

# Journal of the Senate

FORTY-SEVENTH DAY

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SENATE CHAMBER, TOPEKA, KANSAS  
Tuesday, March 22, 2011, 9:00 a.m.

The Senate was called to order by President Stephen Morris.  
The roll was called with thirty-nine senators present.  
Senator Donovan was excused.  
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

Some people seem to think  
You don't approve of laughter.  
They were crying when delivered,  
And they've been frowning ever after.

These same people seem to think  
That humor is a sin.  
Especially when praying  
It's blasphemy to grin!

But I have found that when I suffer  
From a sour disposition,  
A little humor in my praying  
Puts the blues into remission.

And You have done Your part, O God,  
To make the matter even clearer.  
All I have to do is take  
A quick look in the mirror!

Relying on Your Sense of humor, Lord,  
I pray in the Name of Jesus Christ. AMEN

The pledge of allegiance was led by President Stephen Morris.

## **INTRODUCTION OF BILLS AND CONCURRENT RESOLUTIONS**

The following bill was introduced and read by title:

**SB 244**, AN ACT concerning municipalities; relating to agreements for renewable energy generation facilities; amending K.S.A. 10-1116b and repealing the existing section, by Committee on Ways and Means.

#### **REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS**

The following bills were referred to Committees as indicated:

Assessment and Taxation: **HCR 5017**.

Ethics and Elections: **SB 242**.

Ways and Means: **SB 243**.

#### **CHANGE OF REFERENCE**

The President withdrew **HB 2312** from the Committee on **Judiciary**, and referred the bill to the Committee on **Federal and State Affairs**.

#### **MESSAGE FROM THE HOUSE**

Announcing passage of **SB 15**.

Announcing passage of **SB 196**, as amended by **House Substitute for SB 196**.

The House nonconcurrs in Senate amendments to **HB 2151**, requests a conference and has appointed Representatives Colloton, Kinzer and McCray-Miller as conferees on the part of the House.

Announcing passage of **HB 2117**.

#### **INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS**

**HB 2117** was thereupon introduced and read by title.

#### **CHANGE OF CONFERENCE**

The President announced the appointment of Senator Francisco as a member of the Conference Committee on **SB 67** to replace Senator Faust-Goudeau.

#### **INTRODUCTION OF ORIGINAL MOTIONS AND SENATE RESOLUTIONS**

Senators V. Schmidt and Masterson introduced the following Senate resolution, which was read:

SENATE RESOLUTION No. SR 1833—

A RESOLUTION designating March 22, 2011 as Diabetes Alert Day.

WHEREAS, The State of Kansas recognizes that healthy citizens are essential for strong communities to thrive; and

WHEREAS, Diabetes is a major public health problem with increasing prevalence, poor outcomes and high costs; and

WHEREAS, More than 160,000 Kansas have been diagnosed with diabetes and over 90% of those have Type II diabetes which can be delayed; and

WHEREAS, Early detection and disease management can help prevent complications of diabetes, including cardiovascular disease, blindness, nervous system damage and

kidney failure; and

WHEREAS, The Kansas health care community has come together to form the Kansas Diabetes Advisory Council to develop and implement a Kansas Diabetes Plan to reduce the negative clinical and economic impact on individuals and on the State of Kansas; and

WHEREAS, The goals of the Kansas Diabetes Plan are to increase awareness of the prevention and control of diabetes, improve the capacity to address and control the prevention of diabetes, increase Kansas' health care workforce competency in diabetes standards of care, improve awareness of and access to diabetes self-management information, programs and services and to influence public policy to support improving diabetes prevention, detection and care throughout Kansas: Now, therefore,

*Be it resolved by the Senate of the State of Kansas:* That we designate March 22, 2011 as Diabetes Alert Day in the State of Kansas; and

*Be it further resolved:* That we direct the Kansas Diabetes Advisory Council to submit a status report to the Kansas Legislature in 2012 on the progression of the Kansas Diabetes Plan; and

*Be it further resolved:* That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to the Kansas Diabetes Advisory Council and three enrolled copies to Senators Vicki Schmidt and Ty Masterson.

On emergency motion of Senator V. Schmidt **SR 1833** was adopted unanimously.

Senator V. Schmidt introduced Mark Stubbs, Executive Director of the American Diabetes Association, Dr. Gwen Lehleitner, Manager at Sanofi Avertis, and Karen Rooney-Cuevas, Manager at Blue Cross Blue Shield of Kansas. They were acknowledged with a standing ovation by the senate for their contributions in the field of diabetes.

Senator Masterson introduced his daughter, Kenzy, who has diabetes. The Senate acknowledged Kenzy by singing Happy Birthday on her birthday. His wife, Marlo and their children: Abby, Marshal, T.J., Kaely and Mendy were introduced. They were all welcomed with a standing ovation.

## REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **HB 2218**, as amended by House Committee of the Whole, be passed.

Also, **HB 2035**, as amended by House Committee, be amended on page 12, in line 4, by striking "and counseling"; in line 5, by striking "mental health professional" and inserting "psychiatrist, licensed psychologist or licensed clinical social worker"; also in line 5, by striking "and"; in line 6, by striking "counseling"; in line 18, by striking "and counseling"; and the bill be passed as amended.

Committee on **Ways and Means** recommends **HB 2133** be amended by substituting a new bill to be designated as "SENATE Substitute for HOUSE BILL NO. 2133," as follows:

"SENATE Substitute for HOUSE BILL NO. 2133

By Committee on Ways and Means

"AN ACT concerning state funds; relating to moneys recovered from water litigation; relating to funding for local health departments; amending K.S.A. 65-242, 82a-1801 and 82a-1802 and K.S.A. 2010 Supp. 82a-1803, 82a-1804 and 82a-1805 and

repealing the existing sections.";  
And the substitute bill be passed.

### REPORT ON ENROLLED BILLS

**SR 1831, SR 1832** reported correctly enrolled, properly signed and presented to the Secretary of the Senate on March 22, 2011.

### COMMITTEE OF THE WHOLE

On motion of Senator Emler, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Apple in the chair.

The morning session recommended:

**HB 2124** be passed.

**HB 2015, HB 2104, HB 2118, HB 2195, Sub HB 2191** be amended by adoption of the committee amendments, and the bills be passed as amended.

The committee report on **HB 2008** recommending a **Senate Sub for SB 2008** be adopted, and the substitute bill be passed.

The committee report on **HB 2071** recommending a **Senate Sub for HB 2071** be adopted, and the substitute bill be passed.

The committee report on **HB 2194** recommending a **Senate Sub for HB 2194** be adopted, and the substitute bill be passed.

The committee report on **HB 2251** recommending a **Senate Sub for HB 2251** be adopted, and the substitute bill be passed.

**HB 2182** be amended by motion of Senator V. Schmidt, on page 1, following line 5, by inserting:

"New Section 1. Sections 1 through 6, and amendments thereto, shall be known and may be cited as the pharmacy audit integrity act.

New Sec. 2. As used in this act, "pharmacy benefits manager" or "PBM" means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, not-for-profit hospital or medical service organization, insurance company, third-party payor or health program administered by the state board of pharmacy.

New Sec. 3. (a) The entity conducting the audit shall follow the following procedures:

(1) An entity conducting an on-site audit must give the pharmacy at least seven days written notice before conducting an initial audit;

(2) an audit that involves clinical or professional judgment must be conducted by or in consultation with a licensed pharmacist;

(3) the period covered by the audit may not exceed two years from the date that the claim was submitted to or adjudicated by the entity;

(4) the pharmacy may request an extension not to exceed seven days from the date of an originally scheduled on-site audit;

(5) the pharmacy may use the records of a hospital, physician or other authorized practitioner to validate the pharmacy record;

(6) any legal prescription, in compliance with the requirements of the state board of

pharmacy, may be used to validate claims in connection with prescriptions, refills or changes in prescriptions;

(7) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies; and

(8) the entity conducting the audit must establish a written appeals process.

(b) The entity conducting the audit shall also comply with the following requirements:

(1) A finding of overpayment or underpayment must be based on the actual overpayment or underpayment and not a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs;

(2) the entity conducting the audit shall not use extrapolation in calculating the recouplements or penalties for audits, unless required by state or federal contracts;

(3) the auditing company or agent may not receive payment based on a percentage of the amount recovered, unless required by contracts; and

(4) interest may not accrue during the audit period.

New Sec. 4. (a) Any preliminary audit report must be delivered to the pharmacy within 60 days after the conclusion of the audit. Any pharmacy shall be allowed at least 30 days following receipt of the preliminary audit to provide documentation to address any discrepancy found in the audit. Any final audit report shall be delivered to the pharmacy within 120 days after receipt of the preliminary audit report or final appeal, whichever is later.

(b) Recoupment of any disputed funds or repayment of funds to the entity by the pharmacy, if permitted pursuant to contracts, shall occur, to the extent demonstrated or documented in the pharmacy audit findings, after final internal disposition of the audit including the appeals process. If the identified discrepancy for an individual audit exceeds \$20,000, any future payments to the pharmacy may be withheld pending finalization of the audit. Unless otherwise required by the federal or state law, any audit information may not be shared. Auditors shall only have access to previous audit reports on a particular pharmacy conducted by that same entity.

New Sec. 5. Any auditing entity, upon request of the plan sponsor, shall provide a copy of the final report, including the disclosure of any money recouped in the audit. The pharmacy may provide a copy of the report to the commissioner of insurance, provided such report shall not contain any personally identifiable health information in violation of the provisions of the health insurance portability and accountability act of 1996 (Pub. L. No. 104-191).

New Sec. 6. This act shall apply to contracts between an auditing entity and a pharmacy entered into, extended or renewed on or after the effective date of this act. This act shall not apply to any audit, review or investigation that is initiated based upon suspected or alleged fraud, willful misrepresentation or abuse.";

And by redesignating the remaining sections;

On page 1, in the title, in line 1, after "concerning" by inserting "pharmacy; the pharmacy audit integrity act and"; also in line 1, by striking "relating to mail service"; in line 2, by striking "pharmacies;"

Senator Pilcher-Cook made a motion to amend **HB 2182**, on page 1, following line 5, by inserting:

"New Section 1. (a) A resident of this state has the right to purchase health

insurance or refuse to purchase health insurance. The government shall not interfere with a resident's right to purchase health insurance or with a resident's right to refuse to purchase health insurance.

(b) A resident of this state has the right to enter into a private contract with health care providers for lawful health care services. The government shall not interfere with a resident's right to purchase lawful health care services.

