

*SPECIAL SESSION OF 2020*

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2016**

As Amended by House on Final Action

**Brief\***

HB 2016 would create and amend law and make appropriations regarding the governmental response to the coronavirus disease 2019 (COVID-19) 2020 pandemic in Kansas, as follows.

***Coronavirus Relief Funds (Sections 1 through 4)***

The bill would appropriate the Coronavirus Relief Fund (CRF) in the Office of the Governor to provide relief for the effects of coronavirus in the state of Kansas in both fiscal year (FY) 2020 and FY 2021. Expenditures or transfers from the CRF would require an affirmative vote of the Governor and a majority of the legislative members of the State Finance Council (SFC). The bill would also permit the SFC to continue approving such requests during the Legislative Session.

In addition to the CRF funds, the bill would apply the same approval process described above to any federal funds received under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Families First Coronavirus Response Act (Families First Act), the Paycheck Protection Program and Health Care Enhancement Act, and any other federal law that provides moneys to the state for aid for coronavirus relief. The bill would permit any moneys from the federal government for coronavirus relief which are required by federal requirements to be deposited in a fund other than the CRF to be credited to such fund; however,

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

those would be subject to approval by the SFC in the same manner.

The bill would render the provisions of the 2019 and 2020 appropriations bills that provide general authority for the Governor to approve expenditure of federal funds as null and void, as it relates to aid received for the purposes of federal coronavirus relief.

***State of Disaster Emergencies, Kansas Emergency Management Act, and Authority of Local Officials***

The bill would create and amend law related to state of disaster emergencies and the Kansas Emergency Management Act (KEMA), including the following provisions.

***Ratification and Limitation of 2020 State of Disaster Emergencies (Section 5)***

The bill would create a new section of law ratifying and continuing from March 12, 2020, through September 15, 2020, the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020; ratified and continued by concurrent resolution through May 1, 2020; declared by proclamation on April 30, 2020; and extended by the SFC through May 26, 2020.

This section also would prohibit the Governor from proclaiming any new COVID-19-related state of disaster emergency during 2020, unless the Governor makes specific application to the SFC and such action is approved by an affirmative vote of at least six legislative members of the SFC.

***Closure or Cessation of Business or Commercial Activity (Section 6)***

The bill would create a section of law effective on and after September 15, 2020, applicable during any state of

disaster emergency declared under KEMA, prohibiting the Governor from ordering the closure or cessation of any business or commercial activity (for-profit or not-for-profit) for more than 15 days. At least 24 hours prior to the issuance of such order, the Governor would be required to call a meeting of the SFC to consult with the SFC regarding the conditions necessitating the issuance of the order. After an order or orders have resulted in 15 days of such closures or cessation, the Governor may not order such closure or cessation, except upon specific application by the Governor to the SFC, and an affirmative vote of at least six legislative members of the SFC, the Governor may order such closure or cessation of business or commercial activity, as approved by the SFC, for specified periods not to exceed 30 days each.

Any order violating or exceeding these restrictions would not have force and effect of law during the period of a state of disaster emergency and would be null and void.

The provisions of this section would expire on January 26, 2021.

*Amendments to KEMA (Sections 32-34, 36)*

The bill would amend the section of KEMA allowing the Governor to declare a state of disaster emergency to specify this power is subject to the specific limits provided above regarding a COVID-19 new state of disaster emergency in 2020. The bill would add a provision stating the COVID-19 state of disaster emergency described in Section 5 shall terminate on September 15, 2020, except when the Legislature is not in session, upon specific application by the Governor to the SFC and an affirmative vote of at least six legislative members of the SFC, this state of emergency may be extended for specified periods not to exceed 30 days each. No such extension shall continue past January 26, 2021.

