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GOVERNOR LAURA KELLY

MESSAGE FROM THE GOVERNOR

REGARDING VETO OF H SUB FOR SUB SENATE BILL 286

This bill includes valuable provisions that I support, such as expanding telemedicine and criminal penalties for violence against health care workers in hospital settings.

During the pandemic, I worked with hospitals, frontline care workers, and stakeholders on a narrowly tailored compromise to protect our doctors and nurses responding to COVID-19 while ensuring Kansas patients still had appropriate protections. This was important for those working around the clock, caring for our loved ones during the height of the pandemic.

However, a last-minute provision was inserted into this bill which gutted our original carefully crafted compromise and indiscriminately broadened protections for health care providers. substantially reducing protections for Kansas patients.

I will work with the Legislature in a bipartisan fashion on a bill that returns the liability provisions to the original compromise language and include the provisions for telemedicine and enhanced criminal penalties for violence against health care workers in hospital settings so that both Kansas patients and our hard-working healthcare providers are protected.

Therefore, under Article 2, Section 14(a) of the Constitution, I hereby veto H Sub for Sub Senate Bill 286.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR Quidaloly

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An Act concerning public health; relating to the governmental response to the COVID-19 pandemic in Kansas; crimes, punishment and criminal procedure; crimes against the public peace; creating the crime of interference with the conduct of a hospital; increasing the criminal penalty for battery of a healthcare provider; extending the expanded use of telemedicine and expiring such provisions; extending the suspension of certain requirements related to medical care facilities and expiring such provisions; modifying the COVID-19 response and reopening for business liability protection act; extending immunity from civil liability for certain healthcare providers, certain persons conducting business in this state and covered facilities for COVID-19 claims until January 20, 2023; amending K.S.A. 2021 Supp. 21-5413, 48-963, 48-964, 60-5503, 60-5504, 60-5508 and 65-468 and repealing the existing sections.

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

New Section 1. (a) Interference with the conduct of a hospital is:

- (1) Conduct at or in a hospital so as to knowingly deny an employee of the hospital to enter, to use the facilities of or to leave any such hospital;
- (2) knowingly impeding any employee of a hospital from the performance of such employee's duties or activities through the use of:
- (A) Restraint with the intent to prevent such employee from freely moving to a different location or to provide care for another person;
 - (B) abduction, coercion or intimidation; or
 - (C) force and violence or threat thereof; or
- (3) knowingly refusing to leave a hospital upon being requested to leave by the employee charged with maintaining order in such hospital, if such person is committing, threatens to commit or incites others to commit any act that did, or would if completed, disrupt, impair, interfere with or obstruct the mission, processes, procedures or functions of the hospital.
- (b) Aggravated interference with the conduct of a hospital is interference with the conduct of a hospital as defined in subsection (a) when in possession of any weapon as described in K.S.A. 2021 Supp. 21-6301 or 21-6302, and amendments thereto.
- (c) (1) Interference with the conduct of a hospital is a class A nonperson misdemeanor.
- (2) Aggravated interference with the conduct of a hospital is a severity level 6, person felony.
 - (d) As used in this section:
- (1) "Employee" means a person employed by, providing healthcare services at, volunteering at or participating in an educational course of instruction at a hospital; and
- (2) "hospital" means the same as the term is defined in K.S.A. 65-425, and amendments thereto.
- (e) This section shall be a part of and supplemental to the Kansas criminal code.
- Sec. 2. K.S.A. 2021 Supp. 21-5413 is hereby amended to read as follows: 21-5413. (a) Battery is:
- (1) Knowingly or recklessly causing bodily harm to another person; or
- (2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner.
 - (b) Aggravated battery is:
- (1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;
- (B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or
- (C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted:
 - (2) (A) recklessly causing great bodily harm to another person or

disfigurement of another person;

- (B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or
- (3) (A) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act; or
- (B) committing an act described in K.S.A. 8-1567, and amendments thereto, when bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement or death can result from such act; or
- (4) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act while:
- (A) In violation of any restriction imposed on such person's driving privileges pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto;
- (B) such person's driving privileges are suspended or revoked pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto; or
- (C) such person has been deemed a habitual violator as defined in K.S.A. 8-285, and amendments thereto, including at least one violation of K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any city in this state, any resolution of any county in this state or any law of another state, which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute.
 - (c) Battery against a law enforcement officer is:
 - (1) Battery, as defined in subsection (a)(2), committed against a:
- (A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.
- (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
- (C) uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;
- (D) judge, while such judge is engaged in the performance of such judge's duty;
- (E) attorney, while such attorney is engaged in the performance of such attorney's duty; or
- (F) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;
 - (2) battery, as defined in subsection (a)(1), committed against a:
- (A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
- (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
- (C) uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;
- (D) judge, while such judge is engaged in the performance of such judge's duty;
- (E) attorney, while such attorney is engaged in the performance of such attorney's duty; or

