

**SENATE BILL No. 493**

By Committee on Ways and Means

3-10

1 AN ACT concerning the healthcare stabilization fund; relating to coverage  
2 requirements; changing membership on the board of governors;  
3 providing for the dissolution of the fund under certain circumstances;  
4 amending K.S.A. 40-3606 and K.S.A. 2019 Supp. 40-3402, 40-3403  
5 and 40-3408 and repealing the existing sections.  
6

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

8 Section 1. K.S.A. 2019 Supp. 40-3402 is hereby amended to read as  
9 follows: 40-3402. (a) *Prior to January 1, 2021*, a policy of professional  
10 liability insurance approved by the commissioner and issued by an insurer  
11 duly authorized to transact business in this state in which the limit of the  
12 insurer's liability is not less than \$200,000 per claim, subject to not less  
13 than a \$600,000 annual aggregate for all claims made during the policy  
14 period, shall be maintained in effect by each resident healthcare provider  
15 as a condition of active licensure or other statutory authorization to render  
16 professional service as a healthcare provider in this state, unless such  
17 healthcare provider is a self-insurer. *On and after January 1, 2021, a*  
18 *policy of professional liability insurance approved by the commissioner*  
19 *and issued by an insurer duly authorized to transact business in this state*  
20 *in which the limit of the insurer's liability is not less than \$500,000 per*  
21 *claim, subject to not less than a \$1,500,000 annual aggregate for all*  
22 *claims made during the policy period, shall be maintained by each*  
23 *resident healthcare provider as a condition of active licensure or other*  
24 *statutory authorization to render professional service as a healthcare*  
25 *provider in this state, unless such healthcare provider is a self-insurer.*

26 This provision shall not apply to optometrists and pharmacists ~~on or~~ and  
27 after July 1, 1991 ~~nor~~, to physical therapists on and after July 1, 1995 ~~nor~~,  
28 or to health maintenance organizations ~~on or~~ and after July 1, 1997. Such  
29 policy shall provide as a minimum coverage for claims made during the  
30 term of the policy ~~which~~ *that* were incurred during the term of such policy  
31 or during the prior term of a similar policy. Any insurer offering such  
32 policy of professional liability insurance to any healthcare provider may  
33 offer to such healthcare provider a policy as prescribed in this section with  
34 deductible options. Such deductible shall be within such policy limits.

35 (1) Each insurer providing basic coverage shall, within 30 days after  
36 the effective date of any policy issued in accordance with this subsection,

1 notify the board of governors that such coverage is or will be in effect.  
2 Such notification shall be on a form approved by the board of governors  
3 and shall include information identifying the professional liability policy  
4 issued or to be issued, the name and address of all healthcare providers  
5 covered by the policy, the amount of the annual premium, the effective and  
6 expiration dates of the coverage and such other information as the board of  
7 governors shall require. A copy of the notice required by this subsection  
8 shall be furnished to the named insured.

9 (2) In the event of termination of basic coverage by cancellation,  
10 nonrenewal, expiration or otherwise by either the insurer or named  
11 insured, notice of such termination shall be furnished by the insurer to the  
12 board of governors, the state agency which licenses, registers or certifies  
13 the named insured and the named insured. Such notice shall be provided  
14 no less than 30 days prior to the effective date of any termination initiated  
15 by the insurer or within 10 business days after the date coverage is  
16 terminated at the request of the named insured and shall include the name  
17 and address of the healthcare provider or providers for whom basic  
18 coverage is terminated and the date basic coverage will cease to be in  
19 effect. No basic coverage shall be terminated by cancellation or failure to  
20 renew by the insurer unless such insurer provides a notice of termination  
21 as required by this subsection.

