

HOUSE BILL No. 2223

AN ACT concerning health professions and practices; relating to optometry; modifying certain provisions of the optometry law related to scope of practice, definitions and credentialing requirements; amending K.S.A. 40-3402, 40-3403, 65-1501, 65-1509a, 65-1512, 65-1523, 74-1504 and 74-1505 and K.S.A. 2025 Supp. 65-1501a and 65-1505 and repealing the existing sections; also repealing K.S.A. 65-1514.

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

Section 1. K.S.A. 40-3402 is hereby amended to read as follows: 40-3402. (a) Prior to January 1, 2022, 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 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 healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer. For all new policies and policies that renew on and after January 1, 2022, 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 \$500,000 per claim, subject to not less than a \$1,500,000 annual aggregate for all claims made during the policy period, shall be maintained by each resident healthcare provider as a condition of active licensure or other statutory authorization to render professional service as a healthcare provider in this state, unless such healthcare provider is a self-insurer. This provision shall not apply to optometrists, *except as provided in subsection (f)*, and pharmacists on and after July 1, 1991, to physical therapists on and after July 1, 1995, or to health maintenance organizations on and after July 1, 1997. Such policy shall provide as a minimum coverage for claims made during the term of the policy that 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 healthcare provider may offer to such healthcare 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 effective date of any policy issued in accordance with this subsection, 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 healthcare providers covered by the policy, the amount of the annual premium, the effective and expiration dates of the coverage and such other information as the board of governors shall require. A copy of the notice required by this subsection shall be furnished to 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 business days after the date coverage is terminated at the request of the named insured and shall include the name and address of the healthcare provider or providers for whom basic coverage is terminated and the date basic coverage will cease to be in effect. No basic 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). 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) A nonresident healthcare provider shall not be licensed to actively render professional service as a healthcare provider in this state unless such healthcare provider maintains continuous 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, *except as provided in subsection (f)*, and pharmacists on and after July 1, 1991, or to physical therapists on and 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 healthcare provider in this state. Any nonadmitted insurer may file such a form.

(2) Every nonresident healthcare provider that is required to maintain basic coverage pursuant to this subsection shall pay the surcharge levied by the board of governors pursuant to K.S.A. 40-3404(a), 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 healthcare provider that is a self-insurer, the university of Kansas medical center for persons engaged in residency training, as described in K.S.A. 40-3401(r)(1), and amendments thereto, the employers of persons engaged in residency training, as described in K.S.A. 40-3401(r)(2), 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 K.S.A. 40-3414(e), and amendments thereto, shall pay the surcharge levied by the board of governors pursuant to K.S.A. 40-3404(a), and amendments thereto, directly to the board of governors and shall furnish to the board of governors the information required in subsections (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 healthcare provider but, while providing such services, is not covered by the self-insurance provisions of K.S.A. 40-3414(d), and amendments thereto, may obtain basic coverage under an occurrence form policy, if such policy provides professional liability insurance coverage and limits that are substantially the same as the professional liability insurance coverage and limits required by K.S.A. 40-3402(a), and amendments thereto. Where such occurrence form policy is in effect, the provisions of the healthcare provider insurance availability act referring to claims made policies shall be construed to mean occurrence form policies.

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

(f) (1) Except as provided in paragraph (2), an optometrist shall be subject to the professional liability insurance requirements of subsection (a) if such optometrist has been credentialed to provide the

incision and curettage of a chalazion, removal and biopsy of skin lesions, laser capsulotomy and laser trabeculoplasty.

