imposed upon the board of governors that is created by this section, except as is otherwise specifically provided by this act. On the dates prescribed for the transfer of the powers, duties and functions by this act, all of the powers, duties, functions, records and property of the commissioner of insurance or the insurance department, which relate to or are required for the performance of powers, duties or functions which are prescribed for the board of governors by this act, including the power to expend funds now or hereafter made available in accordance with appropriation acts, are hereby transferred to and conferred and imposed upon the board of governors that is created by this section, except as is otherwise specifically provided by this act.~~

~~(10) The board of governors created by this act shall be the successor in every way to the powers, duties and functions of the board of governors and the commissioner of insurance in which such powers, duties and functions were vested prior to the dates prescribed for the transfer of such powers, duties and functions to the board in accordance with this act, except as otherwise specifically provided by this act. Every act performed under the authority of the board of governors created by this act shall be deemed to have the same force and effect as if performed by the board of governors and the commissioner of insurance in which such powers, duties and functions were vested prior to the of transfer of such powers, duties and functions.~~

~~(11) Subject to the provisions of this act, whenever the board of governors that is abolished by this act or the commissioner of insurance, or words of like effect, is referred to or designated by a statute, contract, or other document, and such reference or designation relates to a power, duty or function which is transferred to and conferred and imposed upon the board of governors that is created by this act, such reference or designation shall be deemed to apply to the board of governors created by this act.~~

~~(12) All rules and regulations and all orders or directives of the board of governors that is abolished by this act and all rules and regulations of the commissioner of insurance, which are in existence on the date prescribed for the transfer of powers, duties and functions to such board under this act and which relate to powers, duties and functions that were vested in such board of governors or the commissioner of insurance prior to such date, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the board of governors created by this act, until revised, amended or revoked or nullified pursuant to law. The board of governors created by this act shall be deemed to be a continuation of the board of governors abolished by this act.~~

~~(13) On July 1, 1995, all employees who were engaged prior to such date in the performance of duties and functions under the health care provider insurance availability act, and who, in the opinion of the board, are necessary to perform the duties and functions required under such act by the board shall become employees of the board, and shall retain all retirement benefits and rights of civil service which such employee had prior to July 1, 1995, and their services shall be deemed to have been continuous.~~

(c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), and (p) the fund shall be liable to pay: (1) Any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable resident health care providers or resident self-insurers for any personal injury or death arising out of the rendering of or the failure to render professional services within or without this state;

(2) subject to the provisions of subsection (m), any amount due from a judgment or settlement which is in excess of the basic coverage liability of all liable nonresident health care providers or nonresident self-insurers for any such injury or death arising out of the rendering or the failure to render professional services within this state but in no event shall the fund be obligated for claims against

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nonresident health care providers or nonresident self-insurers who have not complied with this act or for claims against nonresident health care providers or nonresident self-insurers that arose outside of this state;

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

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

(5) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees incurred in defending the fund against claims;

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

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

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

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

(10) return of any unearned surcharge;

(11) subject to subsection (b) of K.S.A. 40-3411, and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider;

(12) notwithstanding the provisions of subsection (m), any amount due from a judgment or settlement for an injury or death arising out of the rendering of or failure to render professional services by a person engaged or who was engaged in residency training or the private practice corporations or foundations and their full-time physician faculty employed by the university of Kansas medical center;

(13) reasonable and necessary expenses for the development and promotion of risk management education programs;

(14) notwithstanding the provisions of subsection (m), any amount, but not less than the required

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basic coverage limits, owed pursuant to a judgment or settlement for any injury or death arising out of the rendering of or failure to render professional services by a person, other than a person described in clause (12) of this subsection (c), who was engaged in a postgraduate program of residency training approved by the state board of healing arts but who, at the time the claim was made, was no longer engaged in such residency program;

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

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

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

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

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

(f) The fund shall not be liable to pay in excess of the amounts specified in the option selected by the health care provider pursuant to subsection (l) for judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services by such health care provider on or after July 1, 1989.

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

- (1) On and after July 1, 1976, if basic coverage is then in effect;
- (2) subsequent in July 1, 1976, at such time as basic coverage becomes effective; or
- (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414 and amendments thereto.

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

(i) Notwithstanding the provisions of K.S.A. 40-3402 and amendments thereto, if the board of governors determines due to the number of claims filed against a health care provider or the outcome of those claims that an individual health care provider presents a material risk of significant future liability

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to the fund, the board of governors is authorized by a vote of a majority of the members thereof, after notice and an opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, to terminate the liability of the fund for all claims against the health care provider for damages for death or personal injury arising out of the rendering of or the failure to render professional services after the date of termination. The date of termination shall be 30 days after the date of the determination by the board of governors. The board of governors, upon termination of the liability of the fund under this subsection, shall notify the licensing or other disciplinary board having jurisdiction over the health care provider involved of the name of the health care provider and the reasons for the termination.

(j) (1) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the director of accounts and reports the amount of such payment, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection (j), from the state general fund to the health care stabilization fund.

(2) Upon the payment of moneys from the health care stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the director of accounts and reports the amount of such payment which is equal to the basic coverage liability of self-insurers, and the director of accounts and reports shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) of this subsection (j), from the state general fund to the health care stabilization fund.

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

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

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

(l) On or after July 1, 1989, every health care provider shall make an election to be covered by one of the following options provided in this subsection (l) which shall limit the liability of the fund with

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respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after July 1, 1989. Such election shall be made at the time the health care provider renews the basic coverage in effect on July 1, 1989, or, if basic coverage is not in effect, such election shall be made at the time such coverage is acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of the election shall be provided by the insurer providing the basic coverage in the manner and form prescribed by the board of governors and shall continue to be effective from year to year unless modified by a subsequent election made prior to the anniversary date of policy. The health care provider may at any subsequent election reduce the dollar amount of the coverage for the next and subsequent fiscal years, but may not increase the same, unless specifically authorized by the board of governors. *Any election of fund coverage limits, whenever made, shall be with respect to judgments or settlements relating to injury or death arising out of the rendering of or failure to render professional services on or after the effective date of such election of fund coverage limits.* Such election shall be made for persons engaged in residency training and persons engaged in other postgraduate training programs approved by the state board of healing arts at medical care facilities or mental health centers in this state by the agency or institution paying the surcharge levied under K.S.A. 40-3404, and amendments thereto, for such persons. Such options shall be as follows:

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

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

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

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

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

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

(o) Notwithstanding the provisions of subsection (m) or any other provision in article 34 of chapter 40 of the Kansas Statutes Annotated to the contrary, the fund shall not be liable for any claim made on or after July 1, 1995, against a physical therapist registered by the state board of healing arts relating to any injury or death arising out of the rendering of or failure to render professional services by such physical therapist prior to July 1, 1995, unless such physical therapist qualified as an inactive health care provider prior to July 1, 1995, and obtained coverage pursuant to subsection (m). ~~Physical therapists not qualified as inactive health care providers prior to July 1, 1995, may purchase coverage from the fund for periods of prior compliance by making application prior to August 1, 1995, and payment within 30 days from notice of the calculated amount as determined by the board of governors to be sufficient to fund anticipated claims based on reasonably prudent actuarial principles.~~

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

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

History: L. 1976, ch. 231, 3; L. 1980, ch. 143, 1; L. 1983, ch. 160, 1; L. 1984, ch. 238, 3; L. 1984, ch. 178, 1; L. 1986, ch. 229, 27; L. 1986, ch. 179, 2; L. 1986, ch. 184, 3; L. 1986, ch. 181, 5; L. 1986, ch. 181, 6; L. 1987, ch. 176, 2; L. 1987, ch. 177, 2; L. 1987, ch. 178, 3; L. 1988, ch. 155, 3; L. 1988, ch. 356, 123; L. 1989, ch. 143, 3; L. 1990, ch. 174, 2; L. 1990, ch. 175, 3; L. 1991, ch. 139, 3; L. 1992, ch. 23, 1; Amended, L. 1994, ch. 328, 1; L. 1995, ch. 145, 2; July 1.

40-3403a.

40-3403a. Termination of fund coverage; equivalent insurance required. Any health care provider whose fund coverage has been terminated under subsection (i) of K.S.A. 40-3403 and amendments thereto shall, as a condition of licensure, maintain professional liability insurance coverage equivalent to that provided by the fund and shall submit to the board of governors satisfactory proof of such coverage, as required by the commissioner.

History: L. 1986, ch. 229, 21; L. 1995, ch. 145, 3; July 1.

40-3403b.

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40-3403b. Health care stabilization fund oversight committee; members, compensation and expenses; duties; legislative staff assistance; information provided for actuarial review, confidentiality, exemption from legal process. (a) There is hereby created a health care stabilization fund oversight committee to consist of eleven members, one of whom shall be the chairperson of the board of governors or another member of the board of governors designated by the chairperson, one of whom shall be appointed by the president of the state senate, one of whom shall be appointed by the minority leader of the state senate, one of whom shall be appointed by the speaker of the state house of representatives, one of whom shall be appointed by the minority leader of the state house of representatives and six of whom shall be persons appointed by the legislative coordinating council. The four members appointed by the president and minority leader of the state senate and the speaker and minority leader of the state house of representatives shall be members of the state legislature. Of the six members appointed by the legislative coordinating council, four shall either be health care providers or be employed by health care providers, one shall be a representative of the insurance industry and one shall be appointed from the public at large who is not affiliated with any health care provider or the insurance industry, but none of such six members shall be members of the state legislature. Members serving on the committee on July 1, 1991, shall continue to serve at the pleasure of the appointing authority.

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

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

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

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

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

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act.

History: L. 1989, ch. 143; L. 1990, ch. 176, 1; L. 1991, ch. 139, 4; Amended, L. 1994, ch. 155, 3; July 1.

40-3404.

40-3404. Annual premium surcharge; collection by insurer; penalty for failure of insurer to comply; basis of amount of premium surcharge. (a) Except for any health care provider whose participation in the fund has been terminated pursuant to subsection (i) of K.S.A. 40-3403 and amendments thereto, the board of governors shall levy an annual premium surcharge on each health care provider who has obtained basic coverage and upon each self-insurer for each fiscal year. This provision shall not apply to optometrists and pharmacists on or after July 1, 1991 nor to physical therapists on or after July 1, 1995 *nor to health maintenance organizations on or after July 1, 1997.* Such premium surcharge shall be an amount ~~equal to a percentage of the annual premium paid by the health care provider for the basic coverage required to be maintained as a condition to coverage by the fund by subsection (a) of K.S.A. 40-3402 and amendments thereto based upon a rating classification system established by the board of governors which is reasonable, adequate and not unfairly discriminatory.~~ *The annual premium surcharge upon each self-insurer, except for persons engaged in residency training, shall be an amount equal to a percentage of the amount such self-insurer would pay for basic coverage as calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413 and amendments thereto.* The annual premium surcharge upon the university of Kansas medical center for persons engaged in residency training, as described in subsection (r)(1) of K.S.A. 40-3401, and amendments thereto, shall be *based on an amount equal to a percentage of* an assumed aggregate premium of \$600,000. The annual premium surcharge upon the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, shall be *based on an amount equal to a percentage of* an assumed aggregate premium of \$400,000. The surcharge on such \$400,000 amount shall be apportioned among the employers of persons engaged in residency training, as described in subsection (r)(2) of K.S.A. 40-3401, and amendments thereto, based on the number of residents employed as of July 1 of each year.

(b) In the case of a resident health care provider who is not a self-insurer, the premium surcharge shall be collected in addition to the annual premium for the basic coverage by the insurer and shall not be subject to the provisions of K.S.A. 40-252, 40-1113 and 40-2801 et seq., and amendments thereto. The amount of the premium surcharge shall be shown separately on the policy or an endorsement thereto and shall be specifically identified as such. Such premium surcharge shall be due and payable by the insurer to the board of governors within 30 days after the annual premium for the basic coverage is received by the insurer, but in the event basic coverage is in effect at the time this act becomes effective, such surcharge shall be based upon the unearned premium until policy expiration and annually thereafter. Within 15 days immediately following the effective date of this act, the board of governors shall send to each insurer information necessary for their compliance with this subsection. The certificate of authority of any insurer who fails to comply with the provisions of this subsection shall be suspended pursuant to K.S.A. 40-222 and amendments thereto until such insurer shall pay the annual premium surcharge due and payable to the board of governors. In the case of a nonresident health care provider or a self-insurer, the premium surcharge shall be collected in the manner prescribed in K.S.A. 40-3402 and amendments thereto.