22 (3) Any professional liability insurance policy issued, delivered or in  
23 effect in this state on and after July 1, 1976, shall contain or be endorsed to  
24 provide basic coverage as required by subsection (a) ~~of this section~~.  
25 Notwithstanding any omitted or inconsistent language, any contract of  
26 professional liability insurance shall be construed to obligate the insurer to  
27 meet all the mandatory requirements and obligations of this act. The  
28 liability of an insurer for claims made prior to July 1, 1984, shall not  
29 exceed those limits of insurance provided by such policy prior to July 1,  
30 1984.

31 (b) A nonresident healthcare provider shall not be licensed to actively  
32 render professional service as a healthcare provider in this state unless  
33 such healthcare provider maintains continuous coverage in effect as  
34 prescribed by subsection (a), except such coverage may be provided by a  
35 nonadmitted insurer who has filed the form required by subsection (b)(1).  
36 This provision shall not apply to optometrists and pharmacists ~~on or~~ *and*  
37 after July 1, 1991 ~~nor~~, *or* to physical therapists on and after July 1, 1995.

38 (1) Every insurance company authorized to transact business in this  
39 state, that is authorized to issue professional liability insurance in any  
40 jurisdiction, shall file with the commissioner, as a condition of its  
41 continued transaction of business within this state, a form prescribed by  
42 the commissioner declaring that its professional liability insurance  
43 policies, wherever issued, shall be deemed to provide at least the insurance

1 required by this subsection when the insured is rendering professional  
2 services as a nonresident healthcare provider in this state. Any  
3 nonadmitted insurer may file such a form.

4 (2) Every nonresident healthcare provider ~~who~~ *that* is required to  
5 maintain basic coverage pursuant to this subsection shall pay the surcharge  
6 levied by the board of governors pursuant to ~~subsection (a)~~ of K.S.A. 40-  
7 3404(a), and amendments thereto, directly to the board of governors and  
8 shall furnish to the board of governors the information required in  
9 subsection (a)(1).

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

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

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

1 be construed to mean occurrence form policies.

2 Sec. 2. K.S.A. 2019 Supp. 40-3403 is hereby amended to read as  
3 follows: 40-3403. (a) For the purpose of paying damages for personal  
4 injury or death arising out of the rendering of or the failure to render  
5 professional services by a healthcare provider, self-insurer or inactive  
6 health care provider subsequent to the time that such healthcare provider  
7 or self-insurer has qualified for coverage under the provisions of this act,  
8 there is hereby established the healthcare stabilization fund. The fund shall  
9 be held in trust in the state treasury and accounted for separately from  
10 other state funds. The board of governors shall administer the fund or  
11 contract for the administration of the fund with an insurance company  
12 authorized to do business in this state.

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

16 (A) Administer the fund and exercise and perform other powers,  
17 duties and functions required of the board under the healthcare provider  
18 insurance availability act;

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

22 (C) prepare and publish, on or before October 1 of each year, a report  
23 for submission to the healthcare stabilization fund oversight committee  
24 that includes a summary of the fund's activity during the preceding fiscal  
25 year, including, but not limited to, the amount collected from surcharges,  
26 the highest and lowest surcharges assessed, the amount paid from the fund,  
27 the number of judgments paid from the fund, the number of settlements  
28 paid from the fund and the fund balance at the end of the fiscal year; ~~and~~

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

36 (E) *in the event that K.S.A. 60-19a02, and amendments thereto, is*  
37 *declared unconstitutional by the supreme court in an action for personal*  
38 *injury or death arising out of rendering or failing to render professional*  
39 *services by a healthcare provider; cooperate fully with the commissioner*  
40 *of insurance in developing and executing a plan for a delinquency*  
41 *proceeding under the insurers supervision, rehabilitation and liquidation*  
42 *act and, if requested by the commissioner; consent to any action deemed*  
43 *by the commissioner to be in the best interests of the public, including any*

1 *action under the insurers supervision, rehabilitation and liquidation act.*

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

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

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

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

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

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

27 (F) one member who is *on a list of nominees submitted to the*  
28 *commissioner by statewide associations comprised of members who*  
29 *represent adult care homes and who is a representative of adult care homes*  
30 ~~who is on a list of nominees submitted to the commissioner by statewide~~  
31 ~~associations comprised of members who represent adult care homes.~~