(c) A person or employer may pay directly for lawful health care services and shall not be required to pay penalties or fines for paying directly for lawful health care services. A health care provider may accept direct payment for lawful health care services and shall not be required to pay penalties or fines for accepting direct payment from a person or employer for lawful health care services.

(d) No state agency, board, commission or any other governmental entity shall require an agreement to participate in medicare, medicaid or any other insurance plan, health care system or health information technology or benefit exchange as a condition for original application or renewal of license, registration or certification for a health care provider.

(e) No state agency, board, commission or any other governmental entity shall prohibit participation in a health information organization for any health information technology or benefit exchange purposes by a health care provider based on whether such health care provider participates in medicare, medicaid or any other insurance plans or health care systems.

(f) The government shall not enact a law that would restrict these rights or that would impose a form of punishment for exercising these rights. No provision of this section shall render a resident of this state liable for any punishment, penalty, assessment, fee or fine as a result of such resident's failure to procure or obtain health insurance coverage or participate in any health care system or plan.

(g) As used in this section:

(1) "Direct payment or pay directly" means payment for lawful health care services without a public or private third party, not including an employer, paying for any portion of the service.

(2) "Health care provider" shall have the meaning provided in K.S.A. 40-3401, and amendments thereto.

(3) "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for or payment for, in full or in part, health care services or health care data or health care information for its participants.

(4) "Lawful health care services" means any health-related service or treatment to the extent that the service or treatment is permitted or not prohibited by law or regulation that may be provided by persons or businesses otherwise permitted to offer such services.

(5) "Penalties or fines" means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge or any named fee with a similar effect established by law or rule by a government established, created or controlled agency that is used to punish or discourage the exercise of rights protected under this section.

(h) This section shall be known and may be cited as the health care freedom act.;

And by renumbering sections accordingly;

On page 1, in the title , in line 1, following "concerning" by inserting "health care;

enacting the health care freedom act; relating to"

A ruling of the chair was requested as to germaneness of the amendment to the bill. The chair ruled the amendment was germane, the chair was challenged.

Upon the showing of five hands a roll call was requested.

On roll call, the vote was: Yeas 26, Nays 13, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Emler, Haley, Huntington, Kelsey, King, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Schodorf, Steineger, Taddiken, Teichman, Vratil, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Hensley, Holland, Kelly, Kultala, Marshall, Morris, Reitz, Schmidt A, Schmidt V, Umbarger.

Absent or Not Voting: Donovan.

The ruling of the Chair was sustained.

#### EXPLANATION OF VOTE

MR. PRESIDENT: I vote "AYE" in support of the ruling of the chairman of the committee of the whole that the amendment offered (paraphrased: Freedom from Federal Healthcare Act) is germane to the underlying bill **HB 2182** (Re: unused medications and mail service pharmacies).

Although personally, I do not see the link that would marry these two topics into one cohesive bill, it has been the long standing practice of this chamber to defer to the ruling of the chair who has ascended to this hoary post.

I respect this precedent. And defer, in faith, to the assumed impartiality as to the merit of the issue to he who bears the honor for the day to lead us. – DAVID HALEY

Senator Pilcher-Cook moved her amendment.

Upon the showing of five hands a roll call vote was requested.

On roll call, the vote was: Yeas 26, Nays 10, Present and Passing 3, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Huntington, Kelsey, King, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt V, Schodorf, Steineger, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Haley, Hensley, Kultala, Morris, Owens, Reitz, Schmidt A.

Present and Passing: Francisco, Holland, Kelly.

Absent or Not Voting: Donovan.

The amendment was adopted. **HB 2182** was passed over and retain a place on the calendar.

**HB 2125** be amended by adoption of the committee amendments, be amended by motion of Senator V. Schmidt, on page 4, in line 6, after the period by inserting "The commission shall adopt such rules and regulations on or before July 1, 2012.";

On page 5, in line 23, before the period by inserting "on or before July 1, 2012" and **HB 2125** be passed as further amended.

The Committee rose and reported progress (see Committee of the Whole afternoon session).

On motion of Senator Emler, the Senate recessed until 2:00 p.m.

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The Senate met pursuant to recess with President Morris in the chair.

## REPORTS OF STANDING COMMITTEES

Committee on Judiciary recommends **HB 2339**, as amended by House Committee of the Whole, be passed.

On motion of Senator Emler, the Senate recessed until 2:45 p.m.

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The Senate met pursuant to recess with President Morris in the chair.

## MESSAGE FROM THE HOUSE

Announcing adoption of **HCR 5022**.

Announcing passage of **SB 152, SB 179, SB 186, SB 188**.

Announcing passage of **SB 14**, as amended; **SB 76**, as amended; **SB 122**, as amended; **SB 123**, as amended; **SB 124**, as amended; **SB 136**, as amended; **SB 170**, as amended.

Announcing passage of **SB 37**, as amended by **House Substitute for SB 37; SB 63**, as amended by **House Substitute for SB 63; SB 101**, as amended by **House Substitute for SB 101; SB 213**, as amended by **House Substitute for SB 213; SB 214**, as amended by **House Substitute for SB 214**.

## INTRODUCTION OF HOUSE BILLS AND CONCURRENT RESOLUTIONS

**HCR 5022** was thereupon introduced and read by title.

## CONSIDERATION OF MOTIONS TO CONCUR OR NONCONCUR

On motion of Senator Apple the Senate nonconcurrred in the House amendments to **SB 61** and requested a conference committee be appointed.

The President appointed Senators Apple, King and Holland as a conference committee on the part of the Senate.

On motion of Senator Apple the Senate nonconcurrred in the House amendments to **SB 193** and requested a conference committee be appointed.

The President appointed Senators Apple, King and Holland as a conference committee on the part of the Senate.

## ORIGINAL MOTION

On motion of Senator V. Schmidt, the Senate acceded to the request of the House for a conference on **S Sub for HB 2049**.

The President appointed Senators V. Schmidt, Brungardt and Kelly as conferees on the part of



the Senate.

On motion of Senator Owens, the Senate acceded to the request of the House for a conference on **HB 2151**.

The President appointed Senators Owens, King and Haley as conferees on the part of the Senate.

## REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **SB 234** be amended by substituting a new bill to be designated as "Substitute for SENATE BILL NO. 234," as follows:

"Substitute for SENATE BILL NO. 234

By Committee on Ways and Means

"AN ACT making and concerning appropriations for fiscal years ending June 30, 2011, June 30, 2012, June 30, 2013, June 30, 2014, June 30, 2015, and June 30, 2016 for state agencies; authorizing certain transfers, capital improvement projects and fees, imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing; amending K.S.A. 2010 Supp. 2-223, 12-5256, 55-193, 72-8814, 75-2319, 75-6702, 76-775, 76-783, 76-7,107, 79-2959, 79-2964, 79-3425i, 79-34,156, 79-34,171 and 82a-953a and repealing the existing sections; also repealing section 138 of chapter 165 of the 2010 Session Laws of Kansas."; and the substitute bill be passed.

## COMMITTEE OF THE WHOLE

The Senate returned to the Committee of the Whole for further consideration of bills on the calendar under the heading of General Orders with Senator Apple in the chair.

On motion of Senator Apple the morning report and the following afternoon report were adopted.

Recommended: **HB 2227** be passed.

A motion by Senator Haley to amend **HB 2227** failed and the following amendment was rejected: on page 1, following line 21, by inserting:

"Sec. 2. K.S.A. 22-2501 is hereby amended to read as follows: 22-2501. When a lawful arrest is effected a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

- (a) Protecting the officer from attack;
- (b) preventing the person from escaping; or
- (c) discovering the fruits, instrumentalities, or evidence of a the crime.";

And by renumbering sections accordingly;

Also on page 1, in line 22, by striking "is" and inserting "and 22-2501 are";

On page 1, in the title, in line 2, following "warrants;" by inserting "relating to search incident to arrest;"; also in line 2, following "22-2304" by inserting "and 22-2501"; in line 3, by striking "section" and inserting "sections"

The Committee report on **Sub HB 2271** be adopted and the bill be passed as amended.

The Committee report on **SB 111** recommending a **Sub SB 111** be adopted, and the substitute bill be passed.

The Committee report on **HB 2149** recommending a **Senate Sub for HB 2149** be adopted, and the substitute bill be passed.

**HB 2010** be amended by motion of Senator Owens, on page 1, by striking all in line 20 and 21;

And redesignating remaining subsections accordingly;

On page 2, in line 41, by striking "and" where it appears for the second time;

On page 3, in line 1, by striking the period and inserting a semicolon; following line 1, by inserting the following:

"(y) rape, section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(z) criminal sodomy, as defined in subsection (a)(3) or (a)(4) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and aggravated criminal sodomy, as defined in subsection (b) of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(aa) indecent liberties with a child and aggravated indecent liberties with a child, section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(bb) unlawful voluntary sexual relations, section 71 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(cc) indecent solicitation of a child and aggravated indecent solicitation of a child, section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(dd) electronic solicitation, section 73 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ee) sexual exploitation of a child, section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto."

**HB 2010** was further amended by Senator Owens on page 1, following line 5, by inserting the following:

"New Section 1. (a) Whenever a person civilly committed pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, files a petition pursuant to K.S.A. 60-1501 et seq., and amendments thereto, relating to such commitment, the costs incurred, including, but not limited to, costs of appointed counsel fees and expenses, witness fees and expenses, expert fees and expenses, and other expenses related to the prosecution and defense of such petition shall be taxed to the county responsible for the costs. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

(b) The county responsible for the costs incurred pursuant to subsection (a) shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(c) As used in this section, "county responsible for the costs" means the county where the person was determined to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

Sec. 2. K.S.A. 2010 Supp. 59-29a04a is hereby amended to read as follows: 59-29a04a. (a) There is hereby created in the state treasury the sexually violent predator expense fund which shall be administered by the attorney general. All moneys credited to such fund shall be used to reimburse counties under:

(1) K.S.A. 59-29a04, and amendments thereto, responsible for the costs related to determining whether a person may be a sexually violent predator; *and*

(2) *section 1, and amendments thereto, for the costs related to a person filing a petition pursuant to K.S.A. 60-1501 et seq., and amendments thereto, relating to the civil commitment pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.*

(b) All expenditures from the sexually violent predator expense fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.";

And by renumbering remaining sections accordingly;

On page 3, in line 2, by striking "60-4104 is" and inserting "59-29a04a and 60-4104 are";

On page 1, in the title, in line 1, after "procedure" by inserting "and civil actions"; also in line 1, following "to" by inserting "civil commitment of sexually violent predators; reimbursement for costs related to habeas corpus actions;"; in line 2, before "60-" by inserting "59-29a04a and"; in line 3, by striking "section" and inserting "sections" and **HB 2010** be passed as amended.