(c) ~~The premium surcharge made for any annual period beginning on or after July 1, 1991, shall be in an amount deemed sufficient by the board of governors, together with the premium surcharges for any subsequent annual periods made prior to July 1, 1994, to fund the total of any existing deficiencies in the fund on July 1, 1991, and all anticipated claims to be made before July 1, 1994, for which the fund will be liable based upon reasonably prudent actuarial principles.~~ In setting the amount of such surcharge, the board of governors: ~~(1) May~~ *may* require any health care provider who has paid a

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~~surcharge for less than 24 months to pay a higher surcharge than other health care providers; and (2) shall require that any health care provider who is insured by a policy or professional liability insurance with deductibles pay a surcharge based on an amount equal to a percentage on the annual amount of premium that would have been paid by the health care provider for basic coverage required to be maintained by the fund as provided by K.S.A. 40-3402 and amendments thereto without any deductibles.~~

History: L. 1976, ch. 231, 4; L. 1980, ch. 143, 2; L. 1983, ch. 160, 2; L. 1984, ch. 238, 4; L. 1985, ch. 166, 3; L. 1986, ch. 229, 29; L. 1986, ch. 179, 4; L. 1986, ch. 184, 4; L. 1986, ch. 181, 7; L. 1987, ch. 176, 3; L. 1990, ch. 175, 4; L. 1991, ch. 139, 3; Amended, L. 1994, ch. 155, 4; July 1.

40-3406.

40-3406. Investment of health care stabilization fund moneys. After consultation with the board of governors the director of investments may invest and reinvest moneys in the fund in accordance with investment policies established by the pooled money investment board under K.S.A. 75-4232, and amendments thereto, in the following:

(a) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of the United States sponsored enterprises which under federal law may be accepted as security for public funds, including investments in mortgage-backed securities;

(b) repurchase agreements with a Kansas bank or primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds;

(c) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(d) interest-bearing time deposits in any commercial bank located in Kansas; or

(e) the municipal investment pool fund, under K.S.A. 12-16577a, and amendments thereto.

History: L. 1976, ch. 231, 6; L. 1987, ch. 295, 4; L. 1989, ch. 48, 85; July 1. 1996 legislative changes incorporated.

40-3407.

40-3407. Payments from fund; claim payments. (a) Except for investment purposes, all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the board of governors, or the chairperson's designee and, with respect to claim payments, accompanied by (1) a certified copy of a final judgment against a health care provider or inactive health care provider for which the fund is liable; or (2) a certified copy of a court approved settlement against a health care provider or inactive health care provider for which the fund is liable.

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

History: L. 1976, ch. 231, 7; Amended, L. 1994, ch. 155, 5; July 1.

40-3408.

40-3408. Liability of insurer or self-insurer for injury or death arising out of act or omission of health care provider, limitation; fund coverage excess over liability insurance coverage; permissive

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exclusions from coverage. (a) The insurer of a health care provider covered by the fund or self-insurer shall be liable only for the first \$200,000 of a claim for personal injury or death arising out of the rendering of or the failure to render professional services by such health care provider, subject to an annual aggregate of \$600,000 for all such claims against the health care provider. However, if any liability insurance in excess of such amounts is applicable to any claim or would be applicable in the absence of this act, any payments from the fund shall be excess over such amounts paid, payable or that would have been payable in the absence of this act. The liability of an insurer for claims made prior to July 1, 1984, shall not exceed those limits of insurance provided by such policy prior to July

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

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

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

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

History: L. 1976, ch. 231, 8; L. 1984, ch. 238, 5; L. 1986, ch. 229, 30; L. 1990, ch. 174, 3; July 1.

40-3409.

40-3409. Service upon board of governors required in action filed in state for injury or death arising out of act or omission of health care provider; time for filing; effect of failure to make service; notification of board of governors required in action filed outside of state; copy of petition involving certain health care providers forwarded to state board of healing arts; defense of action; costs; submission of certain information to board of healing arts.

(a)(1) In any action filed in this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider covered by the fund or any inactive health care provider covered by the fund, the plaintiff shall serve a copy of the petition upon the board of governors by registered mail within 10 days from filing the same, and if such service is not made the fund shall not be liable for any amount due from a judgment or a settlement nor, in such case, shall the health care provider or the provider's insurer or the inactive health care provider or the provider's insurer be liable for such amount that, if such service had been made, would have been paid by the fund; (2) in any action filed outside of this state for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or any inactive health care provider covered by the fund, the inactive health care provider, the self-insurer or the insurer of a health care provider or an inactive health care provider shall notify the board of governors, as soon as it is reasonably practicable, that such summons or petition has been filed. If the petition names as a defendant in the action a health care provider who is licensed, registered or certified by the state board of healing arts, the board of governors shall forward a copy of the petition to the state board of healing arts.

(b) Such action shall be defended by the insurer or the self-insurer, but if the board of governors believes it to be in the best interests of the fund, the board of governors may employ independent counsel to represent the interests of the fund. The cost of employing such counsel shall be paid from the fund. The board of governors is authorized to employ independent counsel in any such action against an inactive health care provider covered by the fund.

(c) The attorneys of record and the board of governors shall submit to the state board of healing arts expert witness reports which have been made available to the opposing parties in the case and, upon the request of the state board of healing arts, any depositions, interrogatories, admissions or other relevant information concerning the case which has been made available to the opposing parties in the case shall also be submitted. The board of governors shall not be required to furnish information not in the possession of the board of governors. Any report or other information made available to the state board of healing arts in accordance with this subsection shall be subject to K.S.A. 65-2898a and amendments thereto. Reasonable expenses incurred in reproducing such reports or other information shall be paid by the state board of healing arts.

History: L. 1976, ch. 231, 9; L. 1983, ch. 213, 3; L. 1985, ch. 167, 1; Amended, L. 1994, ch. 155, 6; January 1, 1995.

40-3410.

40-3410. Negotiation of amount of claim to be paid from fund; settlement; procedure for court approval. When the insurer of a health care provider or inactive health care provider covered by the fund has agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, or where a claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim, or where it would otherwise be in the best interest of the fund, the claimant and the board of governors may negotiate on an amount to be paid from the fund. The board of governors may employ independent counsel to represent the interest of the fund in any such negotiations. In the event the claimant and the board of governors agree upon an amount the following procedure shall be followed:

(a) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or the inactive health care provider, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board of governors.

(b) The court shall set such petition for hearing as soon as the court's calendar permits, and notice of the time, date and place of hearing shall be given to the claimant, the health care provider or inactive health care provider, and to the board of governors.

(c) At such hearing the court shall approve the proposed settlement if the court finds it to be valid, just and equitable.