32 (3) When a vacancy occurs in the membership of the board of  
33 governors created by this act, the commissioner shall appoint a successor  
34 of like qualifications from a list of three nominees submitted to the  
35 commissioner by the professional society or association prescribed by this  
36 section for the category of healthcare provider required for the vacant  
37 position on the board of governors. All appointments made shall be for a  
38 term of office of four years, but no member shall be appointed for more  
39 than two successive four-year terms. Each member shall serve until a  
40 successor is appointed and qualified. Whenever a vacancy occurs in the  
41 membership of the board of governors created by this act for any reason  
42 other than the expiration of a member's term of office, the commissioner  
43 shall appoint a successor of like qualifications to fill the unexpired term. In

1 each case of a vacancy occurring in the membership of the board of  
2 governors, the commissioner shall notify the professional society or  
3 association that represents the category of healthcare provider required for  
4 the vacant position and request a list of three nominations of healthcare  
5 providers from which to make the appointment.

6 (4) The board of governors shall organize in July of each year and  
7 shall elect a chairperson and vice-chairperson from among its membership.  
8 Meetings shall be called by the chairperson or by a written notice signed  
9 by three members of the board.

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

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

21 (B) The board may provide all office space, services, equipment,  
22 materials and supplies, and all budgeting, personnel, purchasing and  
23 related management functions required by the board in the exercise of the  
24 powers, duties and functions imposed or authorized by the healthcare  
25 provider insurance availability act or may enter into a contract with the  
26 commissioner of insurance for the provision, by the commissioner, of all  
27 or any part thereof.

28 (7) The commissioner shall:

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

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

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

36 (1) Any amount due from a judgment or settlement that is in excess  
37 of the basic coverage liability of all liable resident healthcare providers or  
38 resident self-insurers for any personal injury or death arising out of the  
39 rendering of or the failure to render professional services within or without  
40 this state;

41 (2) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,  
42 any amount due from a judgment or settlement that is in excess of the  
43 basic coverage liability of all liable nonresident healthcare providers or

1 nonresident self-insurers for any such injury or death arising out of the  
2 rendering or the failure to render professional services within this state but  
3 in no event shall the fund be obligated for claims against nonresident  
4 healthcare providers or nonresident self-insurers who have not complied  
5 with this act or for claims against nonresident healthcare providers or  
6 nonresident self-insurers that arose outside of this state;

7 (3) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,  
8 any amount due from a judgment or settlement against a resident inactive  
9 healthcare provider for any such injury or death arising out of the  
10 rendering of or failure to render professional services;

11 (4) subject to the provisions of ~~subsections~~ *subsection (f) and (m)*,  
12 any amount due from a judgment or settlement against a nonresident  
13 inactive healthcare provider for any injury or death arising out of the  
14 rendering or failure to render professional services within this state, but in  
15 no event shall the fund be obligated for claims against: (A) Nonresident  
16 inactive healthcare providers who have not complied with this act; or (B)  
17 nonresident inactive healthcare providers for claims that arose outside of  
18 this state, unless such healthcare provider was a resident healthcare  
19 provider or resident self-insurer at the time such act occurred;

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

25 (6) any amounts expended for reinsurance obtained to protect the best  
26 interests of the fund purchased by the board of governors, which purchase  
27 shall be subject to the provisions of K.S.A. 75-3738 through 75-3744, and  
28 amendments thereto, but shall not be subject to the provisions of K.S.A.  
29 75-4101, and amendments thereto;

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

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

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

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

43 (11) subject to K.S.A. 40-3411(b), and amendments thereto,

1 reasonable and necessary expenses for attorney fees and other costs  
2 incurred in defending a person engaged or who was engaged in residency  
3 training or the private practice corporations or foundations and their full-  
4 time physician faculty employed by the university of Kansas medical  
5 center or any nonprofit corporation organized to administer the graduate  
6 medical education programs of community hospitals or medical care  
7 facilities affiliated with the university of Kansas school of medicine from  
8 claims for personal injury or death arising out of the rendering of or the  
9 failure to render professional services by such healthcare provider;