The bill would amend the section of KEMA governing the powers of the Governor during a state of disaster emergency to:

- Specify the orders the Governor may issue are to exercise the powers conferred in this section;
- Specify these orders may be issued during the state of disaster emergency ratified by the bill;
- Require the Governor to call a meeting of the SFC within 24 hours of the issuance of any such order, for the purposes of reviewing the order;
- Replace a provision allowing such orders to be ratified by concurrent resolution of the Legislature with a provision declaring such orders null and void after the period of a state of disaster emergency has ended;
- Remove references to proclamations;
- Amend a provision allowing the Governor to perform and exercise other functions, powers, and duties to specify these must be in conformity with the *Kansas Constitution* and *Bill of Rights* and with the statutes of the state of Kansas, except any regulatory statute specifically suspended under the authority of this section;
- State the Governor shall not have the power or authority to temporarily or permanently seize, or authorize seizure of, any ammunition, or to suspend or limit the sale, dispensing, or transportation of firearms or ammunition pursuant to this section's listing of powers or any other executive authority;
- State, notwithstanding any provision of this section to the contrary and pursuant to the Governor's

state of disaster emergency proclamation issued on May 26, 2020, the Governor shall not have the power or authority to restrict businesses from operating or to restrict the movement or gathering of individuals. This provision would expire on September 15, 2020;

- State the Governor shall not have the power under KEMA or any other law to alter or modify any provisions of the election laws of Kansas, including, but not limited to, the method by which elections are conducted or the timing of such elections;
- Require each order issued under the authority of this section to specify the provision or provisions by specific reference to each paragraph that confers the power under which the order was issued, and
- Allow the Board of County Commissioners of any county to issue an order relating to public health that contains provisions that are less stringent than the provisions of a statewide executive order issued by the Governor. Any Board of County Commissioners issuing such an order would be required to make the following findings and include them in the order:
  - The Board has consulted with the local health officer or other local health officials regarding the Governor's executive order;
  - Following such consultation, implementation of the full scope of provisions in the Governor's executive order is not necessary to protect the public health and safety of the county; and
  - All other relevant findings to support the Board's decision.

The bill also would make technical amendments to this section to ensure consistency in statutory references. Effective January 26, 2021, the bill would return this section to its current version, removing the above amendments.

The bill would amend the KEMA section making violation of KEMA, any rule and regulation, or any lawful order or proclamation made pursuant to it a class A misdemeanor to:

- Replace a “knowing and willful” intent requirement with “intentionally violates”;
- Change the penalty from a class A misdemeanor to a civil penalty of up to \$2,500 per violation, which may be assessed in addition to any other penalty provided by law;
- Direct enforcement of the section through an action brought under Chapter 60 of the *Kansas Statutes Annotated*, by the Attorney General or the county or district attorney in the county in which the violation took place, with any civil penalties recovered by a county or district attorney to be paid into the general fund of the county where the proceedings were instigated; and
- Allow the Attorney General or any county or district attorney to bring an action to enjoin, or to obtain a restraining order, against a person who has violated, is violating, or is otherwise likely to violate KEMA.

*Authority of Local Officials (Sections 25, 35, 37-38)*

The bill would amend a statute governing states of local disaster emergency to allow any state of local disaster emergency declaration to be reviewed, amended, or revoked by the Board of County Commissioners or the governing body of the city, respectively, at a meeting of the governing body.

The bill would amend statutes regarding county boards of health and local health officers to clarify and standardize phrasing and to allow any order issued by the county health officer, including orders issued as a result of an executive order of the Governor, and orders on behalf of a county regarding the remediation of any infectious disease, to be reviewed, amended, or revoked by the Board of County Commissioners of the county affected by such order at a meeting of the board. Any order reviewed or amended by the Board would be required to include an expiration date set by the Board of County Commissioners and could be amended or revoked at an earlier date by a majority vote of the board. The bill would remove provisions requiring payment of compensation out of the county treasury and allowing removal of the local health officer by the Secretary of Health and Environment (Secretary). The bill would amend a statute governing home rule powers to prohibit counties from exempting from or effecting changes in these statutes.