(d) In the event the settlement is not approved, the procedure set forth in K.S.A. 40-3411 and amendments thereto shall be followed.

History: L. 1976, ch. 231, 10; Amended, L. 1994, ch. 155, 7; July 1.

40-3411.

40-3411. Commencement of actions upon failure to reach settlement or obtain court approval thereof on amount to be paid from fund; defense of action; attorneys' fees; costs. (a) In any claim in which the insurer of a health care provider or inactive health care provider covered by the fund has

agreed to settle its liability on a claim against its insured or when the self-insurer has agreed to settle liability on a claim and the claimant's demand is in an amount in excess of such settlement, to which the board of governors does not agree, or where the claim is against an inactive health care provider covered by the fund who does not have liability insurance in effect which is applicable to the claim and the claimant and board of governors cannot agree upon a settlement, an action must be commenced by the claimant against the health care provider or inactive health care provider in a court of appropriate jurisdiction for such damages as are reasonable in the premises. If an action is already pending against the health care provider or inactive health care provider, the pending action shall be conducted in all respects as if the insurer or self-insurer had not agreed to settle.

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

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

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

History: L. 1976, ch. 231, 11; L. 1983, ch. 160, 3; Amended, L. 1994, ch. 328, 2; January 1, 1995.

40-3412.

40-3412. Actions against health care providers or inactive health care providers; no direct action against fund or insurer; inadmissible evidence; fund not liable for certain damages. (a) Any action for personal injury or death arising out of the rendering of or the failure to render professional services by any health care provider or inactive health care provider shall be maintained against such health care provider or inactive health care provider. No claimant shall have any right of action directly against the fund. No claimant shall have any right of action under this act directly against an insurer.

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

(c) Nothing herein shall be construed to impose any liability in the fund in excess of that specifically provided for herein for negligent failure to settle a claim or for failure to settle a claim in good faith.

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

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

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

History: L. 1976, ch. 231, 12; July 1.

40-3413.

40-3413. Apportionment of risk among insurers; preparation of plan; contents; approval or disapproval; amendment; preparation by commissioner of insurance, when; order to discontinue unfair or unreasonable activities or activities inconsistent with act; governing board, membership; commissions on insurance written under plan. (a) Every insurer and every rating organization shall cooperate in the preparation of a plan or plans for the equitable apportionment among such insurers of applicants for professional liability insurance and such other liability insurance as may be included in or added to the plan, who are in good faith entitled to such insurance but are unable to procure the same through ordinary methods. Such plan or plans shall be prepared and filed with the commissioner within a reasonable time but not exceeding 60 calendar days from the effective date of this act. Such plan or plans shall provide:

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

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

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

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

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

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

or plans.

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

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

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

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

History: L. 1976, ch. 231, 13; L. 1977, ch. 166, 1; L. 1980, ch. 144, 1; L. 1982, ch. 208, 1; L. 1984, ch. 178, 2; L. 1987, ch. 179, 1; L. 1988, ch. 356, 124; L. 1989, ch. 144, 1; L. 1992, ch. 23, 2; L. 1995, ch. 145, 5; July 1.

40-3414.

40-3414. Qualification of health care provider or system as self-insurer; cancellation of certificate of self-insurance, grounds; payment of surcharge; Kansas soldiers' home, persons engaged in residency training and persons engaged in a postgraduate training program as self-insurers; health maintenance organizations and related groups; private practice foundations and faculty of university of Kansas Medical center. (a) Any health care provider, or any health care system organized and existing under the laws of this state which owns and operates two or more medical care facilities licensed by the department of health and environment, whose aggregate annual insurance premium is or would be \$100,000 or more for basic coverage calculated in accordance with rating procedures approved by the commissioner pursuant to K.S.A. 40-3413 and amendments thereto, may qualify as a self-insurer by obtaining a certificate of self-insurance from the board of governors. Upon application of any such health care provider or health care system, on a form prescribed by the board of governors, the board of governors may issue a certificate of self-insurance if the board of governors is satisfied that the applicant is possessed and will continue to be possessed of ability to pay any judgment for which liability exists equal to the amount of basic coverage required of a health care provider obtained against such applicant arising from the applicant's rendering of professional services as a health care provider. In making such determination the board of governors shall consider (1) the financial condition of the applicant, (2) the procedures adopted and followed by the applicant to process and handle claims and potential claims, (3) the amount and liquidity of assets reserved for the settlement of claims or potential claims and (4) any other relevant factors. The certificate of self-insurance may contain reasonable conditions prescribed by

the board of governors. Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act, the board of governors may cancel a certificate of self-insurance upon reasonable grounds therefor. Failure to pay any judgment for which the self-insurer is liable arising from the self-insurer's rendering of professional services as a health care provider, the failure to comply with any provision of this act or the failure to comply with any conditions contained in the certificate of self-insurance shall be reasonable grounds for the cancellation of such certificate of self-insurance. The provisions of this subsection shall not apply to the Kansas soldiers' home or to any person who is a self-insurer pursuant to subsection (d) or (e).

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

(c) The Kansas soldiers' home shall be a self-insurer and shall pay the applicable surcharge set forth in subsection (c) of K.S.A. 40-3402 and amendments thereto.

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

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

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

(3) Upon notice and a hearing in accordance with the provisions of the Kansas administrative procedure act the board of governors may cancel, upon reasonable grounds therefor, a certificate of self-insurance issued pursuant to this subsection (e) or the authority of a medical care facility or mental health center to self-insure persons engaged in such postgraduate training programs at the medical care

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facility or mental health center. Failure of a person engaged in such postgraduate training program to comply with the terms and conditions of eligibility to be self-insured by the medical care facility or mental health center, the failure of a medical care facility or mental health center to pay any judgment for which such medical care facility or mental health center is liable as self-insurer of such person, the failure to comply with any provisions of the health care provider insurance availability act or the failure to comply with any conditions for approval of the application or any conditions contained in the certificate of self-insurance shall be reasonable grounds for cancellation of such certificate of self-insurance or the authority of a medical care facility or mental health center to self-insure such persons.

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

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

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

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

(h) Each private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center shall be deemed a self-insurer for the purposes of the health care provider insurance availability act. The private practice corporation or foundation of which the full-time physician faculty is a member shall pay the applicable surcharge set forth in subsection (a) of K.S.A. 40-3404, and amendments thereto on behalf of the private practice corporation or foundation and their full-time physician faculty employed by the university of Kansas medical center.