- (F) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty; or
 - (3) battery, as defined in subsection (a) committed against a:
- (A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;
- (B) state correctional officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;
- (C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or
- (D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.
 - (d) Aggravated battery against a law enforcement officer is:
- (1) An–Aggravated battery, as defined in subsection (b)(1)(A) committed against a:
- (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
- (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
- (C) uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;
- (D) judge, while such judge is engaged in the performance of such judge's duty;
- (E) attorney, while such attorney is engaged in the performance of such attorney's duty; or
- (F) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;
- (2) an-aggravated battery, as defined in subsection (b)(1)(B) or (b)(1) (C), committed against a:
- (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
- (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
- (C) uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;
- (D) judge, while such judge is engaged in the performance of such judge's duty;
- (E) attorney, while such attorney is engaged in the performance of such attorney's duty; or
- (F) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty; or
 - (3) knowingly causing, with a motor vehicle, bodily harm to a:
- (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
- (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
- (C) uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty.

- (e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.
- (f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary for aging and disability services, while such employee is engaged in the performance of such employee's duty.
- (g) Battery against a healthcare provider is a battery as defined in subsection (a) committed against a healthcare provider while such provider is engaged in the performance of such provider's duty.
 - (h) (1) Battery is a class B person misdemeanor.
 - (2) Aggravated battery as defined in:
- (A) Subsection (b)(1)(A) or (b)(4) is a severity level 4, person felony;
- (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;
- (C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person felony; and
- (D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person felony.
 - (3) Battery against a law enforcement officer as defined in:
 - (A) Subsection (c)(1) is a class A person misdemeanor;
 - (B) subsection (c)(2) is a severity level 7, person felony; and
 - (C) subsection (c)(3) is a severity level 5, person felony.
- (4) Aggravated battery against a law enforcement officer as defined in:
- (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and
 - (B) subsection (d)(2) is a severity level 4, person felony.
- (5) Battery against a school employee is a class A person misdemeanor.
- (6) Battery against a mental health employee is a severity level 7, person felony.
- (7) Battery against a healthcare provider is a class A person misdemeanor.
 - $\frac{h}{i}$ As used in this section:
- (1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;
- (2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, whose duties include working at a correctional institution;
- (3) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-2302, and amendments thereto;
- (4) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, whose duties include working at a city holding facility or county jail facility;
- (5) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12;

- (6) "mental health employee" means: (A) An employee of the Kansas department for aging and disability services working at Larned state hospital, Osawatomie state hospital, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto; and (B) contractors and employees of contractors under contract to provide services to the Kansas department for aging and disability services working at any such institution or facility:
- (7) "judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;
- (8) "attorney" means a: (A) County attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;
- (9) "community corrections officer" means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs;
- (10) "court services officer" means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court; and
- (11) "federal law enforcement officer" means a law enforcement officer employed by the United States federal government who, as part of such officer's duties, is permitted to make arrests and to be armed, and
- (12) "healthcare provider" means a person who is licensed, registered, certified or otherwise authorized by the state of Kansas to provide healthcare services in this state and employed by or providing healthcare services at a hospital as defined in K.S.A. 65-425, and amendments thereto.
- Sec. 3. K.S.A. 2021 Supp. 48-963 is hereby amended to read as follows: 48-963. (a) A physician may issue a prescription for or order the administration of medication, including a controlled substance, for a patient without conducting an in-person examination of such patient.
- (b) A physician under quarantine, including self-imposed quarantine, may practice telemedicine.
- (c) (1) A physician holding a license issued by the applicable licensing agency of another state may practice telemedicine to treat patients located in the state of Kansas, if such out-of-state physician holds a temporary emergency license granted pursuant to K.S.A. 2021 Supp. 48-965, and amendments thereto.
- (2) The state board of healing arts may extend the provisions of this subsection 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.
- (d) A physician practicing telemedicine in accordance with this section shall conduct an appropriate assessment and evaluation of the patient's current condition and document the appropriate medical indication for any prescription issued.
- (e) Nothing in this section shall supersede or otherwise affect the provisions of K.S.A. 40-2,215 or 65-4a10, and amendments thereto, or

K.S.A. 40-2,215, and amendments thereto.