#### ***School Closure (Section 7)***

The bill would create a section of law providing that no executive order issued by the Governor pursuant to KEMA that has the effect of closing public or private school attendance centers in Kansas would be effective unless and until the order is affirmed by the State Board of Education (SBE) by adoption of a resolution by a majority of the SBE's members. The Governor would be required to submit the proposed executive order to the SBE before issuing the order, and, upon receipt, the SBE would be required to meet as soon as reasonably possible to review the order and, if a majority of the SBE's members determine the order is in the best interests of the students in Kansas, to adopt a resolution affirming the order.

***COVID-19 Response and Reopening for Business  
Liability Protection Act (Act)***

The bill would create the COVID-19 Response and Reopening for Business Liability Protection Act (Liability Protection Act), as follows.

*Definitions (Section 9)*

The bill would define the following terms: “adult care facility,” “COVID-19,” “COVID-19 claim,” “COVID-19 public health emergency,” “disinfecting or cleaning supplies,” “healthcare provider,” “person,” “personal protective equipment,” “product liability claim,” “public health directives,” and “qualified product.”

*Healthcare Provider Immunity (Section 10)*

The bill would state, notwithstanding any other provision of law except within this section, a healthcare provider is immune from civil liability for damages, administrative fines, or penalties for acts, omissions, healthcare decisions, or the rendering of or the failure to render healthcare services, including services that are altered, delayed, or withheld, as a direct response to any COVID-19 state of disaster emergency under the KEMA.

This immunity would apply to any claims for damages or liability arising out of or relating to acts, omissions, or healthcare decisions occurring during any state of disaster emergency pursuant to KEMA, related to COVID-19.

This immunity would not apply to civil liability when it is established that the act, omission, or healthcare decision constituted gross negligence or willful, wanton, or reckless conduct. This immunity also would not apply to healthcare services not related to COVID-19 that have not been altered, delayed, or withheld because of the COVID-19 public health emergency. The bill (Section 15) would state this provision



would apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to the termination of the COVID-19 state of disaster emergency declared pursuant to KEMA.

*Business Liability (Section 11)*

The bill would state that, notwithstanding any other provision of law, a person (or agent of such person) conducting business in Kansas shall be immune from liability in a civil action for a COVID-19 claim if such person was acting pursuant to and in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued. This section would expire on January 26, 2021, and the bill (Section 15) would state this provision would apply retroactively to any cause of action accruing on or after March 12, 2020.

*Product Liability (Section 12)*

The bill would state that, notwithstanding any other provision of law, a person who designs, manufactures, labels, sells, distributes, provides, or donates a qualified product in response to the COVID-19 public health emergency shall be immune from liability in a civil action alleging a product liability claim involving the product if any of the above actions were taken at the specific request of or in response to a written order or other directive finding a public need for a qualified product, issued by the Governor, Adjutant General, or Division of Emergency Management, and the damages are not occasioned by willful, wanton, or reckless disregard of a known, substantial, and unnecessary risk that the product would cause serious injury to others. The bill (Section 15) would state this provision would apply retroactively to any cause of action accruing on or after March 12, 2020.

### *Adult Care Facilities (Section 13)*

The bill would state that, notwithstanding any other provision of law, an adult care facility would have an affirmative defense in a civil action for damages, administrative fines, or penalties for a COVID-19 claim if such facility is acting pursuant to and in substantial compliance with public health directives, and the facility:

- Was caused, by the facility's compliance with a statute or rule and regulation, to reaccept a resident who had been removed from the facility for treatment of COVID-19; or
- Treats a resident who has tested positive for COVID-19 in such facility in compliance with a statute or rule and regulation.

This section would define "public health directives." The bill (Section 15) would state this provision would apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to the termination of the COVID-19 state of disaster emergency declared pursuant to KEMA. .

### *Other Provisions (Section 14)*

The bill would state that nothing in the Liability Protection Act creates, recognizes, or ratifies a claim or cause of action of any kind; eliminates a required element of any claim; affects workers' compensation law, including the exclusive application of such law; or amends, repeals, alters, or affects any other immunity or limitation of liability. The bill (Section 15) would state this provision would apply would apply retroactively to any cause of action accruing on or after March 12, 2020.