The Committee returned to **HB 2182** for consideration of the bill.

**HB 2182** be amended by motion of Senator V. Schmidt, on page 2, following line 34, by inserting the following:

"New Sec. 9. Sections 9 through 25, and amendments thereto, shall be known and may be cited as the perfusion practice act.

New Sec. 10. As used in sections 9 through 25, and amendments thereto:

(a) "Act" means the perfusion practice act.

(b) "Board" means the state board of healing arts.

(c) "Council" means the perfusion council.

(d) "Extracorporeal circulation" means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs.

(e) "Perfusion" means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, respiratory systems or other organs, or a combination of those activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a person licensed to practice medicine and surgery, including:

(1) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon-dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;

(2) counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and therapeutic modalities including isolated limb perfusion and intraperitoneal hyperthermic chemotherapy;

(3) the use of techniques involving blood management, advanced life

support, and other related functions;

(4) the administration of pharmacological and therapeutic agents, blood products and anesthetic agents through the extracorporeal circuit as ordered by a person licensed to practice medicine and surgery or certified registered nurse anesthetist pursuant to K.S.A. 65-1158, and amendments thereto;

(5) the performance and use of coagulation monitoring and analysis, physiologic monitoring and analysis, blood gas and chemistry monitoring and analysis, hematologic monitoring and analysis, hypothermia, hyperthermia, hemoconcentration and hemodilution and hemodialysis; and

(6) the observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

(f) "Perfusion protocols" means perfusion related policies and protocols developed or approved by a licensed medical care facility or a person licensed to practice medicine and surgery through collaboration with administrators, licensed perfusionists, and other health care professionals.

(g) "Perfusionist" means a person who practices perfusion as defined in this act.

(h) This section shall take effect on and after July 1, 2012.

New Sec. 11. (a) On and after July 1, 2012, except as otherwise provided in this act, no person shall perform perfusion unless the person possesses a valid license issued under this act.

(b) No person shall depict one's self orally or in writing, expressly or by implication, as holder of a license who does not hold a current license under this act.

(c) Only persons licensed under this act as a perfusionist shall be entitled to use the title "perfusionist," "licensed perfusionist," or "licensed clinical perfusionist," abbreviations thereof, words similar to such title or the designated letters "LP" or "LCP."

New Sec. 12. (a) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and licensed, registered, credentialed or certified by appropriate agencies of the state of Kansas from performing duties considered appropriate to their recognized scope of practice.

(b) The following shall be exempt from the requirement of a license pursuant to this act:

(1) A person licensed by another health professional licensing board if:

(A) The person does not represent to the public, directly or indirectly, that the person is licensed under this act, and does not use any name, title, or designation indicating that the person is licensed under this act;

(B) the person confines the person's acts or practice to the scope of practice authorized by the other health professional licensing laws; or

(C) the person is trained according to the extracorporeal membrane oxygenation specialist (ECMO) guidelines of the extracorporeal life support organization (ELSO) and operates an extracorporeal membrane oxygenation circuit under the supervision of a person licensed to practice medicine and surgery;

(2) a person performing autotransfusion or blood conservation techniques

under the supervision of a person licensed to practice medicine and surgery;

(3) a student enrolled in an accredited perfusion education program if perfusion services performed by the student:

(A) Are an integral part of the student's course of study; and

(B) are performed under the direct supervision of a licensed perfusionist assigned to supervise the student and who is on duty and immediately available in the assigned patient care area;

(4) health care providers in the United States armed forces, public health services, federal facilities and other military service when acting in the line of duty in this state; or

(5) persons rendering assistance in the case of an emergency.

(c) This section shall take effect on and after July 1, 2012.

New Sec. 13. (a) An applicant for licensure as a perfusionist shall file an application, on forms provided by the board, showing to the satisfaction of the board that the applicant meets the following requirements:

(1) At the time of the application is at least 18 years of age;

(2) has successfully completed a perfusion education program set forth in rules and regulations adopted by the board and which contains a curriculum no less stringent than the standards of existing organizations which approve perfusion programs;

(3) except as otherwise provided in this act, has successfully passed a license examination approved by the board; and

(4) has paid all fees required for licensure prescribed in this act, which shall not be refundable.

(b) The board may issue a temporary license to an applicant seeking licensure as a perfusionist when such applicant meets the requirements for licensure or meets all the requirements for licensure except examination and pays to the board the temporary license fee as required under section 16, and amendments thereto. Such temporary license is valid (1) for one year from the date of issuance or (2) until the board makes a final determination on the applicant's request for licensure. The board may extend a temporary license, upon a majority vote of the members of the board, for a period not to exceed one year.

(c) The board, without examination, may issue a license to a person who has been in the active practice of perfusion in some other state, territory, the District of Columbia or other country upon certificate of the proper licensing authority of that state, territory, District of Columbia or other country certifying that the applicant is duly licensed, that the applicant's license has never been limited, suspended or revoked, that the licensee has never been censured or had other disciplinary action taken and that, so far as the records of such authority are concerned, the applicant is entitled to its endorsement. The applicant shall also present proof satisfactory to the board:

(1) (A) That the state, territory, District of Columbia or country in which the applicant last practiced maintains standards at least equal to those maintained by Kansas;

(B) that the applicant's original license was based upon an examination at least equal in quality to the examination required in this state and that the passing grade required to obtain such original license was comparable to that required in this state;

(C) of the date of the applicant's original and any and all endorsed licenses

and the date and place from which any license was attained;

(D) that the applicant has been actively engaged in perfusion under such license or licenses since issued, and if not, fix the time when and reason why the applicant was out of practice; and

(E) that the applicant holds a current certificate as a certified clinical perfusionist initially issued by the American board of cardiovascular perfusion (ABCP), or its successor, prior to July 1, 2012; or

(2) that the applicant has been practicing perfusion as described in this act in a full-time capacity for a period of more than two of the last 10 years prior to July 1, 2012.

(d) The board, without examination, may issue a license to a person who holds a current certificate as a certified clinical perfusionist initially issued by the American board of cardiovascular perfusion who has been in the active practice of perfusion in Kansas in a full-time capacity for a period of more than two of the last ten years prior to July 1, 2012.

(e) An applicant for license by endorsement shall not be granted a license unless such applicant's individual qualifications meet the Kansas requirements.

(f) A person whose license has been revoked may make written application to the board requesting reinstatement of the license in a manner prescribed by the board, which application shall be accompanied by the fee provided for in section 16, and amendments thereto.

New Sec. 14. (a) There is hereby created the designation of inactive license. The board is authorized to issue an inactive license to any licensee who makes written application for such license on a form provided by the board and remits the fee for an inactive license established pursuant to section 16, and amendments thereto. The board may issue an inactive license only to a person who meets all the requirements for a license to practice as a perfusionist and who does not engage in active practice as a perfusionist in the state of Kansas. An inactive license shall not entitle the holder to engage in active practice. The provisions of section 15, and amendments thereto, relating to expiration, renewal, continuing education and reinstatement of a license shall be applicable to an inactive license issued under this subsection. Each inactive licensee may apply to engage in active practice by presenting a request required by section 13, and amendments thereto. The request shall be accompanied by the fee established pursuant to section 16, and amendments thereto.

(b) There is hereby created a designation of federally active license. The board is authorized to issue a federally active license to any licensee who makes a written application for such license on a form provided by the board and remits the same fee required for a license established under section 16, and amendments thereto. The board may issue a federally active license only to a person who meets all the requirements for a license to practice as a perfusionist and who practices as a perfusionist solely in the course of employment or active duty in the United States government or any of its departments, bureaus or agencies. The provisions of section 15, and amendments thereto, relating to expiration, renewal, continuing education and reinstatement of a license shall be applicable to a federally active license issued under this subsection. Each federally active licensee may apply to engage in active practice by presenting a request required by section 13, and amendments thereto.

(c) This section shall take effect on and after July 1, 2012.

New Sec. 15. (a) Licenses issued under this act shall expire on the date of expiration established by rules and regulations of the board unless renewed in the manner prescribed by the board. The request for renewal shall be accompanied by the license renewal fee established pursuant to section 16, and amendments thereto.

(b) At least 30 days before the expiration of a licensee's license, the board shall notify the licensee of the expiration by mail addressed to the licensee's last mailing address as noted upon the office records. If the licensee fails to submit an application for renewal on a form provided by the board, or fails to pay the renewal fee by the date of expiration, the board shall give a second notice to the licensee that the license has expired and the license may be renewed only if the application for renewal, the renewal fee, and the late renewal fee are received by the board within the thirty-day period following the date of expiration and that, if both fees are not received within the thirty-day period, the license shall be deemed canceled by operation of law and without further proceedings.

(c) The board may require any licensee to submit to a continuing education audit and provide to the board evidence of satisfactory completion of a program of continuing education required by rules and regulations of the board.

(d) Any license canceled for failure to renew may be reinstated upon recommendation of the board. An application for reinstatement shall be on a form provided by the board, and shall be accompanied by payment of the reinstatement fee and evidence of completion of any applicable continuing education requirements. The board may adopt rules and regulations establishing appropriate education requirements for reinstatement of a license that has been canceled for failure to renew.

(e) The board, prior to renewal of a license, shall require the licensee, if in the active practice of perfusion within the state, to submit to the board evidence satisfactory to the board that the licensee is maintaining a policy of professional liability insurance. The board may require any licensee to provide to the board evidence of malpractice insurance as required by rules and regulations of the board during an audit. The board shall fix by rules and regulations the minimum level of coverage for such professional liability insurance.

(f) This section shall take effect on and after July 1, 2012.

New Sec. 16. (a) The board shall charge and collect in advance fees for perfusionists as established by the board by rules and regulations, not to exceed:

Application for licensure.....	\$300
Annual renewal of license:	
Paper renewal .....	\$200
On-line renewal.....	\$200
Late renewal of licensure:	
Late paper renewal .....	\$100
Late on-line renewal .....	\$100
Revoked licensure reinstatement.....	\$325
Application for inactive license .....	\$300
Renewal of inactive license .....	\$75
Conversion of inactive license to active .....	\$150
Certified copy of license.....	\$25
Written verification of license.....	\$25

Temporary license .....\$75

(b) If the examination is not administered by the board, the board may require that fees paid for any examination under the perfusion practice act be paid directly to the examination service by the person taking the examination.

