

## SENATE BILL No. 330

By Committee on Judiciary

1-25

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1 AN ACT concerning civil procedure; relating to malpractice liability  
2 screening panels; amending K.S.A. 2011 Supp. 60-3502, 60-3503, 60-  
3 3505, 65-4901, 65-4902 and 65-4904 and repealing the existing  
4 sections.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2011 Supp. 60-3502 is hereby amended to read as  
8 follows: 60-3502. (a) If a professional malpractice liability action is filed  
9 in a district court of this state and one of the parties to the action requests,  
10 by filing a memorandum with the court, that a professional malpractice  
11 screening panel be convened, the judge of the district court ~~or, if the~~  
12 ~~district court has more than one division, the chief judge of such court~~  
13 shall convene a professional malpractice screening panel, hereafter  
14 referred to as the screening panel. If a claim for damages arising out of the  
15 rendering of or failure to render services by a professional licensee has not  
16 been formalized by the filing of a petition, any party affected by such  
17 claim may request, by filing a memorandum with the court, that a  
18 screening panel be convened and, if such request is made, the judge of the  
19 district court ~~or the chief judge of such court~~ shall convene a screening  
20 panel. If a petition or claim is filed naming more than one defendant or  
21 more than one person against whom a claim is being made, each defendant  
22 or person is entitled to request a separate screening panel.

23 (b) The membership of the screening panel shall be selected as  
24 follows: (1) A person licensed in the same profession as the defendant or  
25 person against whom the claim is filed, designated by the defendant or by  
26 the person against whom the claim is made if no petition has been filed;  
27 (2) a person licensed in the same profession as the defendant or person  
28 against whom the claim is filed, designated by the plaintiff or by the  
29 claimant if no petition has been filed; (3) a person licensed in the same  
30 profession as the defendant or person against whom the claim is filed,  
31 selected jointly by the plaintiff and the defendant or by the claimant and  
32 the person against whom the claim is made, if no petition has been filed;  
33 and (4) an attorney selected by the judge of the district court ~~or the chief~~  
34 ~~judge of such court~~ from a list of attorneys maintained by the judge of the  
35 district court for such purpose. Such attorney shall be a nonvoting  
36 member of the screening panel but shall act as chairperson of the screening

1 panel.

2 (c) The state agency which licenses, registers, certifies or otherwise is  
3 responsible for the practice of any group of professional licensees shall  
4 maintain and make available to the parties to the proceeding a current list  
5 of professional licensees who are willing and available to serve on the  
6 screening panel. The persons appointed shall constitute the screening panel  
7 for the particular professional malpractice claim to be heard.

8 Sec. 2. K.S.A. 2011 Supp. 60-3503 is hereby amended to read as  
9 follows: 60-3503. The district judge ~~or the chief judge of such court~~ shall  
10 notify the parties to the action that a screening panel has been convened.  
11 The plaintiff or claimant and the defendant or respondent shall each  
12 designate a person licensed in the same profession as the defendant or  
13 respondent within 21 days of such party's receipt of notice of the  
14 convening of the screening panel. The parties shall jointly designate a  
15 person licensed in the same profession as the defendant or respondent  
16 within 14 days after the individual designations have been made. If the  
17 parties are unable to jointly select a professional licensee within such 14  
18 days, the judge of the district court ~~or the chief judge of such court~~ shall  
19 select such professional licensee.

20 Sec. 3. K.S.A. 2011 Supp. 60-3505 is hereby amended to read as  
21 follows: 60-3505. (a) Within 180 days after the screening panel is  
22 commenced, such panel shall make written recommendations on the issue  
23 of whether the professional licensee departed from the standard of conduct  
24 in a way which caused the plaintiff or claimant damage. A concurring or  
25 dissenting member of the screening panel may file a written concurring or  
26 dissenting opinion. All written opinions shall be supported by  
27 corroborating references to published literature and other relevant  
28 documents.

29 (b) The screening panel shall notify all parties when its determination  
30 is to be handed down, and, within seven days of its decision, shall provide  
31 a copy of its opinion and any concurring or dissenting opinion to each  
32 party and each attorney of record and to the judge of the district court ~~or~~  
33 ~~the chief judge of such court.~~

34 (c) The written report of the screening panel shall be admissible in  
35 any subsequent legal proceeding, and either party may subpoena any and  
36 all members of the panel as witnesses for examination relating to the  
37 issues at trial.