### ***COVID-19 Contact Tracing Privacy Act (Section 16)***

The bill would create the COVID-19 Contact Tracing Privacy Act (Privacy Act), as follows.

The bill would state the purpose of the Privacy Act is to protect the privacy of persons whose information is collected through contact tracing and the confidentiality of contact data.

The bill would prohibit the state or any municipality, or any officer or official or agent thereof, from conducting or authorizing contact tracing, except whenever the Secretary or a local health officer determines contact tracing is necessary to perform a public health duty assigned by statute to the official, the Secretary or local health officer may conduct or authorize contact tracing, as provided in the section.

Subject to the availability of appropriations, the Secretary or local health officer could employ, contract for, or engage contact tracers, and persons acting as contact tracers under this authority would be required to meet the qualifications and training prescribed by rules and regulations adopted by the Secretary pursuant to authority provided by the Privacy Act. Until such rules and regulations are adopted, but not later than August 1, 2020, persons acting as contact tracers could act under the supervision of the Secretary and in compliance with the other provisions of the Privacy Act.

The bill would require each person acting as a contact tracer, before collecting any contact data, to execute under oath, on a form prescribed by rules and regulations of the Secretary, an acknowledgment of familiarity with the Privacy Act and the duties it imposes, including the duty of confidentiality. The state or municipal entity hiring, contracting with, or engaging the contact tracer would be required to maintain a copy of the executed form for not less than one year after the person's duties as a contact tracer end, or pursuant to applicable records retention schedule, whichever is later.

The bill would deem a contact tracer employed, contracted, or engaged by the Secretary a state employee under the Kansas Tort Claims Act and a contact tracer employed, contracted, or engaged by a local health officer an employee of the county under the Kansas Tort Claims Act.

The bill would prohibit a contact tracer from disclosing the identity of an infected person to a contact, and only contact data specifically authorized by the Secretary pursuant to rules and regulations could be collected as a part of contact tracing. The Secretary, a local health officer, or a contact tracer would be prohibited from producing data pursuant to a subpoena unless the subpoena is issued by a court and is accompanied by a valid protective order preventing further disclosure of such information.

The bill would require contact data to be:

- Used only for the purposes of contact tracing and not for any other purpose;
- Confidential and not disclosed, produced in response to any Kansas Open Records Act (KORA) request, or made public, unless the disclosure is necessary to conduct contact tracing; and
- Safely and securely destroyed when no longer necessary for contact tracing, pursuant to rules and regulations of the Secretary.

The bill would state participation in contact tracing shall be voluntary, and no contact or infected person shall be compelled to participate in, nor be prohibited from participating in, contact tracing. Any contact or infected person who in good faith discloses to a contact tracer information requested by the contact tracer under authority of the bill would be immune from civil, criminal, and administrative liability for such disclosure. No criminal, civil, or administrative liability would arise against a contact or

infected person solely due to the person's failure to cooperate in contact tracing conducted under the bill.

The bill would prohibit contact tracing from being conducted through the use of any service or means that uses cellphone location data to identify or track, directly or indirectly, the movement of persons.

The bill would state no third party shall be required to collect or maintain data regarding infected persons or contacts for the purpose of contact tracing. Contact tracers would be prohibited from obtaining contact data related to an infected person or contact from any third party, except that contact data voluntarily collected or maintained by a third party could be obtained by a contact tracer only if the third party provides such information voluntarily and with the consent of the infected person or contact whose information is disclosed, or such information is provided pursuant to a valid warrant.

The bill would permit a person to bring a civil action to enjoin violations of the Privacy Act, and a knowing violation of the Privacy Act would be a class C nonperson misdemeanor. The bill would deem contact data to be "personal information" within the meaning of the Kansas Consumer Protection Act statute governing requirements for holders of personal information. These remedies would be in addition to each other and to any other available civil or criminal remedies.