(2) *An optometrist shall not be subject to the requirements of subsection (a) if the initial surcharge to participate in the healthcare stabilization fund exceeds 15%.*

(3) *This subsection shall take effect on and after January 1, 2028.*

Sec. 2. K.S.A. 40-3403 is hereby amended to read as follows: 40-3403. (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 healthcare provider, self-insurer or inactive health care provider subsequent to the time that such healthcare provider or self-insurer has qualified for coverage under the provisions of this act, there is hereby established the healthcare stabilization fund. The fund shall be held in trust in the state treasury and accounted for separately from other state funds. 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) There is hereby created a board of governors that 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 healthcare provider insurance availability act;

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

(C) prepare and publish, on or before October 1 of each year, a report for submission to the healthcare stabilization fund oversight committee that includes 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 fund balance at the end of the fiscal year; and

(D) have the authority to grant temporary exemptions from the provisions of K.S.A. 40-3402 and 40-3404, and amendments thereto, to healthcare providers who have exceptional circumstances and verify in writing that the healthcare provider will not render professional services in this state during the period of exemption. Whenever the board grants such an exemption, the board shall notify the state agency that licenses the exempted healthcare provider.

(2) The board shall consist of ~~11~~ 12 persons appointed by the commissioner of insurance, as provided by this subsection and as follows:

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

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

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

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

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

(F) one member who is on a list of nominees submitted to the commissioner by statewide associations comprised of members who

represent adult care homes and who is a representative of adult care homes; and

(G) *one member who is on a list of nominees submitted to the commissioner by the Kansas optometric association and who is a licensed optometrist authorized to practice as an optometrist.*

(3) When 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 healthcare provider required for the vacant position on the board of governors. 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 that represents the category of healthcare provider required for the vacant position and request a list of three nominations of healthcare providers from which to make the appointment.

(4) The board of governors shall organize in July of each year 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.

(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.

(6) (A) The board shall appoint an executive director who shall be in the unclassified service under the Kansas civil service act and may employ attorneys and other employees who shall also be in the unclassified service under the Kansas civil service act. Such executive director, attorneys and other employees shall receive compensation fixed by the board, in accordance with appropriation acts of the legislature, not subject to approval of the governor.

(B) The board may 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 healthcare 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.

(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.

(c) Except as otherwise provided by any other provision of this act, the fund shall be liable to pay:

(1) Any amount due from a judgment or settlement that is in excess of the basic coverage liability of all liable resident healthcare 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 (f), any amount due from a judgment or settlement that is in excess of the basic coverage liability of all liable nonresident healthcare 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 nonresident

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

(3) subject to the provisions of subsection (f), any amount due from a judgment or settlement against a resident inactive healthcare provider 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 (f), any amount due from a judgment or settlement against a nonresident inactive healthcare provider 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 nonresident inactive healthcare providers:

(A) Who have not complied with this act; or

(B) for claims that arose outside of this state, unless such healthcare provider was a resident healthcare provider or resident self-insurer at the time such act occurred;

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

(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, and such 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 K.S.A. 40-3413(a)(3), 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 healthcare provider insurance availability act;

(10) surcharge refunds payable when the notice of cancellation requirements of K.S.A. 40-3402, and amendments thereto, are met;

(11) subject to K.S.A. 40-3411(b), 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 or any 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 from claims for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider;

(12) 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 or any 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;

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

(14) any amount, but not less than the required 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 paragraph (12), 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 K.S.A. 40-3411(b), and amendments thereto, reasonable and necessary expenses for attorney fees and other costs incurred in defending a person described in paragraph (14);

(16) expenses incurred by the commissioner in the performance of duties and functions imposed upon the commissioner by the healthcare 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 healthcare stabilization fund oversight committee for compensation, travel expenses and subsistence expenses pursuant to K.S.A. 40-3403b(e), 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 \$500,000 or more, it shall be paid by installment payments of \$500,000 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.

(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 healthcare 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 healthcare provider.

(f) In no event shall the fund be liable to pay in excess of the amounts specified in the option selected by an active or inactive healthcare 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 healthcare provider on or after July 1, 1989.

(g) A healthcare 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 to 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 healthcare 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 healthcare 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 healthcare provider or the outcome of those claims that an individual healthcare provider presents a material risk of significant future liability 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 healthcare 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 healthcare provider involved of the name of the healthcare provider and the reasons for the termination.