History: L. 1976, ch. 231, 14; L. 1981, ch. 199, 2; L. 1982, ch. 209, 1; L. 1984, ch. 177, 2; L. 1985, ch. 166, 4; L. 1986, ch. 134, 5; L. 1988, ch. 155, 9; L. 1988, ch. 356, 125; L. 1989, ch. 143, 4; L. 1990, ch. 175, 5; L. 1995, ch. 145, 6; July 1.

40-3415.

40-3415. Consultation and assistance in maintaining compliance with act. The board of governors, the commissioner, the attorney general, the health care stabilization fund oversight committee and the officers and employees of the state agencies which license, register, certify or otherwise regulate health care providers are authorized and directed to consult with and assist each other in maintaining compliance with the provisions of this act.

History: L. 1976, ch. 231, 15; L. 1984, ch. 238, 6; L. 1989, ch. 143, 5; July 1.

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40-3416.

40-3416. Report of suspected violations to regulatory agencies; investigation; report to attorney general; injunctive relief. When the board of governors is informed or reasonably suspects that a health care provider is rendering professional services in violation of K.S.A. 40-3402, and amendments thereto, such board shall report the suspected violation to the state agency which licenses, registers or certifies such health care provider. Upon receipt of such report or other evidence of a violation of K.S.A. 40-3402 and amendments thereto, the state agency shall make such investigation as it deems necessary and take such other official action as deemed appropriate. If a violation is found to exist, the state agency shall promptly notify the attorney general of this state. Upon such notice the attorney general or county attorney of the proper county shall, in the name of the state, institute and maintain an action to enjoin the health care provider from rendering professional services in this state in the district court of the district in which such health care provider is rendering professional services.

History: L. 1976, ch. 231, 16; L. 1995, ch 145, 7; July 1.

40-3417.

40-3417. Rules and regulations. (a) Except as otherwise provided by subsection (b), the commissioner may adopt such rules and regulations as may be deemed necessary to carry out the purposes of this act.

(b) The board of governors may adopt such rules and regulations as may be deemed necessary for the administration of the fund and the powers, duties and functions of the board of governors under the health care provider insurance availability act.

History: L. 1976, ch. 231, 17; Amended, 1994, ch. 155, 9; July 1.

40-3418.

40-3418. Severability of act. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

History: L. 1976, ch. 231, 18; July 1.

40-3418a.

40-3418a. Severability of act. If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

History: L. 1989, ch. 143, 9; July 1.

40-3419.

40-3419. Title of act. K.S.A. 40-3401 to 40-3419, inclusive, shall be known and may be cited as the health care provider insurance availability act.

History: L. 1976, ch. 231, 19; July 1.

40-3420.

40-3420. Professional corporation which reorganizes as not-for-profit corporation is continuing concern for purposes of obtaining basic coverage under health care provider insurance availability act. (a) Any professional corporation organized under the professional corporation law of Kansas that reorganizes as a Kansas not-for-profit corporation and seeks to comply with the provisions of the health care provider insurance availability act shall be considered to be a continuing concern for the purposes of obtaining basic coverage pursuant to the health care provider insurance availability act and shall not be considered to be an inactive health care provider. Any insurer issuing basic coverage to such corporation shall provide coverage for all claims made during the term of the policy issued which arose while the not-for-profit corporation was operating in this state as a professional corporation under the professional corporation law of Kansas.

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

History: L. 1982, ch. 207, 2; April 29.

40-3421.

40-3421. Reports by insurers of claims and actions, confidentiality; failure to report, civil penalty; liability of insurers in civil actions. (a) Any insurer providing professional liability insurance coverage to a health care provider, as defined by K.S.A. 40-3401 and amendments thereto, who is licensed in Kansas shall report to the appropriate state health care provider regulatory agency and the board of governors on forms prescribed by the board of governors any written or oral claim or action for damages for medical malpractice. The report shall be filed no later than 30 days following the insurer's receipt of notice of the claim or action and shall contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: L. 1986, ch. 229, 19; L. 1991, ch. 139, 6; L. 1995, ch. 145, 8; July 1.

40-3422.

40-3422. Appeal bond, insurance commissioner. In any medical malpractice liability action, as defined by K.S.A. 60-3401 and amendments thereto, the proceedings shall be stayed on appeal by the filing of a supersedes bond in the full amount of the judgment against the health care provider signed by the chairperson of the board of governors, or the chairperson's designee, as administrator of the health care stabilization fund without surety or other security.

History: L. 1986, ch. 229, 31; Amended, L. 1994, ch. 155, 10; July 1.

40-3423.

40-3423. Annuities purchased by fund. The health care stabilization fund may own or assign any annuity purchased by the fund pursuant to K.S.A. 1993 Supp. 60-3407, 60-3409 or 60-3411 or pursuant to K.S.A. 40-3410 and amendments thereto in settlements of the liability of the fund.

History: L. 1986, ch. 229, 32; July 1.

40-2702. Insurer defined; venue; certificate of authority required; exceptions; acts constituting transaction of business; effect of failure to obtain certificate. (a) As used in this act, unless the context otherwise requires, the term "insurer" means and includes all corporations, companies, associations, societies, fraternal benefit societies, mutual nonprofit hospital service and nonprofit medical service companies, partnerships and persons engaged

as principals in the business of insurance of the kinds enumerated in articles 4, 5, 6, 7, 11, 18, 19, 19a, 19b, 19c, 22, 32 and 38 of chapter 40 of the Kansas Statutes Annotated, and any amendments thereto, insofar as the business of insurance of the kinds enumerated in such articles relate to life and accident or sickness. Whenever in this section there is reference to an act effected or committed by mail, the venue of such act shall be at the point where the matter transmitted by mail is delivered and takes effect.