The bill would require the Secretary to promulgate rules and regulations to implement, administer, and enforce the provisions of the Privacy Act prior to December 1, 2020.

The Privacy Act would define "contact," "contact tracing," "contact tracer," "COVID-19," "contact data," "infected person," "local health officer," "municipality," "Secretary," and "state" for this purpose.

The provisions of the Privacy Act would expire on May 1, 2021.

### ***Validity of Notarial Acts (Section 17)***

The bill would create a section of law stating that notarial acts performed by a Kansas notary public while the personal appearance requirements are suspended pursuant to an executive order or other state law shall be valid as if the individual had met the personal appearance requirement, even if the individual failed to do so, as long as the notarial act fulfills all requirements prescribed by the executive order or other state law and all other requirements not relating to personal appearance.

### ***First Responder Notifications (Section 18)***

The bill would create a section requiring, during a COVID-19-related state of disaster emergency declared under KEMA, each local health officer to work with first responder agencies operating in the county to share information indicating where a person testing positive for, or under quarantine or isolation due to, COVID-19 resides or can be expected to be present. The bill would require the information to include the person's address and duration of any quarantine, isolation, or expected recovery period, as determined by the local health officer, and only be used for the purpose of allowing the first responders to be alert to the need for utilizing appropriate personal protective equipment during the response activity.

The bill would require the above information to be provided to the 911 call center serving the address provided and would limit the 911 call center to disseminating the information only to first responders responding to the listed address.

The information would not be a public record and would not be subject to the KORA. This records provision would expire on July 1, 2025, unless the Legislature reviews and reenacts the provision pursuant to the applicable section of KORA.

### ***Adult Care Homes (Section 19)***

The bill would create a section of law requiring the Kansas Department for Aging and Disability Services (KDADS) to take the following actions with regard to adult care homes:

- Promptly, and no later than 90 days following the effective date of the bill, make or cause to be made infection control inspections;
- Provide the necessary personal protective equipment, sanitizing supplies, and testing kits appropriate to the needs of each facility on an ongoing basis, based upon:
  - Current number of residents;
  - Current number of full-time and part-time staff members;
  - Number of residents and staff who have tested positive for COVID-19 in the last 14 days;
  - Ability to separate residents with COVID-19 from non-COVID-19 residents; and
  - Any other factors deemed relevant by the Secretary for Aging and Disability Services; and
- Ensure that infection prevention and control best practices and recommendations based upon guidance from the U.S. Centers for Disease Control and Prevention and the Kansas Department of Health and Environment (KDHE) are adopted and made available publicly.

## **Health Care**

### *Telemedicine (Section 20)*

The bill would create a section of law addressing telemedicine, including the following provisions.

The bill would allow a physician to issue a prescription or order administration of medication, including a controlled substance, for a patient, without conducting an in-person examination of the patient.

A physician under quarantine, including self-imposed quarantine, would be allowed to practice telemedicine.

A physician licensed in another state could practice telemedicine to treat patients in Kansas, if the physician advises the Board of Healing Arts (Board) of such practice in writing and in a manner determined by the Board and the physician holds an unrestricted license to practice medicine and surgery in the other state and is not the subject of any investigation or disciplinary action by the licensing agency. The Board would be allowed to extend this provision to other healthcare professionals licensed and regulated by the Board as deemed necessary by the Board to address the impacts of COVID-19 and consistent with ensuring patient safety.

The bill would require a physician practicing telemedicine under this section to conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.

The bill would specify this section would not supersede or otherwise affect the provisions of statutes governing performance of abortions or prohibition of abortions delivered *via* telemedicine.



The section would define “physician” and “telemedicine.” The section would expire on January 26, 2021.

*Hospitals and Medical Care Facilities (Section 21)*

The bill would create a section of law regarding hospital and medical care facility usage, including the following provisions.