(j) (1) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(11), the board of governors shall certify to the secretary of administration the amount of such payment, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state general fund to the healthcare stabilization fund.

(2) Subject to the provisions of paragraph (7), upon the payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(12), the board of governors shall certify to the secretary of administration the amount of such payment that is equal to the basic coverage liability of self-insurers, and the secretary of administration shall transfer an amount equal to the amount certified, reduced by any amount transferred pursuant to paragraph (3) or (4), from the state general fund to the healthcare 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 K.S.A. 40-3402(c), 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 healthcare 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 secretary of administration shall transfer an amount equal to the amount paid from the university of Kansas medical center private practice foundation reserve fund to the healthcare 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) The graduate medical education administration reserve fund is hereby established in the state treasury. If the balance in such reserve fund is less than \$40,000 on July 1 of any year, the nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine shall remit the amount necessary to increase such balance to \$40,000 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 healthcare stabilization fund pursuant to subsection (c)(11) or (c)(12) with respect to any nonprofit corporations organized to administer the graduate medical education programs of community hospitals or medical care facilities affiliated with the university of Kansas school of medicine the secretary of administration shall transfer an amount equal to the amount paid from the graduate medical education administration reserve fund to the healthcare 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.

(5) Upon payment of moneys from the healthcare stabilization fund pursuant to subsection (c)(14) or (c)(15), the board of governors shall certify to the secretary of administration the amount of such payment, and the secretary of administration shall transfer an amount equal to the amount certified from the state general fund to the healthcare stabilization fund.

(6) Transfers from the state general fund to the healthcare stabilization fund pursuant to this subsection shall not be subject to the provisions of K.S.A. 75-3722, and amendments thereto.

(7) The funds required to be transferred from the state general fund to the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of administration shall maintain a record of the amounts certified by the board of governors pursuant to paragraphs (1) and (2) for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. Beginning July 1, 2013, in addition to any other transfers required pursuant to subsection (j), the state general fund transfers that are deferred pursuant to this paragraph shall be transferred from the state general fund to the healthcare stabilization fund in the following manner: On July 1, 2013, and annually thereafter through July 1, 2018, an amount equal to 20% of the total amount of state general fund transfers deferred pursuant to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this paragraph shall not accrue interest thereon.

(k) Notwithstanding any other provision of the healthcare provider insurance availability act, no psychiatric hospital licensed under K.S.A. 39-2001 et seq., 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) (1) On or after July 1, 1989, and prior to January 1, 2022, every healthcare provider shall make an election to be covered by one of the following options provided in subparagraph (A) that shall limit the liability of the fund 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 July 1, 1989. On and after January 1, 2022, every healthcare provider shall make an election to be covered by one of the following options provided in subparagraph (B) that shall limit the liability of the fund 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 January 1, 2022. Such election shall be made at the time the healthcare provider renews the basic coverage, 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. A medical care facility or a healthcare facility deemed qualified as a self-insurer under K.S.A. 40-3414(a), and amendments thereto, may opt out of the requirements set forth in subparagraph (B) if such medical care facility or healthcare facility substantially meets the minimum coverage requirements of this section through coverage provided by the captive insurance company of such medical care facility or healthcare facility. 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 the policy. The healthcare 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. The election of fund coverage limits for 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 shall be deemed to be effective at the highest option. Such options shall be as follows:

(A) (i) 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 healthcare 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.

(ii) 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 healthcare 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.

(iii) 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 healthcare 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 healthcare provider.

(B) (i) OPTION 1. The fund shall not be liable to pay in excess of \$500,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$1,500,000 for such healthcare provider.

(ii) OPTION 2. The fund shall not be liable to pay in excess of \$1,500,000 pursuant to any one judgment or settlement for any party against such healthcare provider, subject to an aggregate limitation for all judgments or settlements arising from all claims made in the fiscal year in an amount of \$4,500,000 for such healthcare provider.