New Sec. 17. The board shall remit all moneys received by or for the board from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such amount shall be credited to the state general fund and the balance shall be credited to the healing arts fee fund. All expenditures from the healing arts fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president of the board or by a person or persons designated by the president.

New Sec. 18. (a) There is established the perfusion council to assist the state board of healing arts in carrying out the provisions of this act. The council shall consist of five members, all citizens and residents of the state of Kansas appointed as follows: The board shall appoint one member who is a person licensed to practice medicine and surgery and one member who is a member of the state board of healing arts. Members appointed by the board shall serve at the pleasure of the board. The governor shall appoint three perfusionists who have at least three years experience in perfusion preceding the appointment and are actively engaged, in this state, in the practice of perfusion or the teaching of perfusion. At least two of the governor's appointments shall be made from a list of four nominees submitted by the Kansas practicing perfusionist society.

(b) The members appointed by the governor shall be appointed for terms of four years except that of the members first appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years, with successor members appointed for four years and to serve until a successor member is appointed. If a vacancy occurs on the council, the appointing authority of the position which has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term.

(c) Perfusionists initially appointed to the council must be eligible for licensure under section 13, and amendments thereto. On and after October 1, 2012, new appointees shall be licensed under the provisions of this act.

(d) The council shall meet at least once each year at a time and place of its choosing and at such other times as may be necessary on the chairperson's call or on the request of a majority of the council's members.

(e) A majority of the council constitutes a quorum. No action may be taken by the council except by affirmative vote of the majority of the members present and voting.

(f) Members of the council attending meetings of the council, or a subcommittee of the council, shall be paid mileage provided in subsection (c) of K.S.A. 75-3223, and amendments thereto, from the healing arts fee fund.

New Sec. 19. The perfusion council shall advise the board regarding:

- (a) Examination, licensing and other fees;
- (b) rules and regulations to be adopted to carry out the provisions of this act;
- (c) subject areas to be covered during the educational program and on the licensure examination;



(d) the number of yearly continuing education hours required to maintain active licensure;

(e) changes and new requirements taking place in the area of perfusion; and

(f) such other duties and responsibilities as the board may assign.

New Sec. 20. The board, with the advice and assistance of the perfusion council, shall:

(a) Pass upon the qualifications of all applicants for examination and licensing, contract for examinations, determine the applicants who successfully pass the examination, duly license and regulate such applicants and keep a roster of all individuals licensed;

(b) adopt rules and regulations as may be necessary to administer the provisions of this act and prescribe forms which shall be issued in the administration of this act;

(c) establish standards for approval of an educational course of study and clinical experience, criteria for continuing education, procedures for the examination of applicants; and

(d) establish standards of professional conduct; procedure for the discipline of licensees and keep a record of all proceedings.

New Sec. 21. (a) The license of a perfusionist may be limited, suspended or revoked, or the licensee may be censured, reprimanded, placed on probation, fined pursuant to K.S.A. 65-2863a, and amendments thereto, assessed costs incurred by the board in conducting any proceeding in which such licensee is the unsuccessful party or otherwise sanctioned by the board or an application for licensure or reinstatement of licensure may be denied if it is found that the licensee or applicant:

(1) Has committed an act of fraud or deceit in the procurement or holding of a license;

(2) has been convicted of a felony or class A misdemeanor in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted or if the holder has been pardoned with full restoration of civil rights in which case the license shall be restored;

(3) is addicted to or has distributed intoxicating liquors or drugs for other than lawful purposes;

(4) is found to be mentally or physically incapacitated to such a degree that in the opinion of the board continued practice by the licensee would constitute a danger to the public's health and safety;

(5) has aided and abetted a person who is not a licensee under this act or is not otherwise authorized to perform the duties of a license holder;

(6) has had a license to practice perfusion revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country, a certified copy of the record of an action of the other jurisdiction being conclusive evidence thereof;

(7) has violated any provision of this act, or rules and regulations promulgated by the board or any lawful order or directive of the board previously entered by the board;

(8) has committed an act of unprofessional conduct under criteria which the board may establish by rules and regulations; or

(9) is, or has been, found guilty of incompetence or negligence while performing as a license holder.

(b) The denial, refusal to renew, suspension, limitation, probation or revocation of a license or other sanction may be ordered by the board upon a finding of a violation of this act. All administrative proceedings conducted pursuant to this act shall be in accordance with the provisions of the Kansas administrative procedure act and shall be reviewable in accordance with the Kansas judicial review act.

(c) A person whose license is suspended shall not engage in any conduct or activity in violation of the order by which the license was suspended.

(d) This section shall take effect on and after July 1, 2012.

New Sec. 22. (a) The board shall have jurisdiction of proceedings to take disciplinary action against any licensee practicing under this act. Any such action shall be taken in accordance with the provisions of the Kansas administrative procedure act.

(b) Either before or after formal charges have been filed, the board and the licensee may enter into a stipulation which shall be binding upon the board and the licensee entering into such stipulation, and the board may enter its findings of fact and enforcement order based upon such stipulation without the necessity of filing any formal charges or holding hearings in the case. An enforcement order based upon a stipulation may order any disciplinary action against the licensee entering into such stipulation.

(c) The board may temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings under the Kansas administrative procedure act if the board determines that there is cause to believe that grounds exist for disciplinary action against the licensee and that the licensee's continuation in practice would constitute an imminent danger to the public health and safety.

New Sec. 23. (a) Nothing in the perfusion practice act or in the provisions of chapter 40 of the Kansas Statutes Annotated, and amendments thereto, shall be construed to require that any individual, group or blanket policy of accident and sickness, medical or surgical expense insurance coverage or any provision of a policy, contract, plan or agreement for medical service issued on or after the effective date of this act, reimburse or indemnify a person licensed under the perfusion practice act for services provided as a perfusionist.

(b) This section shall take effect on and after July 1, 2012.

New Sec. 24. (a) When it appears that any person is violating any provision of this act, the board may bring an action in the name of the state in a court of competent jurisdiction for an injunction against such violation without regard as to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

(b) This section shall take effect on and after July 1, 2012.

New Sec. 25. On and after July 1, 2012, any violation of this act shall constitute a class B misdemeanor.:";

And renumbering the remaining sections accordingly;

"Sec. 30. K.S.A. 2010 Supp. 74-7507 is hereby amended to read as follows: 74-7507. (a) The behavioral sciences regulatory board shall have the following powers, duties and functions:

(1) Recommend to the appropriate district or county attorneys prosecution for violations of this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and

amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(2) compile and publish annually a list of the names and addresses of all persons who are licensed under this act, are licensed under the licensure of psychologists act of the state of Kansas, are licensed under the professional counselors licensure act, are licensed under K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, are licensed under K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, are licensed under the marriage and family therapists licensure act or are registered under the alcohol and other drug abuse counselor registration act;

(3) prescribe the form and contents of examinations required under this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(4) enter into contracts necessary to administer this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act;

(5) adopt an official seal;

(6) adopt and enforce rules and regulations for professional conduct of persons licensed under the licensure of psychologists act of the state of Kansas, licensed under the professional counselors licensure act, licensed under K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, licensed under K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, licensed under the marriage and family therapists licensure act or registered under the alcohol and other drug abuse counselor registration act;

(7) adopt and enforce rules and regulations establishing requirements for the continuing education of persons licensed under the licensure of psychologists act of the state of Kansas, licensed under the professional counselors licensure act, licensed under K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, licensed under K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, licensed under the marriage and family therapists licensure act or registered under the alcohol and other drug abuse counselor registration act;

(8) adopt rules and regulations establishing classes of social work specialties which will be recognized for licensure under K.S.A. 65-6301 to 65-6318, inclusive, and amendments thereto;

(9) adopt rules and regulations establishing procedures for examination of candidates for licensure under the licensure of psychologists act of the state of Kansas, for licensure under the professional counselors licensure act, for licensure under K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, for licensure under K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, for licensure under the marriage and family therapists licensure act, for registration

under the alcohol and other drug abuse counselor registration act and for issuance of such certificates and such licenses;

(10) adopt rules and regulations as may be necessary for the administration of this act, the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act and the alcohol and other drug abuse counselor registration act and to carry out the purposes thereof;

(11) appoint an executive director and other employees as provided in K.S.A. 74-7501 and amendments thereto; and

(12) exercise such other powers and perform such other functions and duties as may be prescribed by law.

(b) The behavioral sciences regulatory board, in addition to any other penalty, may assess an administrative penalty, after notice and an opportunity to be heard, against a licensee or registrant for a violation of any of the provisions of the licensure of psychologists act of the state of Kansas, the professional counselors licensure act, K.S.A. 65-6301 to 65-6320, inclusive, and amendments thereto, K.S.A. 74-5361 to 74-5374, inclusive, and K.S.A. 2010 Supp. 74-5375, and amendments thereto, the marriage and family therapists licensure act or the alcohol and other drug abuse counselor registration act in an amount not to exceed \$1,000. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215 and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) If an order of the behavioral sciences regulatory board is adverse to a licensee or registrant of the board, the costs shall be charged to such person as in ordinary civil actions in the district court in an amount not to exceed \$200. The board shall pay any additional costs and, if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed in accordance with statutes governing taxation of witness fees and costs in the district court.

*(d) The behavioral sciences regulatory board may, after notice and an opportunity to be heard, deny, refuse to renew, suspend, revoke, condition, limit, qualify or restrict the license of any applicant or any person licensed by the behavioral sciences regulatory board, if: (1) The allegations of abuse, neglect or exploitation have been substantiated against a child, adult or resident of a care facility by the secretary of the social and rehabilitation services, secretary on of aging or secretary of health and environment in accordance with the provisions in K.S.A. 38-2223 through 38-2230 and 39-1401 through 39-1443, and amendments thereto;*

*(2) the administrative appeal process has been exhausted; and*

*(3) the determination of substantiation has become final.*

Sec. 31. Section 2 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 2. As used in the addictions counselor licensure act:

(a) "Board" means the behavioral sciences regulatory board created under K.S.A. 74-7501, and amendments thereto.

(b) "Addiction counseling" means the utilization of special skills to assist persons with addictions, and to assist such persons' families and friends to achieve resolution of

addiction through the exploration of the disease and its ramifications, the examination of attitudes and feelings, the consideration of alternative solutions and decision making, as these relate specifically to addiction. Evaluation and assessment, treatment including treatment plan development, ~~case management~~, crisis intervention, referral, record keeping and clinical consultation specifically related to addiction are within the scope of addiction counseling. *Additionally*, at the clinical level of licensure, addiction counseling includes independent practice ~~limited and to~~ the diagnosis and treatment of substance use disorders.