38 Sec. 4. K.S.A. 2011 Supp. 65-4901 is hereby amended to read as  
39 follows: 65-4901. (a) If a petition is filed in a district court of this state  
40 claiming damages for personal injury or death on account of alleged  
41 medical malpractice of a health care provider and one of the parties to the  
42 action requests, by filing a memorandum with the court, that a medical  
43 malpractice screening panel be convened, the judge of the district court ~~or~~,

1 ~~if the district court has more than one division, the chief judge of such~~  
2 ~~court~~ shall convene a medical malpractice screening panel, hereafter  
3 referred to as the "screening panel." If a petition is filed in a district court  
4 of this state claiming damages for personal injury or death on account of  
5 alleged medical malpractice of a health care provider and none of the  
6 parties to the action requests that a screening panel be convened, the judge  
7 may convene a screening panel upon the judge's own motion. If a claim for  
8 damages for personal injury or death on account of alleged medical  
9 malpractice of a health care provider has not been formalized by the filing  
10 of a petition, any party affected by such claim may request, by filing a  
11 memorandum with the court, that a screening panel be convened, and if  
12 such request is made the judge of the district court ~~or, if the district court~~  
13 ~~has more than one division, the chief judge of such court~~ shall convene a  
14 screening panel. If a petition or claim is filed naming more than one  
15 defendant or more than one person against whom a claim is being made,  
16 each defendant or person is entitled to request a screening panel.

17 (b) The membership of the screening panel shall be selected as  
18 follows: (1) A health care provider designated by the defendant or by the  
19 person against whom the claim is made if no petition has been filed; (2) a  
20 health care provider designated by the plaintiff or by the claimant if no  
21 petition has been filed; (3) a health care provider selected jointly by the  
22 plaintiff and the defendant or by the claimant and the person against whom  
23 the claim is made if no petition has been filed; and (4) an attorney selected  
24 by the judge of the district court ~~or, if the district court has more than one~~  
25 ~~division, the chief judge of such court~~ from a list of attorneys maintained  
26 by the judge of the district court ~~or, if the district court has more than one~~  
27 ~~division, the chief judge of such court~~ for such purpose. Such attorney  
28 shall be a nonvoting member of the screening panel but shall act as  
29 chairperson of the screening panel.

30 (c) The state agency which licenses, registers, certifies or otherwise is  
31 responsible for the practice of any group of health care providers shall  
32 maintain and make available to the parties to the proceeding a current list  
33 of health care providers who are willing and available to serve on the  
34 screening panel. The persons appointed shall constitute the screening panel  
35 for the particular medical malpractice claim to be heard.

36 Sec. 5. K.S.A. 2011 Supp. 65-4902 is hereby amended to read as  
37 follows: 65-4902. The ~~district judge or, if the district court has more than~~  
38 ~~one division, the chief judge of such court~~ *judge of the district court* shall  
39 notify the parties to the action that a screening panel has been convened.  
40 The plaintiff or claimant and the defendant or respondent shall each  
41 designate a health care provider licensed in the same profession as the  
42 defendant or respondent within 21 days of such party's receipt of notice of  
43 the convening of the screening panel. The parties shall jointly designate a

1 health care provider licensed in the same profession as the defendant or  
2 respondent within 14 days after the individual designations have been  
3 made. If the parties are unable to jointly select a health care provider  
4 within such 14 days, the judge of the district court ~~or, if the district court~~  
5 ~~has more than one division, the chief judge of such court~~ shall select such  
6 health care provider.

7 Sec. 6. K.S.A. 2011 Supp. 65-4904 is hereby amended to read as  
8 follows: 65-4904. (a) Within 180 days after the screening panel is  
9 commenced, such panel shall make written recommendations on the issue  
10 of whether the health care provider departed from the standard of care in a  
11 way which caused the plaintiff or claimant damage. A concurring or  
12 dissenting member of the screening panel may file a written concurring or  
13 dissenting opinion. All written opinions shall be supported by  
14 corroborating references to published literature and other relevant  
15 documents.

16 (b) The screening panel shall notify all parties when its determination  
17 is to be handed down, and, within seven days of its decision, shall provide  
18 a copy of its opinion and any concurring or dissenting opinion to each  
19 party and each attorney of record and to the judge of the district court ~~or,~~  
20 ~~if the district court has more than one division, the chief judge of such court.~~

21 (c) The written report of the screening panel shall be admissible in  
22 any subsequent legal proceeding, and either party may subpoena any and  
23 all members of the panel as witnesses for examination relating to the  
24 issues at trial, provided the panel member or members otherwise meet the  
25 qualifications of K.S.A. 60-3412, and amendments thereto.

26 Sec. 7. K.S.A. 2011 Supp. 60-3502, 60-3503, 60-3505, 65-4901, 65-  
27 4902 and 65-4904 are hereby repealed.

28 Sec. 8. This act shall take effect and be in force from and after its  
29 publication in the statute book.