(2) The board of governors shall have the authority to adjust the amounts provided in subparagraph (B) as the board deems necessary to effectuate the provisions of the healthcare provider insurance availability act, except that the minimum coverage for a healthcare provider shall not be less than \$1,000,000 per claim and \$3,000,000 in the aggregate.

(m) In the event of a claim against a healthcare provider for personal injury or death arising out of the rendering of or the failure to render professional services by such healthcare provider, the liability of the fund shall be limited to the amount of coverage selected by the healthcare provider at the time of the incident giving rise to the claim.

(n) Notwithstanding anything in article 34 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, to the contrary, the fund shall in no event be liable for any claims against any healthcare provider based upon or relating to the healthcare 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 healthcare provider for damages resulting from the healthcare provider's sexual acts or activity.

Sec. 3. K.S.A. 65-1501 is hereby amended to read as follows: 65-1501. (a) The practice of optometry means:

(1) The examination of the human eye and its ~~adnexae~~ *adnexa* and the employment of objective or subjective means or methods, (including the administering, prescribing or dispensing, of ~~topical~~ pharmaceutical drugs), for the purpose of diagnosing the refractive, muscular, or pathological condition thereof;

(2) *the use of medical devices* and the prescribing, dispensing or adapting of lenses, (including any ophthalmic lenses which are classified as drugs by any law of the United States or of this state), prisms, low vision rehabilitation services, orthoptic exercises and visual training therapy for the relief of any insufficiencies or abnormal conditions of the human eye and its ~~adnexae~~ *adnexa*; and

(3) *the use of medical devices* and the prescribing, administering or dispensing of ~~topical~~ pharmaceutical drugs ~~and oral drugs~~ *through all routes of administration, except intraocular injections*, for the examination, diagnosis and treatment of ocular conditions and any insufficiencies or abnormal conditions of the human eye and its ~~adnexae including adult open-angle glaucoma~~ *adnexa*;

(4) *the removal of non-perforating foreign bodies from the cornea, conjunctiva or eyelids, removal of eyelashes, scraping the cornea for diagnostic tests, smears or cultures, the dilation, probing, irrigation or closing the tear drainage structure of the eye, expression of conjunctival follicles or cysts, debridement of the corneal epithelium, incision and curettage of a chalazion, removal and biopsy of skin lesions without known malignancy, laser capsulotomy and laser trabeculoplasty; and*

(5) *the performance of additional procedures that are not otherwise prohibited by subsection (b) that are within the scope of a licensee's education and training for the treatment of any insufficiencies or abnormal conditions of the human eye and its adnexa as authorized pursuant to rules and regulations adopted by the board. The board shall not adopt a rule and regulation authorized pursuant to this paragraph without first receiving a recommendation from the interprofessional advisory committee that such procedure is appropriate for an optometrist to perform.*

(b) The practice of optometry shall not include *the performance of the following procedures: (1) The management and treatment of glaucoma, except as provided in subsection (a); (2) the performance of surgery, including the use of lasers for surgical purposes, except that licensees may remove non-perforating foreign bodies from the cornea, conjunctiva or eyelids; remove eyelashes; scrape the cornea for diagnostic tests, smears or cultures; dilate, probe, irrigate or close by punctal plug the tear drainage structures of the eye; express conjunctival follicles or cysts; debridement of the corneal epithelium and co-management of post-operative care; or (3) the performance of procedures requiring anesthesia administered by injection or general anesthesia. Retinal surgery, penetrating keratoplasty or corneal transplant, administration of or surgery performed under general anesthesia, surgery related to the removal of the eye from a living human being, surgical extraction of the crystalline lens, surgical intraocular implants, incisional or excisional surgery of the extraocular muscles, surgery of the bony orbit, laser-assisted in situ keratomileusis or photorefractive keratectomy, YAG laser vitreolysis, and surgery of the eyelid for cosmetic or mechanical repair of blepharochalasis, ptosis and tarsorrhaphy. However, an optometrist may provide pre-operative and post-operative care for the procedures in this subsection.*