10 (12) ~~notwithstanding the provisions of subsection (m),~~ any amount  
11 due from a judgment or settlement for an injury or death arising out of the  
12 rendering of or failure to render professional services by a person engaged  
13 or who was engaged in residency training or the private practice  
14 corporations or foundations and their full-time physician faculty employed  
15 by the university of Kansas medical center or any nonprofit corporation  
16 organized to administer the graduate medical education programs of  
17 community hospitals or medical care facilities affiliated with the university  
18 of Kansas school of medicine;

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

24 (14) ~~notwithstanding the provisions of subsection (m),~~ any amount,  
25 but not less than the required basic coverage limits, owed pursuant to a  
26 judgment or settlement for any injury or death arising out of the rendering  
27 of or failure to render professional services by a person, other than a  
28 person described in paragraph (12), who was engaged in a postgraduate  
29 program of residency training approved by the state board of healing arts  
30 but who, at the time the claim was made, was no longer engaged in such  
31 residency program;

32 (15) subject to K.S.A. 40-3411(b), and amendments thereto,  
33 reasonable and necessary expenses for attorney fees and other costs  
34 incurred in defending a person described in paragraph (14);

35 (16) expenses incurred by the commissioner in the performance of  
36 duties and functions imposed upon the commissioner by the healthcare  
37 provider insurance availability act, and expenses incurred by the  
38 commissioner in the performance of duties and functions under contracts  
39 entered into between the board and the commissioner as authorized by this  
40 section; and

41 (17) periodically to the state general fund reimbursements of amounts  
42 paid to members of the healthcare stabilization fund oversight committee  
43 for compensation, travel expenses and subsistence expenses pursuant to



1 K.S.A. 40-3403b(e), and amendments thereto.

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

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

17 (f) In no event shall the fund be liable to pay in excess of the amounts  
18 specified in the option selected by an active or inactive healthcare provider  
19 pursuant to subsection (l) for judgments or settlements relating to injury or  
20 death arising out of the rendering of or failure to render professional  
21 services by such healthcare provider on or after July 1, 1989.

22 (g) A healthcare provider shall be deemed to have qualified for  
23 coverage under the fund:

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

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

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

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

35 (i) Notwithstanding the provisions of K.S.A. 40-3402, and  
36 amendments thereto, if the board of governors determines due to the  
37 number of claims filed against a healthcare provider or the outcome of  
38 those claims that an individual healthcare provider presents a material risk  
39 of significant future liability to the fund, the board of governors is  
40 authorized by a vote of a majority of the members thereof, after notice and  
41 an opportunity for hearing in accordance with the provisions of the Kansas  
42 administrative procedure act, to terminate the liability of the fund for all  
43 claims against the healthcare provider for damages for death or personal

1 injury arising out of the rendering of or the failure to render professional  
2 services after the date of termination. The date of termination shall be 30  
3 days after the date of the determination by the board of governors. The  
4 board of governors, upon termination of the liability of the fund under this  
5 subsection, shall notify the licensing or other disciplinary board having  
6 jurisdiction over the healthcare provider involved of the name of the  
7 healthcare provider and the reasons for the termination.

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

15 (2) Subject to the provisions of paragraph (7), upon the payment of  
16 moneys from the healthcare stabilization fund pursuant to subsection (c)  
17 (12), the board of governors shall certify to the secretary of administration  
18 the amount of such payment that is equal to the basic coverage liability of  
19 self-insurers, and the secretary of administration shall transfer an amount  
20 equal to the amount certified, reduced by any amount transferred pursuant  
21 to paragraph (3) or (4), from the state general fund to the healthcare  
22 stabilization fund.