It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (b) of this section, without a certificate of authority from the commissioner of insurance. This section shall not apply to:

provisions, and paragraph (9) of subsection (c) of section 501 of the internal revenue code; and

(8) any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding and strengthening educational institutions, organized and operated without profit to any private shareholder or individual, by issuing insurance and annuity contracts directly from the home office of the company, without insurance agents or insurance representatives in this state, only to or for the benefit of such institutions and individuals engaged in the services of such institutions, but this exemption shall be conditioned upon any such company complying with the following requirements:

(i) Payment of an annual registration fee of \$500;

(ii) filing a copy of the form of any policy or contract issued to Kansas residents with the commissioner of insurance;

(iii) filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the commissioner of insurance; and

(iv) providing, in such form as may be prescribed by the commissioner of insurance, for the appointment of the commissioner of insurance as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kansas citizen and process so served against such company shall have the same force and validity as if served upon the company.

proposed amendment

by

Variable Annuity Life Insurance Company

which is not subject to guaranty fund assessments by its state of domicile

*Senate F.D.D.
Attachment 4
3/3/97*



PONY EXPRESS COMMUNITY BANK

MEMBER FDIC

January 31, 1997

To:
Kansas Senate
Financial Institution and Insurance Committee
Capitol Building
Topeka, Kansas

Re: Senate Bill No. 86 as Amended--Public Funds to be held by
Kansas institutions

Chairman Steffes and Committee Members:

Background: Our financial institution is a small community bank with approximately \$20 million in deposits. The home office is located in St. Joseph, MO with two branches located in Elwood, Ks. in Doniphan County and Lucas, Ks. in Russell County.

In August, 1995, the holding company for First State Bank, Elwood, Ks. acquired ownership of The Farmers State Bank, Lucas, Ks. In January 1996, the two banks were merged and the home office moved from Elwood, Ks. to St. Joseph, Mo. Branches were simultaneously located in Elwood and Lucas.

In Lucas and Elwood, each of our branches is the only financial institution located in their respective City.

Issue: An inadvertent result of the above action was that the Kansas branches could no longer legally hold public funds as bank deposits. In early 1996, this Bank voluntarily informed the respective governing bodies of the local municipalities of the change in order to permit them to conform with Kansas law.

The impact of the law affected tax-supported funds of the city, county, library, cemetery, townships, and school district. Some of these entities had several accounts with our Bank. After consultation with their legal counsel and auditing firms, action was taken by the governing bodies to move their public funds out of town to a bank with a home office located in Kansas.

In the case of the City of Lucas, the bank was located 10 miles away to a branch of United Missouri Bank which does have a home office chartered in Kansas.

Senate J. P. D.
Attachment 5

Feb. 3, 1997

The City Clerk and City Treasurer of Lucas (pop. 500) are parttime positions held to administer the daily business of the City. This change has unfortunately created significant additional time-consuming burdens on these City officials.

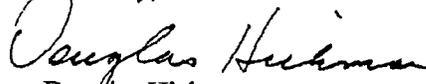
With the changes in banking described above, the City in particular has been negatively affected in the following specific ways:

- 1) Additional personnel time to mail deposits and conduct banking business out of town;
- 2) Additional postage cost and telephone expense to conduct banking business;
- 3) Substantial modifications required in City recordkeeping and computer operations to account for the transactions of two bank locations;
- 4) Additional personnel time to monitor and reconcile two bank statements instead of just one;
- 5) Additional personnel time to prepare monthly reports for City records including budget analysis and City Council management reports to include the new out of town accounts;
- 6) Additional annual auditing expense and procedures to include verification and transactions of the out of town account;
- 7) And finally, the funds generated by local citizens and local taxpayers are deposited in a neighboring community instead of supporting loan activity in the location in which the funds are derived.

Recommendation: That the Kansas legislature support and pass Senate Bill No. 86 as amended to permit financial institutions with home or branch offices located in the State of Kansas to hold public funds deposits.

Your consideration of this matter is appreciated.

Sincerely,



Douglas Hickman
Executive Vice President
Lucas, Ks. Branch

5-2



Date: February 3, 1997
To: Senate Financial Institutions and Insurance Committee
From: Sue Anderson, Executive Director
Subject: Testimony in support of Senate Bill 86

On behalf of the Community Bankers Association of Kansas, thank you for the opportunity to appear before you today in support of Senate Bill 86.

For those of you on the Committee who may be unfamiliar with our Association, we represent exclusively community banks. We have approximately 150 banks, from across the state of Kansas, as members. Many people ask me what the difference is between a community bank and "other banks." A community bank is locally owned and operated, and is, generally speaking, in the size range of under \$300 million in assets..

An integral philosophy of a community bank is to use money generated by the customers of the bank to reinvest back into the community area making local loans to entrepreneurs, existing small businesses, agriculture, individuals, and families. This practice of locally recycling deposits creates additional economic benefits to the area. Local borrowers can find the money needed to purchase a car, buy or remodel a home, any of the many things and reasons for which a person may need to borrow money. Commercial loans help new businesses get started or existing ones to grow, which - through increased profits and hopefully additional wage earners - creates more tax dollars.

It is because of this local re-investment of dollars that we appear before you today. At issue, is whether the State's public monies, generated by the tax payers of this state, will remain available to help local borrowers.

When loan demand is high, banks need additional fund sources. Using local public fund deposits forms a good economic partnership. From these funds, loans can be made available to the local borrowers who paid into the local tax base. This current process creates a circular effect which helps keep down the cost of the loan to the consumer and their own tax dollars are at work - locally. It is to the benefit of the local taxpayer needing a loan.

*Senate File
Attachment 6
Feb. 3, 1997*

Directed By The Members We Serve

SB 86 Testimony
Senate FI&I Committee
February 3, 1997
Page -2-

Local public funds are a primary source of lendable funds within the state of Kansas. Without those dollars present, local banks could face a severe liquidity crunch, which would increase the cost of borrowing for the Kansas tax payer and make it hard for Kansans to find affordable local funding for their homes, businesses and farms.

Maintaining the bidding criteria for public funds by continuing the existing requirement of a home office in Kansas will greatly increase the chances those funds will remain available to be used economically for local lending. That's why we support Senate Bill 86.

In conclusion, I wish to mention one other important point, which may be clouding this issue. Senate Bill 86 does not exclude bidders from public funds arena. It simply clarifies the existing eligibility requirements. Any bank, savings bank or savings and loan institution may bid on public funds. There is only one requirement - and it is equal for all bidders - the financial institution must have its home or main office in Kansas. That is no different than say the requirement for a Kansas driver's license. You must be a resident ("home-based" if you will) in the state to be eligible to hold a Kansas driver's license.

The Community Bankers Association of Kansas respectfully requests that Senate Bill 86 be recommended favorably for passage. Thank you again for the opportunity to appear here today.

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6-2

(spolitics.st\session.97\speech.S86)





Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

MEMORANDUM

To: Senate Financial Institutions
and Insurance Committee

From: Tom Wilder

Re: S.B. 86 (Deposit of Public Funds)

Date: February 3, 1997

The Kansas Insurance Code includes bank deposit statutes similar to those which regulate public funds accounts. Last year, the Legislature passed K.S.A. 40-229a to require insurance companies which do business in Kansas to deposit funds at a financial institution as a measure of the solvency of the company. The term "financial institution" is defined in that statute as, "any Kansas domiciled bank acceptable to the commissioner, which has its principal place of business in Kansas." A copy of the new law is attached to my testimony.