(c) A licensee shall be held to a standard of care in the diagnosis and treatment of adult open-angle glaucoma ~~commensurate to, the performance of incision and curettage of a chalazion, removal and~~

biopsy of skin lesions, laser capsulotomy and laser trabeculoplasty with that of a person licensed to practice medicine and surgery, who exercises that degree of skill and proficiency commonly exercised by an ordinary, skillful, careful and prudent person licensed to practice medicine and surgery.

(d) Under the direction and supervision of a licensee, a licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist may assist in the provision of low vision rehabilitation services in addition to such other services ~~which~~ *that* such licensed professional nurse, licensed practical nurse, licensed physical therapist and licensed occupational therapist is authorized by law to provide under ~~subsection (d) of K.S.A. 65-1113(d), subsection (h) of K.S.A. 65-1124(h), subsection (b) of K.S.A. 65-2901(b) and subsection (b) of K.S.A. 65-5402(b),~~ and amendments thereto.

Sec. 4. K.S.A. 2025 Supp. 65-1501a is hereby amended to read as follows: 65-1501a. ~~For the purposes of this act the following terms shall have the meanings respectively ascribed to them As used in the optometry law,~~ unless the context requires otherwise:

(a) "Board" means the board of examiners in optometry established under K.S.A. 74-1501, and amendments thereto.

(b) "License" means a license to practice optometry granted under the optometry law.

(c) "Licensee" means a person licensed under the optometry law to practice optometry.

(d) "Adapt" means the determination, selection, fitting or use of lenses, prisms, orthoptic exercises or visual training therapy *or the modification of lenses using light or other means* for the aid of any insufficiencies or abnormal conditions of the eyes after or by examination or testing.

(e) "Lenses" means any type of ophthalmic lenses, which are lenses prescribed or used for the aid of any insufficiencies or abnormal conditions of the eyes.

(f) "Prescription" means a verbal, written or electronic order transmitted directly or by electronic means from a licensee giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the specifications and directions for lenses, prisms, orthoptic exercises, low vision rehabilitation services or visual training therapy to be used for the aid of any insufficiencies or abnormal conditions of the eyes, including instructions necessary for the fabrication or use thereof and the date of issue.

(g) "Prescription for ~~topical pharmaceutical drugs or oral drugs~~" means a verbal, written or electronic order transmitted directly or by electronic means from a licensee giving or containing the name and address of the prescriber, the license registration number of the licensee, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, the number of refills permitted, the date of issue and expiration date.

~~(h) "Topical pharmaceutical drugs" means drugs administered topically and not by other means.~~

(†) "Dispense" means to deliver prescription-only medication or ophthalmic lenses to the ultimate user pursuant to the lawful prescription of a licensee and dispensing of prescription-only medication by a licensee shall be limited to a ~~twenty-four hour~~ *24-hour* supply or minimal quantity necessary until a prescription can be filled by a licensed pharmacist, except that the ~~twenty-four hour~~ *24-hour* supply or minimal quantity shall not apply to lenses described in ~~subsection (a)(2) of K.S.A. 65-1501(a)(2),~~ and amendments thereto.

(†)(i) "False advertisement" means any advertisement ~~which~~ *that* is false, misleading or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the

light of such representations made.

~~(k)~~(j) "Advertisement" means all representations disseminated in any manner or by any means, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of professional services or ophthalmic goods.

~~(l)~~(k) "Health careHealthcare provider" shall have the meaning ascribed to that term means the same as defined in subsection ~~(f)~~ of K.S.A. 40-3401(f), and amendments thereto.

~~(m)~~(l) "Medical facility" shall have the meaning ascribed to that term means the same as defined in subsection ~~(e)~~ of K.S.A. 65-411(c), and amendments thereto.