The section would allow a hospital to admit patients in excess of its number of licensed beds or inconsistent with its licensed classification of beds, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. A hospital admitting patients in this manner would be required to notify KDHE as soon as practicable, but prior authorization would not be required.

The section would allow a hospital to use non-hospital space, including off-campus space, to perform COVID-19 testing, triage, quarantine, or patient care, to the extent the hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients. The KDHE could impose reasonable safety requirements on such use to maximize the availability of patient care, and non-hospital space used in this manner would be deemed to meet the requirements of a statute governing provision of services by a hospital consisting of more than one establishment. A hospital using non-hospital space in this manner would be required to notify the KDHE as soon as practicable, but prior authorization would not be required.

The section would allow a medical care facility to permit healthcare providers authorized to provide healthcare services in Kansas to provide healthcare services at such medical facility without becoming a member of the facility’s medical staff.

“Hospital” and “medical care facility” would have the same meanings as in statutes governing hospital and related facility licensing, inspection, and regulation.

The section would expire 120 calendar days after the expiration or termination of the state of disaster emergency proclamation issued by the Governor in response to the COVID-19 public health emergency, or any extension thereof.

*Temporary Emergency License (Section 22)*

The bill would create a section of law allowing the Board to grant a temporary emergency license to practice any profession licensed, certified, registered, or regulated by the Board to an applicant with qualifications the Board deems sufficient to protect public safety and welfare, within the scope of professional practice authorized by the temporary emergency license, for the purpose of preparing for, responding to, or mitigating any effect of COVID-19.

The section would expire on January 26, 2021.

*Temporary Licensure Measures for Additional Healthcare Providers (Section 23)*

The bill would create a section of law, notwithstanding any applicable law to the contrary, allowing physician assistants (PAs) to provide healthcare services appropriate to such provider’s education, training, and experience within a designated healthcare facility at which the PA is employed or contracted to work as necessary to support the facility’s response to the COVID-19 pandemic without a written agreement with a supervising physician and the PA would not be liable in any criminal prosecution, civil action or administrative proceeding arising out of the lack of such written agreement.

The bill also would allow advanced practice registered nurses (APRNs) and nurse anesthetists to provide healthcare

services appropriate to each provider's education, training, and experience within a designated healthcare facility at which the provider is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without direction and supervision from a responsible physician. APRNs and nurse anesthetists providing health care under the provisions of this section would not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of a lack of direction and supervision from a responsible physician.

Licensed practical nurses (LPNs) would be allowed to provide healthcare services appropriate to such provider's education, training, and experience within a designated healthcare facility at which the LPN is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without direction from a registered professional nurse (RN), and the LPN would not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such LPN's lack of supervision from an RN. The bill would allow an RN or LPN to order the collection of throat or nasopharyngeal swab specimens from individuals suspected of being infected by COVID-19 for purposes of testing.

The bill would allow licensed pharmacists to provide care for routine health maintenance, chronic disease states, or similar conditions appropriate to such pharmacist's education, training, and experience within a designated healthcare facility at which the pharmacist is employed or contracted to work as necessary to support the facility's response to the COVID-19 pandemic without a collaborative practice agreement with a physician, and the pharmacist would not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such pharmacist's lack of collaborative practice agreement with a physician.

The bill would allow a RN or LPN who holds a license that is exempt, inactive, or has lapsed within the past five years from the effective date of the bill to provide healthcare

services appropriate to the nurse's education, training, and experience, and the RN or LPN would not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such nurse's exempt, inactive, or lapsed license.

The bill would authorize a designated healthcare facility, as necessary to support the facility's response to the COVID-19 pandemic, to:

- Allow a student who is enrolled in a program to become a licensed, registered, or certified healthcare professional to volunteer for work within such facility in roles that are appropriate to such student's education, training, and experience;
- Allow a licensed, registered, or certified healthcare professional or emergency medical personnel who is serving in the military in any duty status to volunteer or work within such facility in roles that are appropriate to such military service member's education, training, and experience; and
- Allow a medical student, physical therapist, or emergency medical services provider to volunteer or work within such facility as a respiratory therapist extender under the supervision of a physician, respiratory therapist, or APRN. Such respiratory therapist extender would be allowed to assist respiratory therapists and other healthcare professionals in the operation of ventilators and related devices and provide other healthcare services appropriate to such provider's education, training, and experience, as determined by the facility in consultation with such facility's medical leadership.