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

1 center private practice foundation reserve fund to the healthcare  
2 stabilization fund or, if the balance in such reserve fund is less than the  
3 amount so paid, an amount equal to the balance in such reserve fund.

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

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

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

39 (7) The funds required to be transferred from the state general fund to  
40 the healthcare stabilization fund pursuant to paragraphs (1) and (2) for the  
41 fiscal years ending June 30, 2010, June 30, 2011, June 30, 2012, and June  
42 30, 2013, shall not be transferred prior to July 1, 2013. The secretary of  
43 administration shall maintain a record of the amounts certified by the

1 board of governors pursuant to paragraphs (1) and (2) for the fiscal years  
2 ending June 30, 2010, June 30, 2011, June 30, 2012, and June 30, 2013.  
3 Beginning July 1, 2013, in addition to any other transfers required  
4 pursuant to subsection (j), the state general fund transfers that are deferred  
5 pursuant to this paragraph shall be transferred from the state general fund  
6 to the healthcare stabilization fund in the following manner: On July 1,  
7 2013, and annually thereafter through July 1, 2018, an amount equal to  
8 20% of the total amount of state general fund transfers deferred pursuant  
9 to this paragraph for the fiscal years ending June 30, 2010, June 30, 2011,  
10 June 30, 2012, and June 30, 2013. The amounts deferred pursuant to this  
11 paragraph shall not accrue interest thereon.

12 (k) Notwithstanding any other provision of the healthcare provider  
13 insurance availability act, no psychiatric hospital licensed under K.S.A.  
14 2019 Supp. 39-2001 et seq., and amendments thereto, shall be assessed a  
15 premium surcharge or be entitled to coverage under the fund if such  
16 hospital has not paid any premium surcharge pursuant to K.S.A. 40-3404,  
17 and amendments thereto, prior to January 1, 1988.

18 (l) On or after July 1, 1989, *and prior to January 1, 2021*, every  
19 healthcare provider shall make an election to be covered by one of the  
20 following options provided in ~~this subsection~~ *paragraph (1)* that shall limit  
21 the liability of the fund with respect to judgments or settlements relating to  
22 injury or death arising out of the rendering of or failure to render  
23 professional services on or after July 1, 1989, *and prior to January 1,*  
24 *2021. On and after January 1, 2021, every healthcare provider shall make*  
25 *an election to be covered by one of the following options provided in*  
26 *paragraph (2) that shall limit the liability of the fund with respect to*  
27 *judgments or settlements relating to injury or death arising out of the*  
28 *rendering of or failure to render professional services on or after January*  
29 *1, 2021. Such election shall be made at the time the healthcare provider*  
30 *renews the basic coverage in effect on July 1, 1989, or, if basic coverage is*  
31 *not in effect, such election shall be made at the time such coverage is*  
32 *acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice of*  
33 *the election shall be provided by the insurer providing the basic coverage*  
34 *in the manner and form prescribed by the board of governors and shall*  
35 *continue to be effective from year to year unless modified by a subsequent*  
36 *election made prior to the anniversary date of the policy. The healthcare*  
37 *provider may at any subsequent election reduce the dollar amount of the*  
38 *coverage for the next and subsequent fiscal years, but may not increase the*  
39 *same, unless specifically authorized by the board of governors. Any*  
40 *election of fund coverage limits, whenever made, shall be with respect to*  
41 *judgments or settlements relating to injury or death arising out of the*  
42 *rendering of or failure to render professional services on or after the*  
43 *effective date of such election of fund coverage limits. Such election shall*

1 be made for persons engaged in residency training and persons engaged in  
2 other postgraduate training programs approved by the state board of  
3 healing arts at medical care facilities or mental health centers in this state  
4 by the agency or institution paying the surcharge levied under K.S.A. 40-  
5 3404, and amendments thereto, for such persons. The election of fund  
6 coverage limits for a nonprofit corporation organized to administer the  
7 graduate medical education programs of community hospitals or medical  
8 care facilities affiliated with the university of Kansas school of medicine  
9 shall be deemed to be effective at the highest option. Such options shall be  
10 as follows:

11 (1) (A) *OPTION 1.* The fund shall not be liable to pay in excess of  
12 \$100,000 pursuant to any one judgment or settlement for any party against  
13 such healthcare provider, subject to an aggregate limitation for all  
14 judgments or settlements arising from all claims made in the fiscal year in  
15 an amount of \$300,000 for such provider.