~~(n)~~(m) "Medical care facility" shall have the meaning ascribed to that term means the same as defined in K.S.A. 65-425, and amendments thereto.

~~(o)~~(n) "Ophthalmologist" means a person licensed to practice medicine and surgery by the state board of healing arts who specializes in the diagnosis and medical and surgical treatment of diseases and defects of the human eye and related structures.

~~(p)~~(o) "Low vision rehabilitation services" means the evaluation, diagnosis, management and care of the low vision patient including low vision rehabilitation therapy, education and interdisciplinary consultation under the direction and supervision of an ophthalmologist or optometrist.

~~(q)~~ "Oral drugs" means oral antibacterial drugs, oral antiviral drugs, oral antihistamines, oral analgesic drugs, oral steroids, oral antiglaucoma drugs and other oral drugs with clinically accepted ocular uses:

Sec. 5. K.S.A. 2025 Supp. 65-1505 is hereby amended to read as follows: 65-1505. (a) Persons entitled to practice optometry in Kansas shall be those persons licensed in accordance with the provisions of the optometry law. A person shall be qualified to be licensed and to receive a license as an optometrist: (1) Who is of good moral character; and in determining the moral character of any such person, the board may take into consideration any felony conviction of such person, but such conviction shall not automatically operate as a bar to licensure; (2) who has graduated from a school or college of optometry approved by the board; and (3) who successfully meets and completes the requirements set by the board and passes an examination given by the board.

(b) All applicants for licensure, in addition to successfully completing all other requirements for licensure, shall submit evidence satisfactory to the board of professional liability insurance in an amount acceptable to the board.

(c) Any person applying for examination by the board shall fill out and swear to an application furnished by the board, accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$450, and file the same with the secretary of the board at least 30 days prior to the holding of the examination. At such examinations the board shall examine each applicant in subjects taught in schools or colleges of optometry approved by the board, as may be required by the board. If such person complies with the other qualifications for licensing and passes such examination, such person shall receive from the board, upon the payment of a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, a license entitling such person to practice optometry. In the event of the failure on the part of the applicant to pass the first examination, such person may, with the consent of the board, within 18 months, by filing an application accompanied by a fee fixed by the board by rules and regulations in an amount of not to exceed \$150, take a second examination; for the third and each subsequent examination a fee fixed by the board by rules and regulations in an amount of not to exceed \$150. Any examination fee and license fee fixed by the board under this subsection which is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

(d) Any applicant for reciprocal licensure may in the board's discretion be licensed and issued a license without examination if the applicant has been in the active practice of optometry in another state for at least the three-year period immediately preceding the application for reciprocal licensure and the applicant:

(1) Presents a certified copy of a certificate of registration or license ~~which~~ *that* has been issued to the applicant by another state where the requirements for licensure are deemed by the board to be equivalent to the requirements for licensure under this act, if such state accords a like privilege to holders of a license issued by the board;

(2) submits a sworn statement of the licensing authority of such other state that the applicant's license has never been limited, suspended or revoked and that the applicant has never been censured or had other disciplinary action taken;

(3) successfully passes an examination of Kansas law administered by the board and such clinical practice examination as the board deems necessary; and

(4) pays the reciprocal license fixed by the board by rules and regulations in an amount of not to exceed \$450. The reciprocal license fee fixed by the board under this subsection ~~which~~ *that* is in effect on the day preceding the effective date of this act shall continue in effect until the board adopts rules and regulations under this subsection fixing a different fee therefor.

(e) The board shall adopt rules and regulations establishing the criteria ~~which~~ *that* a school or college of optometry shall satisfy in meeting the requirement of approval by the board established under subsection (a). The board may send a questionnaire developed by the board to any school or college of optometry for which the board does not have sufficient information to determine whether the school or college meets the requirements for approval and rules and regulations adopted under this act. The questionnaire providing the necessary information shall be completed and returned to the board in order for the school or college to be considered for approval. The board may contract with investigative agencies, commissions or consultants to assist the board in obtaining information about schools or colleges. In entering such contracts the authority to approve schools or colleges shall remain solely with the board.