(c) "Licensed addiction counselor" means a person who engages in the practice of addiction counseling limited to substance use disorders and who is licensed under this act, except that on and after July 1, 2011, such person shall engage in the practice of addiction counseling only in a state-licensed or certified alcohol and other drug treatment program *unless otherwise exempt for licensure under subsection (m) of K.S.A. 59-29b46, and amendments thereto.*

(d) "Licensed clinical addiction counselor" means a person who engages in the independent practice of addiction counseling ~~which practice and is limited to~~ the diagnosis and treatment of substance use disorders specified in the edition of the American psychiatric association's diagnostic and statistical manual of mental disorders (DSM) designated by the board by rules and regulations and is licensed under this act.

Sec. 32. Section 4 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 4. (a) An applicant for licensure as an addiction counselor shall furnish evidence that the applicant:

- (1) Has attained the age of 21;
- (2) (A) has completed a baccalaureate degree from an addiction counseling program that is part of a college or university approved by the board; or  
(B) has completed a baccalaureate degree from a college or university approved by the board in a related field that includes a minimum number of semester hours of coursework supporting the ~~diagnosis and treatment of~~ substance use disorders as approved by the board; or  
(C) completed a baccalaureate degree from a college or university approved by the board in a related field with additional work in addiction counseling from a college or university approved by the board, and such degree program and the additional work includes the course work requirements provided in paragraph (a)(2)(B) of this subsection; or  
(D) is currently licensed in Kansas as a licensed psychologist, licensed master social worker, licensed professional counselor, licensed marriage and family therapist or licensed ~~masters~~ *master's* level psychologist;
- (3) has passed an examination approved by the board;
- (4) has satisfied the board that the applicant is a person who merits the public trust; and
- (5) each applicant has paid the application fee established by the board under section 12 *of chapter 45 of the 2010 Session Laws of Kansas*, and amendments thereto.

(b) (1) Applications for licensure as a clinical addiction counselor shall be made to the board on a form and in the manner prescribed by the board. Each applicant shall furnish evidence satisfactory to the board that the applicant:

(A) Is licensed by the board as a licensed addiction counselor or meets all requirements for licensure as an addiction counselor; and

(i) has completed a master's degree from an addiction counseling program that is part of a college or university approved by the board; or

(ii) has completed a master's degree from a college or university approved by the board in a related field that includes a minimum number of semester hours of coursework supporting the diagnosis and treatment of substance use disorders as approved by the board; or

(iii) has completed a master's degree from a college or university approved by the board in a related field with additional work in addiction counseling from a college or university approved by the board and such degree program and the additional work includes the course work requirements provided in paragraph (b)(2)(B) of this subsection; ~~and~~ or

(iv) *has completed a master's degree in a related field and is licensed as an addiction counselor; and*

(B) has completed not less than two years of postgraduate supervised professional experience in accordance with a clinical supervision plan approved by the board of not less than 4,000 hours of supervised professional experience including at least 1,500 hours of direct client contact conducting substance abuse assessments and treatment with individuals, couples, families or groups and not less than 150 hours of clinical supervision, including not less than 50 hours of person-to-person individual supervision, integrating diagnosis and treatment of substance use disorders with use of the diagnostic and statistical manual of mental disorders of the American psychiatric association, except that ~~one-half~~  $\frac{1}{2}$  of the requirement of this paragraph (B) may be waived for persons with a doctoral degree in addiction counseling or a related field acceptable to the board; and

(C) has passed an examination approved by the board; and

(D) has paid the application fee fixed under section 12 *of chapter 45 of the 2010 Session Laws of Kansas*, and amendments thereto.

(2) A person who was registered by the behavioral sciences regulatory board as an alcohol and other drug counselor or credentialed by the department of social and rehabilitation services as an alcohol and drug credentialed counselor or credentialed by the Kansas association of addiction professionals as an alcohol and other drug abuse counselor in Kansas at any time prior to the effective date of this act, ~~who has been actively engaged in the practice of addiction counseling in Kansas as a registered~~ *who was registered in Kansas as an alcohol and other drug counselor, an alcohol and drug credentialed counselor or a credentialed alcohol and other drug abuse counselor within three years prior to the effective date of this act and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a licensed addiction counselor by providing demonstration acceptable to the board of competence to perform the duties of an addiction counselor.*

(3) Any person who was registered by the behavioral sciences regulatory board as an alcohol and other drug counselor or credentialed by the department of social and rehabilitation services as an alcohol and drug credentialed counselor or credentialed by the Kansas association of addiction professionals as an alcohol and other drug abuse counselor in Kansas at any time prior to the effective date of this act, and who is also licensed to practice independently as a mental health *practitioner* or person licensed to

practice medicine and surgery, and who ~~has been actively engaged in the practice of addiction counseling in Kansas as a registered or credentialed~~ *was registered or credentialed in Kansas as an alcohol and other drug counselor* within three years prior to the effective date of this act and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a licensed clinical addiction counselor and may engage in the independent practice of addiction counseling and is authorized to diagnose and treat substance use disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations.

*(4) Any person who was credentialed by the department of social and rehabilitation services as an alcohol and drug counselor and has been actively engaged in the practice, supervision or administration of addiction counseling in Kansas for not less than 10 four years providing demonstration acceptable to the board of competence to perform the duties of a licensed clinical addiction counselor and was credentialed by the Kansas association of addiction professionals as an alcohol and other drug abuse counselor level II or III in Kansas at any time prior to the effective date of this act, or and holds a master's degree in a related field and whose last registration or credential in Kansas prior to the effective date of this act was not suspended or revoked, upon application to the board, payment of fees and completion of applicable continuing education requirements, shall be licensed as a clinical addiction counselor and may engage in the independent practice of addiction counseling and is authorized to diagnose and treat substance use disorders specified in the edition of the diagnostic and statistical manual of mental disorders of the American psychiatric association designated by the board by rules and regulations.*

~~(4)(5)~~ On and after July 1, 2011, a licensed addiction counselor ~~may~~ *shall* engage in the practice of addiction counseling ~~within~~ *in* only a state licensed or certified alcohol and other drug treatment program, *unless otherwise exempt for licensure under subsection (m) of K.S.A. 59-29b46, and amendments thereto.*

New Sec. 33. Section 7 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 7. (a) The board may issue a license to an individual who is currently registered, certified or licensed to practice addiction counseling in another jurisdiction if the board determines that:

(1) The standards for registration, certification or licensure to practice addiction counseling in the other jurisdiction are substantially the equivalent of the requirements of the addictions counselor licensure act and rules and regulations of the board; ~~and or~~

(2) the applicant demonstrates on forms provided by the board compliance with the following standards as adopted by the board:

(A) Continuous registration, certification or licensure to practice addiction counseling during the five years immediately preceding the application with at least the minimum professional experience as established by rules and regulations of the board;

(B) the absence of disciplinary actions of a serious nature brought by a registration, certification or licensing board or agency; and

(C) completion of a baccalaureate or ~~masters~~ *master's* degree in addiction counseling from a college or university approved by the board or completion of a baccalaureate or master's degree in a related field that includes all required addiction

coursework.

(b) Applicants for licensure as a clinical addiction counselor shall additionally demonstrate competence to diagnose and treat substance abuse disorders through meeting the requirements of either paragraph (1) or (2) of subsection (a) and at least two of the following areas acceptable to the board:

(1) Either coursework as established by rules and regulations of the board or passing a national clinical examination approved by the board;

(2) three years of clinical practice with demonstrated experience supporting diagnosing or treating substance use disorders; or

(3) attestation from a professional licensed to diagnose and treat mental disorders, or substance use disorders, or both, in independent practice or licensed to practice medicine and surgery stating that the applicant is competent to diagnose and treat substance use disorders.

(c) An applicant for a license under this section shall pay an application fee established by the board under section 12 of chapter 45 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 34. Section 8 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 8. (a) An applicant who meets the requirements for licensure pursuant to this act, has paid the license fee provided for by section 12 of chapter 45 of the 2010 Session Laws of Kansas, and amendments thereto, and has otherwise complied with the provisions of this act shall be licensed by the board.

(b) Licenses issued pursuant to this act shall expire 24 months from the date of issuance unless revoked prior to that time. A license may be renewed upon application and payment of the fee provided for by section 12 of chapter 45 of the 2010 Session Laws of Kansas, and amendments thereto. The application for renewal shall be accompanied by evidence satisfactory to the board that the applicant has completed during the previous 24 months the continuing education required by rules and regulations of the board. As part of such continuing education, the *clinical addiction counselor* applicant shall complete not less than six continuing education hours relating to diagnosis and treatment of substance use disorders. ~~and Both the clinical addiction counselor applicant and the addiction counselor applicant shall complete not less than three continuing education hours of professional ethics.~~

(c) A person whose license has been suspended or revoked may make written application to the board requesting reinstatement of the license upon termination of the period of suspension or revocation in a manner prescribed by the board, which application shall be accompanied by the fee provided for by section 12 of chapter 45 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 35. Section 9 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 9. The board may refuse to grant licensure to, or may suspend, revoke, condition, limit, qualify or restrict the licensure issued under this act of any individual who the board, after *the opportunity for* a hearing, determines:

(a) Is incompetent to practice addiction counseling, or is found to engage in the practice of addiction counseling in a manner harmful or dangerous to a client or to the public;

(b) is convicted by a court of competent jurisdiction of a felony, misdemeanor crimes against persons or substantiation of abuse against a child, adult or resident of a care facility, even if not practice related;



(c) has violated a provision of the addictions counselor licensure act or one or more of the rules and regulations of the board;

(d) has obtained or attempted to obtain a license or license renewal by bribery or fraudulent representation;

(e) has knowingly made a false statement on a form required by the board for license or license renewal;

(f) has failed to obtain continuing education credits required by rules and regulations of the board;

(g) has been found guilty of unprofessional conduct as defined by rules and regulations established by the board; or

(h) has had a registration, license or certificate as an addiction counselor revoked, suspended or limited, or has had other disciplinary action taken, or an application for registration, license or certificate denied, by the proper regulatory authority of another state, territory, District of Columbia or another country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof.