16 ~~(2)(B)~~ *OPTION 2.* The fund shall not be liable to pay in excess of  
17 \$300,000 pursuant to any one judgment or settlement for any party against  
18 such healthcare provider, subject to an aggregate limitation for all  
19 judgments or settlements arising from all claims made in the fiscal year in  
20 an amount of \$900,000 for such provider.

21 ~~(3)(C)~~ *OPTION 3.* The fund shall not be liable to pay in excess of  
22 \$800,000 pursuant to any one judgment or settlement for any party against  
23 such healthcare provider, subject to an aggregate limitation for all  
24 judgments or settlements arising from all claims made in the fiscal year in  
25 an amount of \$2,400,000 for such healthcare provider.

26 (2) (A) *OPTION 1.* *The fund shall not be liable to pay in excess of*  
27 *\$500,000 pursuant to any one judgment or settlement for any party*  
28 *against such healthcare provider, subject to an aggregate limitation for all*  
29 *judgments or settlements arising from all claims made in the fiscal year in*  
30 *an amount of \$1,500,000 for such healthcare provider.*

31 (B) *OPTION 2.* *The fund shall not be liable to pay in excess of*  
32 *\$1,500,000 pursuant to any one judgment or settlement for any party*  
33 *against such healthcare provider, subject to an aggregate limitation for all*  
34 *judgments or settlements arising from all claims made in the fiscal year in*  
35 *an amount of \$4,500,000 for such healthcare provider.*

36 (m) ~~The fund shall not be liable for any amounts due from a judgment~~  
37 ~~or settlement against resident or nonresident inactive healthcare providers~~  
38 ~~who first qualify as an inactive healthcare provider on or after July 1,~~  
39 ~~1989, unless such healthcare provider has been in compliance with K.S.A.~~  
40 ~~40-3402, and amendments thereto, for a period of not less than five years.~~  
41 ~~If a healthcare provider has not been in compliance for five years, such~~  
42 ~~healthcare provider may make application and payment for the coverage~~  
43 ~~for the period while they are nonresident healthcare providers, nonresident~~

1 self-insurers or resident or nonresident inactive healthcare providers to the  
2 fund. Such payment shall be made within 30 days after the healthcare  
3 provider ceases being an active healthcare provider and shall be made in  
4 an amount determined by the board of governors to be sufficient to fund  
5 anticipated claims based upon reasonably prudent actuarial principles. The  
6 provisions of this subsection shall not be applicable to any healthcare  
7 provider that becomes inactive through death or retirement, or through  
8 disability or circumstances beyond such healthcare provider's control, if  
9 such healthcare provider notifies the board of governors and receives  
10 approval for an exemption from the provisions of this subsection. Any  
11 period spent in a postgraduate program of residency training approved by  
12 the state board of healing arts shall not be included in computation of time  
13 spent in compliance with the provisions of K.S.A. 40-3402, and  
14 amendments thereto. The provisions of this subsection shall expire on July  
15 1, 2014.