If the Committee reaches a common agreement as to the correct definition of a "bank" in Senate Bill 86, the Department would like the legislation to be amended to include the new term in K.S.A. 1996 Supp. 40-229a to clarify where insurance companies can deposit funds.

Kansas Statutes - Insurance Laws
CHAPTER 40-- INSURANCE
Article 2 -- GENERAL PROVISIONS

40-229a Deposits

(a) All cash, securities, real estate deeds, mortgages or other assets deposited with the commissioner of insurance pursuant to the provisions of the insurance code of the state of Kansas shall be deposited with any Kansas financial institution acceptable to the commissioner through which a custodial or controlled account, a joint custody receipt arrangement or any combination of these or other measures that are acceptable to the commissioner is used. As used in this section, "financial institution" means any Kansas domiciled bank acceptable to the commissioner, which has its principal place of business in Kansas. As used in this section, "commissioner" means the commissioner of insurance. All such deposits shall be held by such financial institution on behalf of the commissioner as in trust for the use and benefit of such company and such company's policyholders and creditors. Such assets shall be released from such deposits only upon written approval of the commissioner. All income from deposits shall belong to the depositing organization and shall be paid to it as it becomes available. The commissioner, upon written approval, may direct the financial institution to permit exchange of securities or assets upon deposit of specified substituted securities or assets. All forms for deposit, withdrawal or exchange shall be prescribed, prepared and furnished by the commissioner and no facsimile signatures shall be used or recognized. The commissioner or assistant commissioner of insurance or a duly authorized insurance department employee may at any time inspect the securities on deposit in any such financial institution. Nothing in this act shall be construed to hold the state of Kansas, the commissioner, assistant commissioner or authorized employee liable either personally or officially for any default of such financial institution.

Real estate shall be deposited with the commissioner by the depositing organization executing a deed or assignment conveying title thereto to the commissioner, in trust for the use and benefit of such company. Such deeds or assignment shall be recorded in the office of the register of deeds of the county in which such real estate is situated. -- When the depositing organization is authorized to withdraw real estate from deposit, the commissioner shall execute deeds to such organization or such other persons, companies or corporations as such organization shall direct. The costs of registering such deeds shall be borne by the depositing organization.

All deposits made with the commissioner shall be audited by the commissioner and the state treasurer not less frequently than once each three years. The commissioner may accept an audit performed by another governmental agency acceptable to the commissioner, in lieu of this audit requirement.

(b) Assets, except real estate assets, deposited pursuant to this section shall be held by the custodian on behalf of the commissioner as in trust for the use and benefit of the depositing organization. Such

assets shall remain the specific property of the organization and shall be subject to the claim of any third party against the custodian.

(c) The custodian is authorized to redeposit such assets with a clearing corporation as defined in K.S.A. 84-8-102 and amendments thereto, if such clearing corporation is domiciled in the United States. The custodian is authorized to hold such assets through the federal reserve bank book-entry system.

(d) The commissioner shall by rules and regulations establish requirements relating to deposits under this subsection appropriate to assure the security and safety of such deposits, including but not limited to the following:

- (1) Captital and surplus of the custodian;
- (2) title in which deposited assets are held;
- (3) records to be kept by the custodian and the commissioner's access thereto;
- (4) periodic reports by the custodian to the commissioner;
- (5) responsibility of the custodian to indemnify the company for loss of deposited assets;
- (6) withdrawal or exchange of deposited assets; and
- (7) authority of the commissioner to terminate the deposit if the condition of the custodian should threaten the security of the deposited assets.

HISTORY L. 1996, ch. 25, § 1, eff. 7-1-96.

DATE NEW 1996

SUBJECT CATEGORY 540 - Securities
 560 - Finance and investments
 620 - Financial institutions
 840 - Government agencies

DEFINITIONS Financial institution; Commissioner

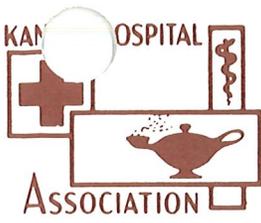
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INFORMATION TYPE TEXT

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Donald A. Wilson
President

To: Senate Committee on Financial Institutions and Insurance
From: Kansas Hospital Association
Re: SB 86
Date: February 3, 1997

The Kansas Hospital Association appreciates the opportunity to be heard regarding Senate Bill 86. Numerous other individuals and groups have testified about the details of this legislation, so our comments will be brief. We support language that would allow the deposit of public funds in banks not having their main offices in Kansas.

Our interest in this bill stems from the fact that one-half of the state's 128 community hospitals are owned by a governmental unit. In the vast majority of cases that entity is a county, a city or a special hospital district. As such, those governmentally owned hospitals know the importance of the legal requirements governing deposit of public funds.

The hospitals affected by these state laws are by and large the small and rural facilities in Kansas. As the committee knows, these hospitals also face difficult financial challenges. Creating additional flexibility regarding the deposit of public funds not only helps these hospitals, but also the taxpayers supporting them.

Thank you for your consideration of our comments.

*Senate File 8
Attachment 8
Feb. 3, 1997*

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Testimony of SueAnn V. Schultz,
Senior Vice President, General Counsel, BANK IV

Senate Bill 86

2-3-97

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address you today. I am SueAnn Schultz, Senior Vice President and General Counsel for BANK IV. I appear before you as a proponent of Senate Bill 86 as amended by the Kansas League of Municipalities.

Existing public funds legislation was, and is, intended to insure that taxpayer money be held by financial institutions that are safe, sound and known to Kansans. Beyond these core values, the intention of the law is to assure that the institutions acting as depositories and service providers are responsible and responsive to serving the needs of the Kansas taxpayers whose money those funds represent. By design, it is intended that those eligible financial institutions have a vested interest in Kansas by virtue of their investment in facilities, human resources and capital. All of these investments guarantee that these depositories be fully participatory in the Kansas economy, both in support of commerce and as Kansas taxpayers.

The placement of public funds is essentially a competitive bid process. This process has worked effectively to insure that the public funds received the highest competitive interest rates and that the fees for services were at their competitive lowest. This system has been the most effective when there are more *qualified and interested* bidders. This bill, as amended, allows all financial institutions with offices where public entities are located, to competitively bid on public deposits, thereby saving taxpayers' money.