Sec. 36. Section 10 of chapter 45 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 10. Nothing in the addictions counselor licensure act shall be construed:

(a) To prevent addiction counseling practice by students or interns or individuals preparing for the practice of addiction counseling to practice under qualified supervision of a professional, recognized and approved by the board, in an educational institution or agency so long as they are designated by titles such as "student," "trainee," "intern" or other titles clearly indicating training status;

(b) to authorize the practice of psychology, medicine and surgery, professional counseling, marriage and family therapy, ~~masters~~ *master's* level psychology or social work *or other professions licensed by the behavioral sciences regulatory board*;

(c) to apply to the activities and services of a rabbi, priest, minister, clergy person or organized ministry of any religious denomination or sect, including a Christian-Science practitioner, unless such person or individual who is a part of the organized ministry is a licensed addiction counselor;

(d) to apply to the activities and services of qualified members of other professional groups including, but not limited to, attorneys, physicians, psychologists, ~~masters~~ *master's* level psychologists, marriage and family therapists, professional counselors, *or other professions licensed by the behavioral sciences regulatory board*, registered nurses or social workers performing services consistent with the laws of this state, their training and the code of ethics of their profession, so long as they do not represent themselves as being an addiction counselor; or

(e) to prevent qualified persons from doing work within the standards and ethics of their respective professions and callings provided they do not hold themselves out to the public by any title or description of services as being an addiction counselor.

New Sec. 37. (a) This section shall be known and may be cited as the school sports head injury prevention act.

(b) As used in this section:

(1) "School" means any public or accredited private high school, middle school or junior high school.

(2) "Health care provider" means a person licensed by the state board of healing

arts to practice medicine and surgery or chiropractic.

(c) The state board of education, in cooperation with the Kansas state high school activities association, shall compile information on the nature and risk of concussion and head injury including the dangers and risks associated with the continuation of playing or practicing after a person suffers a concussion or head injury. Such information shall be provided to school districts for distribution to coaches, school athletes and the parents or guardians of school athletes.

(d) A school athlete may not participate in any sport competition or practice session unless such athlete and the athlete's parent or guardian have signed, and returned to the school, a concussion and head injury information release form. A release form shall be signed and returned each school year that a student athlete participates in sport competitions or practice sessions.

(e) If a school athlete suffers, or is suspected of having suffered, a concussion or head injury during a sport competition or practice session, such school athlete immediately shall be removed from the sport competition or practice session.

(f) Any school athlete who has been removed from a sport competition or practice session shall not return to competition or practice until the athlete is evaluated by a health care provider and the health care provider provides such athlete a written clearance to return to play or practice. If the health care provider who provides the clearance to return to play or practice is not an employee of the school district, such health care provider shall not be liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

New Sec. 38. The Kansas state high school activities association and its member high schools, and administrators, principals, coaches, teachers and other affiliated with such association and member high schools, shall not adopt any rules and regulations or interpret any existing rule and regulation in any manner which would prohibit a student athlete from training with any Kansas state high school league-sponsored sport or competition while the student athlete is participating in nonschool swimming athletic training or diving athletic training, or both, during the high school sport season and throughout the year if:

(a) The nonschool swimming athletic training or diving athletic training, or both, is under the jurisdiction of and sanctioned by the national governing body of the sport, U.S.A. swimming, inc., or U.S.A. diving, inc.; and

(b) the student athlete meets the reasonable and ordinary school-established requirements for participation in the student athlete's high school swimming program or diving program, or both.

Sec. 39. K.S.A. 2010 Supp. 65-2901 is hereby amended to read as follows: 65-2901. As used in article 29 of chapter 65 of the Kansas Statutes Annotated, and ~~acts amendatory of the provisions thereof or supplemental amendments~~ thereto:

(a) "Physical therapy" means examining, evaluating and testing individuals with mechanical, anatomical, physiological and developmental impairments, functional limitations and disabilities or other health and movement-related conditions in order to determine a diagnosis solely for physical therapy, prognosis, plan of therapeutic intervention and to assess the ongoing effects of physical therapy intervention. Physical therapy also includes alleviating impairments, functional limitations and disabilities by designing, implementing and modifying therapeutic interventions that may include, but

are not limited to, therapeutic exercise; functional training in community or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; patient-related instruction; reducing the risk of injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations and engaging in administration, consultation, education and research. Physical therapy also includes the care and services provided by a physical therapist or a physical therapist assistant under the direction and supervision of a physical therapist ~~who that~~ is licensed pursuant to *article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto. this act*. Physical therapy does not include the use of roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, the practice of any branch of the healing arts and the making of a medical diagnosis.

(b) "Physical therapist" means a person who is licensed to practice physical therapy pursuant to *article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto. this act*. Any person who successfully meets the requirements of K.S.A. 65-2906, and amendments thereto, shall be known and designated as a physical therapist and may designate or describe oneself, *as appropriate*, as a physical therapist, physiotherapist, licensed physical therapist, *doctor of physical therapy, abbreviations thereof, or words similar thereto or use of the designated letters* P.T., Ph. T., M.P.T., D.P.T. or L.P.T. *Nothing in this section shall be construed to prohibit physical therapists licensed under K.S.A. 2010 Supp. 65-2906 and 65-2909, and amendments thereto, from listing or using in conjunction with their name any letters, words, abbreviations or other insignia to designate any educational degrees, certifications or credentials recognized by the board which such licensee has earned. Each licensee when using the letters or term "Dr." or "Doctor" in conjunction with such licensee's professional practice, whether in any written or oral communication, shall identify oneself as a "physical therapist" or "doctor of physical therapy."*

(c) "Physical therapist assistant" means a person who is certified pursuant to *article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, this act* and who works under the direction of a physical therapist, and who assists the physical therapist in selected components of physical therapy intervention. Any person who successfully meets the requirements of K.S.A. 65-2906, and amendments thereto, shall be known and designated as a physical therapist assistant, and may designate or describe oneself as a physical therapist assistant, certified physical therapist assistant, *abbreviations thereof, or words similar thereto or use of the designated letters* P.T.A., C.P.T.A. or P.T. Asst. *Nothing in this section shall be construed to prohibit physical therapist assistants certified under K.S.A. 2010 Supp. 65-2906 and 65-2909, and amendments thereto, from listing or using in conjunction with their name any letters, words, abbreviations or other insignia to designate any educational degrees, certifications or credentials which such physical therapist assistant has earned.*

(d) "Board" means the state board of healing arts.

(e) "Council" means the physical therapy advisory council.

(f) "Physician" means a person licensed to practice medicine and surgery.

Sec. 40. K.S.A. 2010 Supp. 65-2913 is hereby amended to read as follows: 65-2913. (a) It shall be unlawful for any person who is not licensed under ~~this article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto,~~ ~~æ~~ as a physical therapist or whose license has been suspended or revoked in any manner to represent oneself as a physical therapist or to use in connection with such person's name the words physical therapist, physiotherapist, ~~or~~ licensed physical therapist or *doctor of physical therapy* or use the abbreviations P.T., Ph. T., M.P.T., D.P.T. or L.P.T., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist. A violation of this subsection shall constitute a class B nonperson misdemeanor. *Nothing in this section shall be construed to prohibit physical therapists licensed under K.S.A. 2010 Supp. 65-2906 and 65-2909, and amendments thereto, from listing or using in conjunction with their name any letters, words, abbreviations or other insignia to designate any educational degrees, certifications or credentials recognized by the board which such licensee has earned. Each licensee when using the letters or term "Dr." or "Doctor" in conjunction with such licensee's professional practice, whether in any written or oral communication, shall identify oneself as a "physical therapist" or "doctor of physical therapy."*

(b) Any person who, in any manner, represents oneself as a physical therapist assistant, or who uses in connection with such person's name the words or letters physical therapist assistant, certified physical therapist assistant, P.T.A., C.P.T.A. or P.T. Asst., or any other letters, words, abbreviations or insignia, indicating or implying that such person is a physical therapist assistant, without a valid existing certificate as a physical therapist assistant issued to such person pursuant to *article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto* ~~the provisions of this act,~~ shall be guilty of a class B nonperson misdemeanor. *Nothing in this section shall be construed to prohibit physical therapist assistants certified under K.S.A. 2010 Supp. 65-2906 and 65-2909, and amendments thereto, from listing or using in conjunction with their name any letters, words, abbreviations or other insignia to designate any educational degrees, certifications or credentials which such physical therapist assistant has earned.*

(c) Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and practicing their profession. The provisions of article 29 of chapter 65 of the Kansas Statutes Annotated, and ~~æts~~ ~~amendatory thereof or supplemental~~ *amendments* thereto, shall not apply to the following individuals so long as they do not hold themselves out in a manner prohibited under subsection (a) or (b) of this section:

- (1) Persons rendering assistance in the case of an emergency;
- (2) members of any church practicing their religious tenets;
- (3) persons whose services are performed pursuant to the delegation of and under the supervision of a physical therapist who is licensed under this act;
- (4) health care providers in the United States armed forces, public health services, federal facilities and coast guard or other military service when acting in the line of duty in this state;
- (5) licensees under the healing arts act, and practicing their professions, when

licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensee under subsection (g) of K.S.A. 65-2872, and amendments thereto;

(6) dentists practicing their professions, when licensed and practicing in accordance with the provisions of law;

(7) nurses practicing their professions, when licensed and practicing in accordance with the provisions of law or persons performing services pursuant to the delegation of a licensed nurse under subsection (m) of K.S.A. 65-1124, and amendments thereto;

(8) health care providers who have been formally trained and are practicing in accordance with their training or have received specific training in one or more functions included in this act pursuant to established educational protocols or both;

(9) students while in actual attendance in an accredited health care educational program and under the supervision of a qualified instructor;

(10) self-care by a patient or gratuitous care by a friend or family member;

(11) optometrists practicing their profession when licensed and practicing in accordance with the provisions of article 15 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(12) podiatrists practicing their profession when licensed and practicing in accordance with the provisions of article 20 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(13) occupational therapists practicing their profession when licensed and practicing in accordance with the occupational therapy practice act and occupational therapy assistants practicing their profession when licensed and practicing in accordance with the occupational therapy practice act;

(14) respiratory therapists practicing their profession when licensed and practicing in accordance with the respiratory therapy practice act;

(15) physician assistants practicing their profession when licensed and practicing in accordance with the physician assistant licensure act;

(16) persons practicing corrective therapy in accordance with their training in corrective therapy;

(17) athletic trainers practicing their profession when licensed and practicing in accordance with the athletic trainers licensure act;

(18) persons who massage for the purpose of relaxation, muscle conditioning or figure improvement, so long as no drugs are used and such persons do not hold themselves out to be physicians or healers;

(19) barbers practicing their profession when licensed and practicing in accordance with the provisions of article 18 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(20) cosmetologists practicing their profession when licensed and practicing in accordance with the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto;

(21) attendants practicing their profession when certified and practicing in accordance with the provisions of article 61 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto; *and*

(22) naturopathic doctors practicing their profession when licensed and practicing in accordance with the naturopathic doctor licensure act.