The bill would allow a healthcare professional licensed and in good standing in another state to practice such profession in the state of Kansas. A license that has been

suspended or revoked or a licensee who is subject to pending license-related disciplinary action would not be considered to be in good standing. Any license that is subject to limitation in another state would be subject to the same limitation in the state of Kansas. Such healthcare professional would not be liable in any criminal prosecution, civil action, or administrative proceeding arising out of such healthcare professional's lack of licensure in the state of Kansas.

The bill would allow, subject to any terms and conditions established by the Secretary of Health and Environment, a designated healthcare facility to use a qualified volunteer or qualified personnel affiliated with any other designated healthcare facility as if such volunteer or personnel was affiliated with the facility using such volunteer or personnel.

The bill would allow a healthcare professional to be licensed, certified, or registered or to have such license, certification, or registration reinstated within five years of lapse or renewed by the applicable licensing agency of the state of Kansas without satisfying the following conditions of licensure, certification, or registration:

- An examination, if such examination's administration has been canceled while the state of disaster emergency proclamation issued by the Governor in response to the COVID-19 pandemic is in effect;
- Fingerprinting;
- Continuing education; and
- Payment of a fee.

The bill would provide that a professional certification in basic life support, advanced cardiac life support, or first aid shall remain valid if such professional certification is due to expire or be canceled while the state of disaster emergency

proclamation issued by the Governor in response to the COVID-19 pandemic is in effect.

Fingerprinting of individuals would not be required as a condition of licensure and certification for any hospital, adult care home, county medical care facility or psychiatric hospital.

The bill would state “appropriate to such professional’s education, training and experience,” or words of like effect, shall be determined by the designated healthcare facility in consultation with such facility’s medical leadership and would define “designated healthcare facility.”

The provisions of the section would expire on January 26, 2021.

#### ***Critical Access Hospitals (Section 39)***

The bill would amend the definition of “critical access hospital” in a statute governing rural health networks to add a provision stating that, prior to June 30, 2021, to the extent a critical access hospital determines it is necessary to treat COVID-19 patients or to separate COVID-19 patients and non-COVID-19 patients, the hospital would not be limited to 25 beds, and a facility with an approved swing bed agreement would not be limited to a combined total of 25 extended care and acute care beds or limited to providing acute inpatient care for a period of time that does not exceed, on an annual average basis, 96 hours per patient.

The bill also would make technical amendments to this statute to ensure consistency in statutory phrasing.

#### ***Court Videoconferencing (Section 24)***

The bill would amend a provision enacted in 2020 House Sub. for SB 102 to allow the Chief Justice of the Kansas Supreme Court to issue an order authorizing the use

of two-way electronic audio-visual communication (videoconferencing) in any court proceeding, when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers, by removing language limiting application of this provision to periods during any state of disaster emergency under KEMA. [Note: Under continuing law, the provisions of this section would expire on March 31, 2021.]

### ***Sale of Alcoholic Liquor (Section 26)***

The bill would amend the statute governing removal of unconsumed alcoholic liquor from premises of a club or drinking establishment to allow legal patrons to remove from the licensed premises one or more containers of alcoholic liquor not in the original container, subject to the following conditions:

- It must be legal for the licensee to sell the alcoholic liquor;
- Each container of alcoholic liquor must have been purchased by a patron on the licensed premises;
- The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and
- Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

These provisions would expire on January 26, 2021.

### ***Unemployment Compensation (Sections 27 through 31)***

The bill would make a number of temporary changes to the state unemployment compensation system in response to the COVID-19 pandemic.