Since 1887 BANK IV has been providing service to the taxpayers of Kansas by being a *qualified and interested* bidder on public funds. In 1996, we maintained in excess of 400 public accounts containing more than \$200 Million. Notwithstanding the competitive bid process, BANK IV has been in bid situations where we were the only *qualified and interested bidder*, and our preclusion from participation in the bid process would result in public funds customers having fewer *qualified and interested* financial institutions bidding for their funds. Further, BANK IV currently provides custodial safekeeping services to 96 Kansas banks, because existing law requires that securities pledged for public funds be held by a financial institution that has adequate modern facilities for the safekeeping of securities and that is not affiliated in any way with the depository institution holding the public funds.

Senate Bill
Attachment 9
Feb. 3, 1997

On October 18, 1996, we made a corporate decision to merge our Kansas chartered bank with our affiliate bank in Kansas City, Missouri. Charter consolidation allows seamless banking service across all geographic areas and enables BANK IV to better serve our customers who live and work across state lines. None of the public funds deposits left the state, no banking locations were closed and there were no changes to services or fees.

But for the location of the charter, BANK IV unquestionably meets the intent of existing public funds legislation. We still have an executive management office in Wichita. As the largest bank in Kansas, we pay more privilege, real estate and personal property taxes than any other bank in this state (in excess of \$10,600,000 in 1996). We employ more than 2,090 people in Kansas who also pay property and personal income taxes, and the 1996 payroll of BANK IV exceeded \$52,000,000. In 1996, BANK IV provided financing in excess of \$492,000,000 to small businesses and farms, mortgage loans exceeded \$82,000,000, our Loan to Deposit ratio was 70.4% and our total Loan to Asset ratio was 56.8%. With 87 branches in 36 communities in Kansas, we have invested in excess of \$130,000,000 in banking facilities throughout the state.

BANK IV's financial reinvestment in the state of Kansas is further demonstrated by its \$1,412,308 capital investment in Kansas Venture Capital, Inc. (the Kansas statewide risk capital organization created to provide capital for investment in smaller Kansas businesses), making BANK IV the largest shareholder in KVCI.

Each bank operating in Kansas, no matter where the charter is located, must meet the requirements of the Community Reinvestment Act for serving its community's credit needs. BANK IV's most recent CRA rating was the highest given by the Office of the Comptroller of the Currency: **Outstanding**. This rating is based on the OCC's objective review of BANK IV's performance in reinvesting dollars, time and talent back into the local markets served by BANK IV. In 1996, BANK IV contributed \$1,448,000 to various Kansas charitable organizations and provided \$5,836,000 for community events throughout the state, such as Dodge City Days and the Kansas State Fair.

The recent acquisition of BANK IV's holding company by NationsBank Corporation will not change the level of BANK IV's involvement in the state. The recently announced NationsBank National Call Center, a \$10,000,000 project that will create in excess of 400 new jobs in Wichita, is an example of the focus by NationsBank on investment in and return to the communities it serve.

BANK IV's proven track record is one that I am proud to present and demonstrates that the location of a charter does not define what an organization does or its level of commitment to a community or state. Each financial institution with an office in this state has made a commitment to invest time, energy and capital resources to improve its community and should be entrusted with the privilege of competing for the right to serve as a depository for public funds. We ask that you adopt Senate Bill 86 as amended.

Thank you for your attention. I would be happy to address any questions you may have.

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Our File No.

January 31, 1997

Mr. Jim Maag
Senior Vice President
Kansas Bankers Association
800 SW Jackson, Ste. 1500
Topeka, KS 66612-1265

Re: SB 86, 1997 Session

Dear Jim:

You have asked that I briefly and generally discuss the meanings of the terms securities, security entitlements, financial assets, securities account, security agreement, security interest, perfection and control, as such terms are used in SB 86. SB 86 provides that all of these terms have the meanings given them under the current Kansas Uniform Commercial Code.

The provisions of SB 86 amend existing statutes prescribing how repayment of deposits of local units of government is to be secured. Current law for securing local funds deposits, which basically predates the UCC, essentially prescribes a method by which obligations are secured by transfer of physical certificates to third parties. That method still is effective when a physical certificate, a certificated security, is held by the debtor and can be transferred to a third party, or changes in ownership can be reflected on the books of the issuer. However, now ownership of almost all securities eligible for pledging and held by Kansas financial institutions is not evidenced by physical instruments in the possession of the institution, but by credits on the books of "securities intermediaries", clearing corporations or institutions which as part of their business maintain securities accounts for others. A "securities account", an account to which financial assets, including securities entitlements, are credited, reflects their ownership by the holder of the account. Changes in such ownership, and security interests therein, are shown by accounting entries on the books of securities intermediaries.

Formerly, the rules of the Kansas UCC on transfer of interests in securities were keyed to the concept of transfer of physical certificates or registration of transfers on the books of the issuer. This system did not reflect the reality of how most changes in ownership and security interests actually are reflected in today's

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Mr. Jim Maag
January 31, 1997
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securities holding systems. The 1996 Kansas legislature adopted the amendments to the UCC recommended by the commissioners on uniform state laws to provide a legal structure for the system of indirect securities holding, or holding through the accounts of various securities intermediaries, which reflects the market place. These amendments became effective July 1, 1996.

Under the new legal structure, financial institutions hold most, if not all, of their "securities", obligations of or interests in issuers, in the form of "securities entitlements", credits to securities accounts with securities intermediaries. Under the revised UCC and SB 86, a "security interest", an interest in property securing repayment, in "securities entitlements", rights against securities intermediaries possessed by persons identified in the records of the securities intermediaries as having securities entitlements, given by a financial institution to secure repayment of local public funds is created by a written security agreement. The security agreement needs to be in writing to be enforceable against the FDIC under federal law. This "security agreement", an agreement creating a security interest, can be "perfected", made effective against third parties, by filing or by "control". Control is the method of perfection required by SB 86 because a person who has perfection by control has priority over another secured party who does not. "Control" means that the secured party can have the securities entitlements sold upon default without further action by the depository institution.

I trust the foregoing brief summary of the meanings of terms in SB 86 will be of assistance to you. If you have further questions, please let me know.

Sincerely yours,

WRIGHT, HENSON,
SOMERS, SEBELIUS, CLARK & BAKER, LLP



Charles N. Henson

CNH/vdj