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

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

30 *(o) In the event that K.S.A. 60-19a02, and amendments thereto, is*  
31 *declared unconstitutional by the supreme court ruling in an action for*  
32 *personal injury or death arising out of the rendering of or failure to render*  
33 *professional services by a healthcare provider, the provisions of K.S.A. 40-*  
34 *3402, and amendments thereto, and any other provision of law mandating*  
35 *that healthcare providers maintain a policy of professional liability*  
36 *insurance and pay a surcharge to the fund in accordance with this act*  
37 *shall expire on the July 1 following such supreme court ruling. In such*  
38 *event, the fund shall be deemed to be an insurer in accordance with*  
39 *chapter 40 of the Kansas Statutes Annotated, and amendments thereto,*  
40 *and shall be subject to any actions deemed by the commissioner of*  
41 *insurance to be in the best interests of the public, including a delinquency*  
42 *proceeding within the meaning of the insurers supervision, rehabilitation*  
43 *and liquidation act.*

1       Sec. 3. K.S.A. 2019 Supp. 40-3408 is hereby amended to read as  
2 follows: 40-3408. (a) *Prior to January 1, 2021*, the insurer of a healthcare  
3 provider covered by the fund or self-insurer shall be liable only for the first  
4 \$200,000 of a claim for personal injury or death arising out of the  
5 rendering of or the failure to render professional services by such  
6 healthcare provider, subject to an annual aggregate of *not less than*  
7 \$600,000 for all such claims against the healthcare provider. *On and after*  
8 *January 1, 2021*, the insurer of a healthcare provider covered by the fund  
9 or self-insurer shall be liable only for the first \$500,000 of a claim for  
10 personal injury or death arising out of the rendering of or the failure to  
11 render professional services by such healthcare provider, subject to an  
12 annual aggregate of \$1,500,000 for all such claims against the healthcare  
13 provider. ~~However,~~ If any liability insurance in excess of such amounts is  
14 applicable to any claim or would be applicable in the absence of this act,  
15 any payments from the fund shall be excess over such amounts paid,  
16 payable or that would have been payable in the absence of this act.

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

21       (c) Notwithstanding anything in article 34 of chapter 40 of the Kansas  
22 Statutes Annotated, and amendments thereto, to the contrary, an insurer  
23 that provides coverage to a healthcare provider may exclude from  
24 coverage any liability incurred by such provider:

25       (1) From the rendering of or the failure to render professional  
26 services by any other healthcare provider who is required by K.S.A. 40-  
27 3402, and amendments thereto, to maintain professional liability insurance  
28 in effect as a condition to rendering professional services as a healthcare  
29 provider in this state; or

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

37       (d) The fund shall not be liable for payment of any claim excluded by  
38 an insurer pursuant to this section or any claim otherwise excluded from  
39 coverage under a healthcare provider's professional liability insurance.

40       (e) Notwithstanding any provision of article 34 of chapter 40 of the  
41 Kansas Statutes Annotated, and amendments thereto, to the contrary, an  
42 insurer that provides coverage to a healthcare provider may exclude from  
43 coverage:

1 (1) Any liability incurred by such healthcare provider as a result of  
2 professional services rendered as a charitable healthcare provider; or

3 (2) any liability incurred by such healthcare provider that is covered  
4 under the federal tort claims act pursuant to chapter 171 of title 28 of the  
5 United States code.

6 Sec. 4. K.S.A. 40-3606 is hereby amended to read as follows: 40-  
7 3606. This act shall apply to all insurance companies, fraternal benefit  
8 societies, health maintenance organizations, reciprocal insurance  
9 exchanges, mutual nonprofit hospital and medical service corporations,  
10 captive insurance companies, group funded pools except municipal group  
11 funded pools governed by K.S.A. 12-2616 through 12-2629, and  
12 amendments thereto, *the healthcare stabilization fund established under*  
13 *K.S.A. 40-3403, and amendments thereto*, prepaid service plans operating  
14 under article 19a of chapter 40 of the Kansas Statutes Annotated, *and*  
15 *amendments thereto*, regardless of whether such entities are authorized to  
16 do business in this state, and such entities ~~which~~ *that* are in the process of  
17 organization.

18 Sec. 5. K.S.A. 40-3606 and K.S.A. 2019 Supp. 40-3402, 40-3403 and  
19 40-3408 are hereby repealed.

20 Sec. 6. This act shall take effect and be in force from and after its  
21 publication in the statute book.