The bill would include a policy statement that Kansas is committed to maintaining and strengthening access to its unemployment compensation system.

The bill would provide that a claimant is not ineligible for benefits on the basis of not actively seeking work during a disaster emergency proclaimed by the Governor and in response to the spread of COVID-19 and the State has temporarily waived the work search requirement in compliance with the Families First Act.

Additionally, the bill would waive the waiting week requirement for new claims filed from April 5, 2020, through December 26, 2020, in accordance with the Families First Act and the CARES Act.

The bill would require employers to provide any notifications to individuals in the service of the employer as required by the Secretary of Labor pursuant to the Families First Act.

For calendar year 2021, the bill would limit unemployment contribution rates for employers to the standard rate schedule and prohibit an additional solvency adjustment.

The bill would provide that benefits paid as a result of employees being discharged by an employer directly impacted by COVID-19 in accordance with the Families First Act would not be charged to the account of the contributing employer.

Under the bill, payments of unemployment compensation that are wholly reimbursed to a reimbursing



employer by the federal government shall be charged for the purpose of such reimbursement under the CARES Act.

The bill also would eliminate provisions prohibiting negative account employers from participating in shared work plans, but would provide that shared work plans may be approved only if the Secretary of Labor determines the contributing employer does not adversely impact the State's eligibility under Section 2108 of the CARES Act, which provides for federal reimbursement of certain shared work plan payments.

#### ***Severability Clause (Section 40)***

The bill would include a severability provision, stating if any portion of the act or application thereof to any person or circumstance is declared unconstitutional or invalid, such invalidity would not affect other portions that can be given effect without the invalid portion or application, and such other portions would remain valid and enforceable.

#### ***Effective Date***

The bill would be in effect upon publication in the *Kansas Register*.

#### **Background**

The 2020 Legislature passed Senate Sub. for HB 2054, which created and amended law and made appropriations in response to the 2020 COVID-19 pandemic in Kansas. Among the contents of the bill were provisions requiring LCC approval of expenditures from federal COVID-19 relief funds, ratification of state of disaster emergencies declared in response to COVID-19, additional legislative oversight in the KEMA, limitations on certain actions by or powers of the Governor in KEMA, additional authority for boards of county commissioners, liability limitations for healthcare

professionals and businesses, and codification of elements of various executive orders issued in response to the COVID-19 pandemic.

On May 26, 2020, the Governor vetoed Senate Sub. for HB 2054, citing certain changes to KEMA, the requirements for approval of expenditures from federal COVID-19 relief funds, and the liability limitations contained in the bill as policy provisions she could not support.

The same day, the Governor issued a proclamation calling the Legislature into Special Session, beginning June 3, 2020, “to extend the state of disaster emergency and to enact appropriate amendments to the [KEMA] so as to provide for emergency response to the effects of the COVID-19 pandemic.”

The Legislative Coordinating Council authorized meetings of the House and Senate Committees on Judiciary to review portions of Senate Sub. for HB 2054. On June 2, 2020, the House and Senate Committees on Judiciary held informational hearings on the status of negotiations between legislative leadership and the Governor’s Office, including a draft bill based upon the negotiations. The draft bill, based upon 2020 Regular Session Senate Sub. for HB 2054, would modify or add a number of provisions, including:

- Oversight of coronavirus relief funds (modified);
- KEMA additions and amendments related to state of disaster emergencies and the Governor’s powers (modified);
- Authority of local officials (modified);
- The Liability Protection Act (modified);
- The Privacy Act (added); and

- KDADS duties regarding adult care homes (modified).

Background information on Senate Sub. for HB 2054 may be found in the conference committee report brief for that bill.

On June 3, the House Committee on Judiciary introduced HB 2016, based upon the language in the draft bill and further negotiations, at the request of Representative Patton. The bill was referred to the House Committee of the Whole.

On final action, the House adopted a technical amendment.

No fiscal note was available for the bill when the House took action.