(f) (1) The board may require an applicant for licensure or a licensee in connection with an investigation of the licensee to be fingerprinted and submit to a state and national criminal history record check in accordance with K.S.A.—2024 2025 Supp. 22-4714, and amendments thereto.

(2) (A) The board shall fix a fee for fingerprinting applicants or licensees in an amount necessary to reimburse the board for the cost of the fingerprinting. Fees collected under this subsection shall be deposited in the criminal history and fingerprinting fund.

(B) There is hereby created in the state treasury the criminal history and fingerprinting fund. All moneys credited to the fund shall be used to pay all costs and fees associated with processing of fingerprints and criminal history checks for the board of examiners in optometry. The fund shall be administered by the board. All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or a person designated by the president.

(g) *Any licensee applying for credentialing by the board shall complete and swear to an application form furnished by the board accompanied by an additional fee fixed by the board by rules and regulations in an amount necessary to reimburse the board for the cost of credentialing.*

Sec. 6. K.S.A. 65-1509a is hereby amended to read as follows: 65-1509a. (a) In addition to the payment of the license renewal fee, each licensee applying for license renewal shall furnish to the secretary of the board satisfactory evidence of successfully completing a minimum

of 24 hours of continuing education annually, five hours of which shall relate to ocular pharmacology, therapeutics or related topics of study, approved by the board in the year just preceding such application for the renewal of the license. The board, in its discretion, may increase the required hours of continuing education by rules and regulations adopted by the board. On or before April 1 of each year, the secretary of the board shall send a written notice of continuing education requirements to this effect to every person holding a valid license to practice optometry within the state as provided in ~~subsection (a) of~~ K.S.A. 65-1509(a), and amendments thereto.

(b) (1) *A licensee who seeks to administer or perform a procedure referenced by K.S.A. 65-1501(a)(4) or (5), and amendments thereto, that requires the use of injections or lasers shall be required to receive credentialing as follows:*

(A) *A licensee who graduated from an accredited college or school of optometry on or after July 1, 2020, shall be granted such credentialing by the board upon submitting a request to the board; or*

(B) *a licensee who graduated from an accredited college or school of optometry prior to July 1, 2020, shall be granted credentialing when the board receives proof of successful completion of a 32-hour certification program that:*

(i) *Includes both didactic and clinical or laboratory experiences and testing approved by the board; and*

(ii) *is presented by a school or college of optometry or school of medicine that is approved by the board.*

(2) (A) *A licensee that has received credentialing under paragraph (1) shall submit a report to the board on a quarterly basis that contains:*

(i) *The name of the optometrist;*

(ii) *the total number of procedures performed during that quarter;*

(iii) *the location where each procedure was performed; and*

(iv) *the outcome for each procedure or patient.*

(B) *A reporting optometrist shall certify the accuracy of the information contained in the report.*

(C) *Beginning July 1, 2027, and annually thereafter, the board shall compile and make public the information contained in reports received under this subsection, but shall redact any personally identifiable information prior to making such reports public.*

(D) *The provisions of this paragraph shall expire on July 1, 2031.*

Sec. 7. K.S.A. 65-1512 is hereby amended to read as follows: 65-1512. ~~This act~~*The provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, shall be known and may be cited as the optometry law.*

Sec. 8. K.S.A. 65-1523 is hereby amended to read as follows: 65-1523. The board in its discretion, in addition to any other remedies provided in this act, may apply to a court of competent jurisdiction for injunctive relief *against any person* to restrain violations of the provisions of this act, *and the* lawful rules and regulations promulgated by the board under authority of this act.