(d) Any patient monitoring, assessment or other procedures designed to evaluate

the effectiveness of prescribed physical therapy must be performed by or pursuant to the delegation of a licensed physical therapist or other health care provider.

(e) Nothing in this act shall be construed to permit the practice of medicine and surgery. No statute granting authority to licensees of the state board of healing arts shall be construed to confer authority upon physical therapists to engage in any activity not conferred by *article 29 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto.* ~~this act.~~

New Sec. 41. Section 41 through 58, and amendments thereto, shall be known and may be cited as the Kansas health information technology and exchange act.

New Sec. 42. As used in the Kansas health information technology and exchange act:

- (a) "Act" means the Kansas health information technology and exchange act.
- (b) "Approved HIO" means a health information organization operating in the state which has been approved by the corporation.
- (c) "Corporation" means the Kansas health information exchange, inc., created by executive order 10-06.
- (d) "Covered entity" means a health care provider, a health care component of a hybrid entity, a health plan or a health care clearinghouse.
- (e) "DPOA-HC" means the person to whom a durable power of attorney for health care decisions has been granted by an individual in accordance with K.S.A. 58-625 et seq., and amendments thereto.
- (f) "Health care clearinghouse" means a health care clearinghouse, as that term is defined by the HIPAA privacy rule, doing business within the state.
- (g) "Health care provider" means a health care provider, as that term is defined by the HIPAA privacy rule, that furnishes health care to individuals in the state.
- (h) "Health information organization" means any entity operating in the state which (1) maintains technical infrastructure for the electronic movement of health information among covered entities, and (2) promulgates and enforces policies governing participation in such health information exchange.
- (i) "Health information technology" means an information processing application using computer hardware and software for the storage, retrieval, use and disclosure of health information for communication, decision-making, quality, safety and efficiency of health care. "Health information technology" includes, but is not limited to: (1) An electronic health record; (2) a personal health record; (3) health information exchange; (4) electronic order entry; and (5) electronic decision support.
- (j) "Health plan" means a health plan, as that term is defined by the HIPAA privacy rule, doing business within the state.
- (k) "HIPAA privacy rule" means the privacy rule of the administrative simplification subtitle of the health insurance portability and accountability act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. part 160 and 45 C.F.R. part 164, subparts A and E, as amended from time to time. As used in the act, the following terms shall be defined using the definitions set forth in the HIPAA privacy rule: (a) Designated record set; (b) disclosure; (c) electronic protected health information; (d) health care; (e) health care clearinghouse; (f) health care provider; (g) health information; (h) hybrid entity; (i) individual; (j) individually identifiable health information; (k) protected health information; (l) public health authority; and (m) use.
- (l) "Incapacitated adult" means a person whose ability to receive and evaluate

relevant health care information or to effectively communicate personal health care decisions, or both, notwithstanding the use of assistive technologies or other supports, is impaired such that the person, in the opinion of the health care provider presently providing examination or treatment for the individual, lacks the capacity to reasonably weigh the risks and benefits of the provision of health care or to effectively communicate personal health care decisions. No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be an incapacitated adult under the act for that reason alone.

(m) "Interoperability" means the capacity of two or more information systems to exchange information or data in an accurate, effective, secure and consistent manner.

(n) "Minor" means any person under age 18 unless: (1) Such person is 16 or older and is, or has been, married; or (2) a court of proper jurisdiction has conferred rights of majority upon such person.

(o) "Participation agreement" means a written agreement between a covered entity and an approved HIO concerning the covered entity's participation in the approved HIO on terms consistent with section 16 of this act.

(p) "Personal representative" means the person who has the legal authority to act on behalf of an individual for one of the purposes listed in section 49 of this act.

(q) "Secretary" means the secretary of the department of health and environment.

(r) "Standard authorization form" means the standard authorization form developed and promulgated by the secretary pursuant to section 6 of this act.

(s) "State" means the state of Kansas.

(t) "State agency" means the department of health and environment; the Kansas health policy authority; the department of social and rehabilitation services; the department on aging; the department of corrections; the office of the attorney general; the insurance department; those state boards responsible for licensing and disciplining health care providers; other state regulatory bodies; and any county or municipal government or instrumentality thereof, including local boards of health and local health officers, but not including any community mental health center as defined by K.S.A. 75-3307e, and amendments thereto.

(u) "State law" means any Kansas statute; regulation promulgated by a state agency; directive, opinion, or guidance issued by a state agency; opinion issued by any state or municipal court; or any opinion issued by the attorney general.

New Sec. 43. It is the purpose of this act to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and health information exchange.

New Sec. 44. (a) A covered entity shall provide an individual or such individual's personal representative with access to the individual's protected health information maintained by the covered entity in a designated record set in compliance with 45 C.F.R. 164.524.

(b) A covered entity shall implement and maintain appropriate administrative, technical and physical safeguards to protect the privacy of protected health information in a manner consistent with 45 C.F.R. 164.530(c).

New Sec. 45. (a) No covered entity shall use or disclose protected health

information except as follows:

(1) Use and disclosure of protected health information consistent with an authorization that satisfies the requirements of 45 C.F.R. 164.508;

(2) use and disclosure of protected health information without an authorization as permitted under 45 C.F.R. 164.502, 164.506, 164.508, 164.510 and 164.512; or

(3) use and disclosure of protected health information as required under 45 C.F.R. 164.502.

(b) Notwithstanding the provisions of subsection (a), no covered entity shall disclose an individual's protected health information to a health information organization for any purpose without an authorization that satisfies the requirements of 45 C.F.R. 164.508, unless such covered entity:

(1) Is a party to a current participation agreement with an approved HIO at the time the disclosure is made;

(2) discloses the individual's protected health information to that approved HIO in a manner consistent with the approved HIO's established procedures;

(3) prior to the disclosure, has furnished to the individual, or such individual's personal representative, whose information is to be disclosed to the approved HIO, the notice required under section 56 of this act; and

(4) restricts disclosure to the approved HIO of any protected health information concerning the individual that is the subject of a written request delivered to the covered entity by the individual, or such individual's personal representative, for reasonable restrictions on disclosure of all or any specified categories of the individual's protected health information, as defined pursuant to section 56 of this act, following the covered entity's receipt of such written request.

(c) Notwithstanding the provisions of subsections (a) and (b), a covered entity that uses or discloses protected health information in compliance with this section shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

New Sec. 46. (a) No later than six months following the effective date of this act, the secretary shall develop and adopt by rules and regulations a standard authorization form for the use and disclosure of protected health information consistent with the requirements of 45 C.F.R. 164.508.

(b) Any person or entity in possession, custody or control of any protected health information which is the subject of a properly completed standard authorization form shall accept such form as valid authorization for the disclosure of such protected health information to the person or entity identified in such standard authorization form. Notwithstanding any other provisions, a person or entity is not precluded from accepting or relying upon any document which satisfies the requirements of 45 C.F.R. 164.508, as valid authorization for the use or disclosure of protected health information.

New Sec. 47. (a) Notwithstanding any other provision of this act, a covered entity may condition the furnishing of copies of an individual's protected health information in paper or electronic form to the individual, the individual's personal representative, or any other person or entity authorized by law to obtain or reproduce such information, upon the payment of charges to be established and updated by the secretary, except no provider shall condition the furnishing of copies to another provider needed for that provider's treatment of an individual on payment of such fee. This section shall not apply to disclosures by a covered entity to an approved HIO, or by an approved HIO to



a covered entity.

New Sec. 48. (a) Any provision of state law regarding the confidentiality, privacy, security or privileged status of any protected health information which may be contrary to, inconsistent with or more restrictive than the rules set forth in this act shall be superseded by the rules set forth in this act, except that: (1) Nothing in this act shall limit or restrict the effect and application of the peer review statute, K.S.A. 65-4915, and amendments thereto; the risk management statute, K.S.A. 65-4921, and amendments thereto; or the statutory physician-patient privilege, K.S.A. 60-427, and amendments thereto; and (2) nothing in this act shall supersede the provisions of any state law relating to the confidentiality, privacy, security or privileged status of protected health information in the possession or custody of any state agency.

(b) Nothing in this act shall limit or restrict the ability of any state agency to require the disclosure of protected health information by any person or entity pursuant to law.

New Sec. 49. It is the purpose of this act to identify the person who qualifies as a personal representative to act on behalf of an individual for any of the following purposes:

(1) Consent to treatment and for the provision of health care to an individual by a health care provider;

(2) consent for autopsy of a decedent's body or part;

(3) disposition of a decedent's remains including burial, cremation or entombment;

(4) consent for anatomical gift of decedent's body or part;

(5) Informed consent for an individual's participation in a research protocol in accordance with the provisions of 21 C.F.R. 56.101 et seq., and 45 C.F.R. 46.101 et seq.;

(6) an individual's exercise of individual rights under the HIPAA privacy rule in accordance with 45 C.F.R. 164.520 to 164.528;

(7) an individual's authorization for use or disclosure of that individual's protected health information in accordance with 45 C.F.R. 164.502 to 164.514;

(8) an individual's exercise of individual rights with respect to inclusion of protected health information within an approved HIO in accordance with section 16 of this act; or

(9) an individual's exercise of patient rights in accordance with any other state or federal statute or regulation, including, but not limited to, 42 C.F.R. 482.13 and 45 C.F.R. 635, but only to the extent such statute or regulation does not otherwise identify a personal representative for such purpose.

New Sec. 50. (a) When any person or entity requires a personal representative to act on behalf of an incapacitated adult or deceased individual for one of the purposes listed in section 49 of this act, such person or entity shall first make a reasonable inquiry as to whether a DPOA-HC or a legal guardian has been designated or appointed for such incapacitated adult or deceased individual.

(b) If no DPOA-HC or legal guardian has been designated or appointed or such DPOA-HC or legal guardian is incompetent or unavailable at the time, the person or entity requiring a personal representative to act on behalf of an incapacitated adult or deceased individual for one of the purposes listed in section 9 of this act shall make a reasonable inquiry as to the availability of another individual to serve as the personal

representative, in the following priority, provided such person is competent and available at the time:

- (1) The incapacitated adult's or deceased individual's spouse;
  - (2) any adult son or daughter of the incapacitated adult or deceased individual;
  - (3) either parent of the incapacitated adult or deceased individual;
  - (4) any adult brother or sister of the incapacitated adult or deceased individual;
  - (5) any adult grandchild of the incapacitated adult or deceased individual; or
  - (6) a close friend of the incapacitated adult or deceased individual.
- (c) Where there are multiple personal representatives at the same priority level in the hierarchy, it shall be the responsibility of those personal representatives to make reasonable efforts to reach a consensus as to their decision on behalf of the patient. If two or more personal representatives who are in the same category and have equal priority disagree about the matter at issue, a majority of the available persons in that category shall control, unless, in the case of an incapacitated adult, the minority initiates guardianship proceedings in accordance with K.S.A. 59-3050 et seq., and amendments thereto. No health care provider or other person or entity shall be required to seek appointment of a legal guardian on behalf of an incapacitated adult for any purpose listed in section 9 of this act.