- (f) As used in this section:
- (1) "Physician" means a person licensed to practice medicine and surgery.
- (2) "Telemedicine" means the delivery of healthcare services by a healthcare provider while the patient is at a different physical location.
- (g) Notwithstanding the prior expiration of this section on March 31, 2022, the provisions of this section shall be in force and effect on and after the effective date of this act. This section shall expire on March 31, 2022 January 20, 2023.
- Sec. 4. K.S.A. 2021 Supp. 48-964 is hereby amended to read as follows: 48-964. (a) (1) A hospital may admit patients in excess of such hospital's number of licensed beds or inconsistent with the licensed classification of such hospital's beds to the extent that such hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients.
- (2) A hospital admitting patients in such manner shall notify the department of health and environment as soon as practicable but shall not be required to receive prior authorization to admit patients in such manner.
- (b) (1) A hospital may utilize non-hospital space, including off-campus space, to perform COVID-19 testing, triage, quarantine or patient care to the extent that such hospital determines is necessary to treat COVID-19 patients and to separate COVID-19 patients and non-COVID-19 patients.
- (2) The department of health and environment may impose reasonable safety requirements on such use of non-hospital space to maximize the availability of patient care.
- (3) Non-hospital space used in such manner shall be deemed to meet the requirements of K.S.A. 65-431(d), and amendments thereto.
- (4) A hospital utilizing non-hospital space in such manner shall notify the department of health and environment as soon as practicable but shall not be required to receive prior authorization to utilize non-hospital space in such manner.
- (c) A medical care facility may permit healthcare providers authorized to provide healthcare services in the state of Kansas to provide healthcare services at such medical care facility without becoming a member of the medical care facility's medical staff.
- (d) As used in this section, "hospital" and "medical care facility" mean the same as defined in K.S.A. 65-425, and amendments thereto.
- (e) Notwithstanding the prior expiration of this section on March 31, 2022, the provisions of this section shall be in force and effect on and after the effective date of this act. This section shall expire on March 31, 2022 January 20, 2023.
- Sec. 5. K.S.A. 2021 Supp. 60-5503 is hereby amended to read as follows: 60-5503. (a) Notwithstanding any other provision of law, except as provided in subsection (c)₅:
- (1) (A) A healthcare provider that is employed by or providing healthcare services at a medical care facility as defined in K.S.A. 65-425, and amendments thereto, is immune from civil liability for damages, administrative fines or penalties for that arise out of or relate to 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 related to the COVID-19 public health emergency.
- (B) The provisions of paragraph (A) shall not apply to a healthcare provider that is employed by or providing healthcare services at a medical care facility as defined in K.S.A. 65-425, and amendments thereto, that denies healthcare services to a person at such medical

facility based solely on such person's COVID-19 vaccination status.

- (2) A healthcare provider that is not employed by or providing healthcare services at a medical care facility as defined in K.S.A. 65-425, and amendments thereto, is immune from civil liability for damages, administrative fines or penalties for acts, omissions, healthcare decisions or the render of or the failure to render healthcare services, including services that are altered, delayed or withheld, as a direct response to the COVID-19 public health emergency.
- (b) (1) Except as provided in paragraph (2), the provisions of this section shall apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring between March 12, 2020, and March 31, 2022 January 20, 2023, related to the COVID-19 public health emergency. The provisions of this section shall apply to such claims accruing on or after March 30, 2022, and prior to the effective date of this act.
- (2) The provisions of subsection (a)(1), as amended by this act, shall apply to any claims for damages or liability that arise out of or relate to acts, omissions or healthcare decisions occurring between the effective date of this act and January 20, 2023, related to the COVID-19 public health emergency.
- (c) (1) The provisions of this section shall 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.
- (2) The provisions of this section shall not apply to healthcare services not related to COVID-19 that have not been altered, delayed or withheld as a direct response to the COVID-19 public health emergency.
- Sec. 6. K.S.A. 2021 Supp. 60-5504 is hereby amended to read as follows: 60-5504. (a) Notwithstanding any other provision of law, a person, or an agent of such person, conducting business in this state 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.
- (b) Notwithstanding the prior expiration of this section on March 31, 2022, the provisions of this section shall be in force and effect on and after the effective date of this act. The provisions of this section shall expire on March 31, 2022 January 20, 2023.
- Sec. 7. K.S.A. 2021 Supp. 60-5508 is hereby amended to read as follows: 60-5508. (a) The provisions of K.S.A. 2021 Supp. 60-5504, 60-5505 and 60-5507, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020.
- (b) (1) Except as provided in paragraph (2), the provisions of K.S.A. 2021 Supp. 60-5503 and 60-5506, and amendments thereto,—and the amendments made to K.S.A. 2021 Supp. 60-5506 by section 2 of 2021 House Bill No. 2126, shall apply retroactively to any cause of action-accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency declared pursuant to K.S.A. 48-924, and amendments thereto.
- (e) The provisions of K.S.A. 2021 Supp. 60-5503, and amendments thereto, shall apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to March 31, 2022 January 20, 2023.
- (2) The provisions of K.S.A. 2021 Supp. 60-5503(a)(1), as amended by this act, shall apply to any cause of action accruing on or after the effective date of this act and prior to January 20, 2023.
- Sec. 8. K.S.A. 2021 Supp. 65-468 is hereby amended to read as follows: 65-468. As used in K.S.A. 65-468 through 65-474, and amendments thereto:
- (a) "Healthcare provider" means any person licensed or otherwise authorized by law to provide health care services in this state or a

professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by law to form such corporation and who are health care providers as defined by this subsection, or an officer, employee or agent thereof, acting in the course and scope of employment or agency.

- (b) "Member" means any hospital, emergency medical service, local health department, home health agency, adult care home, medical clinic, mental health center or clinic or nonemergency transportation system.
- (c) "Mid-level practitioner" means a physician assistant or advanced practice registered nurse who has entered into a written protocol with a rural health network physician.
- (d) "Physician" means a person licensed to practice medicine and surgery.
- (e) "Rural health network" means an alliance of members, including at least one critical access hospital and at least one other hospital, that has developed a comprehensive plan submitted to and approved by the secretary of health and environment regarding: Patient referral and transfer; the provision of emergency and nonemergency transportation among members; the development of a network-wide emergency services plan; and the development of a plan for sharing patient information and services between hospital members concerning medical staff credentialing, risk management, quality assurance and peer review.
- (f) (1) "Critical access hospital" means a member of a rural health network that: Makes available 24-hour emergency care services; provides not more than 25 acute care inpatient beds or in the case of a facility with an approved swing-bed agreement a combined total of extended care and acute care beds that does not exceed 25 beds; provides acute inpatient care for a period that does not exceed, on an annual average basis, 96 hours per patient; and provides nursing services under the direction of a licensed professional nurse and continuous licensed professional nursing services for not less than 24 hours of every day when any bed is occupied or the facility is open to provide services for patients unless an exemption is granted by the licensing agency pursuant to rules and regulations. The critical access hospital may provide any services otherwise required to be provided by a full-time, on-site dietician, pharmacist, laboratory technician, medical technologist and radiological technologist on a parttime, off-site basis under written agreements or arrangements with one or more providers or suppliers recognized under medicare. The critical access hospital may provide inpatient services by a physician assistant, advanced practice registered nurse or a clinical nurse specialist subject to the oversight of a physician who need not be present in the facility. In addition to the facility's 25 acute beds or swing beds, or both, the critical access hospital may have a psychiatric unit or a rehabilitation unit, or both. Each unit shall not exceed 10 beds and neither unit shall count toward the 25-bed limit or be subject to the average 96-hour length of stay restriction.
- (2) Notwithstanding the provisions of paragraph (1), prior to—March 31, 2022 January 20, 2023, to the extent that a critical access hospital determines it is necessary to treat COVID-19 patients or to separate COVID-19 patients and non-COVID-19 patients, such critical access hospital shall not be limited to 25 beds or, in the case of a facility with an approved swing bed agreement, to a combined total of 25 extended care and acute care beds, and shall not be limited to providing acute inpatient care for a period of time that does not exceed, on an annual average basis, 96 hours per patient. Notwithstanding the prior expiration of this subsection on March 31, 2022, the provisions of this section shall be in force and effect on and after the effective date of this act.
- (g) "Hospital" means a hospital other than a critical access hospital that has entered into a written agreement with at least one critical access

hospital to form a rural health network and to provide medical or administrative supporting services within the limit of the hospital's capabilities.

Sec. 9. K.S.A. 2021 Supp. 21-5413, 48-963, 48-964, 60-5503, 60-5504, 60-5508 and 65-468 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above Bill originated in the

Senare, and passed that	l body	
		
Senate adopted		
Conference Commit	tee Report	
		President of the Senate
		Secretary of the Senate
Passed the House as amended		
House adopted		
Conference Commit	tee Report	
		Speaker of the House
		Chief Clerk of the House
Approved		

Governor.