Sec. 9. K.S.A. 74-1504 is hereby amended to read as follows: 74-1504. (a) The board shall administer and enforce the provisions of the optometry law, and the board is hereby granted such specific powers as are necessary for the purpose of administering and enforcing such law. In addition, the board may:

(1) Employ agents, attorneys and inspectors under such rules and regulations as the board may prescribe in accordance with the provisions of the optometry law, except that no state officer shall be eligible for employment by the board.

(2) Make all necessary disbursements; to carry out the provisions of this act, including payment for stationery supplies, ~~acquire and acquiring~~ all necessary optical instruments to be used in the conducting of examination, ~~print and distribute to all optometrists in the state a yearbook of the names and addresses of all optometrists licensed by the board~~ *maintain and make available to the public a directory including*

the names and addresses of all optometrists licensed by the board.

(3) Grant all licenses as seem just and proper and to suspend, limit, revoke or refuse to renew any such licenses granted for any of the causes specified under K.S.A. 65-1506, and amendments thereto.

(4) Administer oaths and take testimony upon granting or refusing to grant, revoking, limiting or suspending licenses.

(5) Issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts. In case of disobedience on the part of any person to comply with any subpoena issued in behalf of the board, or on the refusal of any witness to testify to any matters regarding which such witness may be lawfully interrogated, the judge of the district court of any county, on application of a member of the board, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify in such court. Each witness who appears before the board by the board's order or subpoena, other than a state officer or employee, shall receive for attendance the fees and mileage provided for witnesses in civil cases in courts of record ~~which~~ *that* shall be audited and paid upon the presentation of proper vouchers sworn to by such witnesses and approved by the president and secretary-treasurer of the board.

(6) Adopt rules and regulations for the procedure and conduct of the board and for the administration of the optometry law, ~~which rules and regulations shall~~ *that are not be inconsistent consistent* with the provisions of the optometry law.

(b) The board shall meet at least annually for the purpose of examining applicants for licensure. ~~Such meetings shall be held in Topeka.~~ At least 30 days prior to the examination, the board shall cause a special notice to be published in the Kansas register stating the date and hour for holding such examination. Special meetings shall be held at such times and places as the board may direct.

(c) The board shall preserve an accurate record of all meetings and proceedings of the board including receipts and disbursements with vouchers therefor and complete minutes of all prosecutions and violations of the optometry law and of examinations held under the provisions of the optometry law and an accurate inventory of all property of the board. All such records shall be kept in the office of the board and made accessible to the public.

Sec. 10. K.S.A. 74-1505 is hereby amended to read as follows: 74-1505. (a) The board shall appoint a seven-member committee to be known as the interprofessional advisory committee which, as requested by the board, ~~shall make recommendations on clinical or practice-related issues, including procedure coding matters and appropriate treatments for ocular diseases and conditions~~ *may review new technologies to make recommendations for consideration by the board. The board may request that the committee meet to review a procedure and make a recommendation whether or not the procedure is appropriate for an optometrist to perform.*

(b) The interprofessional advisory committee shall consist of one member of the board appointed by the board who shall serve as a nonvoting chair, together with three optometrists licensed to practice optometry in this state chosen by the board from those nominated by the Kansas optometric association and three ophthalmologists licensed to practice in this state chosen by the board from those nominated by the Kansas ~~medical society and the Kansas association of osteopathic medicine~~ *of eye physicians and surgeons.*

The Kansas optometric association and ~~the Kansas medical society of~~

eye physicians and surgeons shall submit six nominees to the board. ~~The Kansas association of osteopathic medicine shall submit two nominees to the board.~~ Persons appointed to the committee shall serve terms of three years and without compensation. All expenses of the committee shall be paid by the board.

(c) This section shall *a* be part of and supplemental to the optometry law.

Sec. 11. K.S.A. 40-3402, 40-3403, 65-1501, 65-1509a, 65-1512, 65-1514, 65-1523, 74-1504 and 74-1505 and K.S.A. 2025 Supp. 65-1501a and 65-1505 are hereby repealed.

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

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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.