(d) In the event a person of a higher priority to an individual's identified personal representative becomes available and is willing to serve the individual's personal representative for one of the purposes listed in section 9 of this act, the person with higher priority shall be identified as the individual's personal representative. In the event a person in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority of an individual's recognized personal representative, the challenging party may initiate guardianship proceedings in accordance with the K.S.A. 59-3030 et seq., and amendments thereto.

(e) A personal representative's authority to act on behalf of an incapacitated adult shall extend only so long as the adult is incapacitated. Upon gaining capacity, the individual shall have the sole authority to act for any of the purposes listed in section 9 of this act.

New Sec. 51. (a) The person with the authority to consent to the provision of health care to a minor by a health care provider also shall have the authority to act as that minor's personal representative with respect to any other purpose listed in section 49 of this act as it relates to the provision of such health care.

(b) If no parent or legal guardian of a minor with authority to consent to the provision of health care by a health care provider to that minor is available by any means, personally, telephonically or electronically or competent to provide such consent, the person or entity requiring a personal representative for a minor for one of the purposes listed in section 9 of this act shall make a reasonable inquiry as to the availability of another person to act as the minor's personal representative, in the following priority, provided such person is competent and available at the time:

- (1) Any person designated in writing by such parent or legal guardian to consent for the provision of health care by a health care provider for the minor;
- (2) any grandparent of the minor;
- (3) any adult brother or sister of the minor;
- (4) any adult aunt or uncle of the minor;
- (5) any adult cousin of the minor; or

(6) any adult close friend of the minor's parent or legal guardian.

No person or entity shall seek or rely upon a decision made by a personal representative of a minor with respect to treatment and provision of health care unless such person or entity reasonably determines the delay associated with locating the minor's parent or legal guardian would be detrimental to the health or welfare of such minor.

(c) Upon reaching the age of majority and otherwise becoming emancipated, an individual shall gain control over the protected health information, including protected health information relating to the provision of health care to the individual while such individual was a minor. The parent, legal guardian or other person who consented for the provision of health care by a health care provider may not access or otherwise exercise control over such protected health information once the individual reaches the age of majority or otherwise becomes emancipated.

(d) Any person who identifies and relies upon a personal representative to act for a minor with respect to one of the purposes listed in section 9 of this act in compliance with this provision shall be immune from any civil or criminal liability or adverse licensure or disciplinary action by a state agency relating to the subject matter of such purpose regardless of any other provision of state law.

New Sec. 52. (a) Nothing herein shall amend or repeal the laws related to the Kansas durable power of attorney act for health care decisions, K.S.A. 58-625 et seq., and amendments thereto, the Kansas natural death act, K.S.A. 65-28,101 et seq., and amendments thereto, or the laws related to do-not-resuscitate directives, K.S.A. 65-4941 et seq., and amendments thereto. A personal representative does not have the power to revoke any of the following valid advance directives properly executed by the individual, regardless of the individual's subsequent incapacity:

- (1) A durable power of attorney for health care decisions; or
- (2) a Kansas natural death act declaration.

(b) Nothing herein shall alter or amend any existing laws related to the necessity of obtaining consent for provision of health care by a health care provider; informed consent for a research protocol; the determination of whether an adult has an impairment or a minor has been emancipated; or the circumstances in which a minor may consent for the provision of health care by a health care provider on such minor's own behalf.

New Sec. 53. A health care provider may disclose protected health information without authorization to any state agency for any public health purpose that is permitted or required by law. Nothing in this act shall be construed to limit the use, transfer, or disclosure of protected health information as required or permitted by any other provision of law.

New Sec. 54. (a) The corporation shall establish and revise, as appropriate, standards for approval and operation of statewide and regional health information organizations operating in the state as approved HIOs including, but not limited to, the following:

- (1) Satisfaction of certification standards for health information exchanges promulgated by the federal government;
- (2) adherence to nationally recognized standards for interoperability;
- (3) adoption and adherence to rules promulgated by the corporation regarding access to and use and disclosure of protected health information maintained by or on an

approved HIO;

(4) demonstration of adequate financial resources to sustain continued operations in compliance with the standards;

(5) participation in outreach activities for individuals and covered entities;

(6) conduct of operations in a transparent manner to promote consumer confidence;

(7) implementation of security breach notification procedures; and

(8) development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the corporation pursuant to section 16 of this act.

New Sec. 55. (a) The corporation shall establish and implement:

(1) A process by which a health information exchange may apply for and receive approval by the corporation by demonstrating compliance with the standards promulgated by the corporation pursuant to section 54 of this act;

(2) a process by which an approved HIO shall be re-approved on appropriate intervals by demonstrating continued compliance with the standards promulgated by the corporation pursuant to section 14 of this act; and

(3) a process for the investigation of reported concerns and complaints regarding an approved HIO and imposition of appropriate remedial and proactive measures to address any identified deficiencies.

New Sec. 56. (a) The corporation shall establish requirements for participation agreements to include the following:

(1) Specification of procedures for the covered entity to disclose an individual's protected health information to the approved HIO;

(2) specification of procedures for the covered entity to access an individual's protected health information from the approved HIO;

(3) specification of the written notice to be provided by the covered entity to any individual, or such individual's personal representative, prior to the covered entity's disclosure of the individual's protected health information to the approved HIO. Such written notice, which may be incorporated into the covered entity's notice of privacy practices required under the HIPAA privacy rule, shall include the following that:

(A) The individual's protected health information will be disclosed to the approved HIO to facilitate the provision of health care to the individual;

(B) the approved HIO maintains appropriate safeguards to protect the privacy and security of protected health information;

(C) only authorized individuals may access protected health information from the approved HIO;

(D) the individual, or such individual's personal representative, has the right to request in writing that the covered entity: (i) Not disclose any of the individual's protected health information to the approved HIO; or (ii) not disclose specified categories of the individual's protected health information to the approved HIO;

(E) such restrictions may result in a health care provider not having access to information necessary to provide appropriate care for the individual;

(F) the covered entity is required to honor a written request delivered to the covered entity by an individual, or such individual's representative, not to disclose any of the individual's protected health information to an approved HIO; and

(G) the covered entity is required to honor a written request delivered to the

covered entity by an individual, or such individual's representative, for reasonable restrictions on the disclosure of specified categories of the individual's protected health information to an approved HIO.

(4) specification of documentation requirements to demonstrate delivery of such notice to an individual, or such individual's personal representative, by or on behalf of the covered entity prior to the covered entity's disclosure of the individual's protected health information to the approved HIO;

(5) standards for determining the reasonableness of an individual's written request, or the written request of such individual's personal representative, not to disclose specified categories of the individual's protected health information to the approved HIO based on the covered entity's technological capabilities; and

(6) specification of the purposes for which a covered entity may access protected health information through the approved HIO.

New Sec. 57. Any health information organization which is not an approved HIO shall not be eligible for any financial support from the state, or assistance or support from the state in securing any other source of funding.

New Sec. 58. Notwithstanding any other provision of this act, no use or disclosure of protected health information maintained by or on an approved HIO shall be made except pursuant to rules adopted by the corporation consistent with this act. An approved HIO that uses or discloses protected health information in compliance with such rules shall be immune from any civil or criminal liability or any adverse administrative action arising out of or relating to such use or disclosure.

Sec. 59. K.S.A. 16-1602 is hereby amended to read as follows: 16-1602. In this act:

(a) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(b) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation required by the transaction.

(c) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(d) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this act and other applicable law.

(e) "Digital signature" means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer's public key can accurately determine whether:

(1) The transformation was created using the private key that corresponds to the signer's public key; and

(2) the initial message has not been altered since the transformation was made.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means.

(i) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(j) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

(k) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(l) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.

(m) "Message" means a digital representation of information.

(n) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(o) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(p) "Registered certification authority" means a person providing certification of a digital signature who is, or is certified by, a member of the group of certification authorities approved by and registered with the secretary.

(q) "Secretary" means the Kansas secretary of state.

(r) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

(s) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

~~(t) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, insurance, health care, commercial or governmental affairs.~~

Sec. 60. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.";

And by redesignating the remaining sections accordingly;

On page 2, by striking all in lines 35 and 36, and by inserting "Sec. 3. K.S.A. 16-1602, 65-1734, 65-4970, 65-4972, and 65-4973 and K.S.A. 2010 Supp 65-1669, 65-1671, 65-1901, 65-1902, 65-1905, 65-1912, 65-2901, 65-2913, 65-3228, 65-4971 and 65-4974 and 74-7507 and section 2, section 4, section 7, section 8, section 9, and section 10 of chapter 45 of the 2010 Session Laws of Kansas are hereby repealed.";

In title, on page 1, in line 1, by striking all after “concerning” and by striking all in lines 2 and 3 and by inserting “health care; amending K.S.A. 16-1602 and K.S.A. 2010 Supp 65-1669, 65-1671, 65-1901, 65-1902, 65-1905, 65-1912, 65-2901, 65-2913 and 74-7507 and section 2, section 4, section 7, section 8, section 9, and section 10 of chapter 45 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 65-1734, 65-4970, 65-4972, and 65-4973 and K.S.A. 2010 Supp. 65-3228, 65-4971 and 65-4974.” and **HB 2182** be passed as amended.

A motion by Senator V. Schmidt to amend **HB 2182** was withdrawn.

**HB 2067** be amended by adoption of the committee amendments, be further amended by motion of Senator Francisco on page 2, line 38, by striking “except” and inserting “accept”.

**HB 2067** be further amended by motion of Senator Francisco on page 2, line 39, by striking “18” and inserting “17,” and on page 29, line 11, by striking “18” and inserting “17.” and **HB 2067** be passed as further amended.

A motion by Senator Bruce to amend **HB 2067** failed and the following amendment was rejected: on page 35, following line 21, by inserting:

"New Sec. 20. (a) Independent authority to prosecute an election crime or attempted election crime shall be vested in:

- (1) The district or county attorney of the county where such violations occurred; or
- (2) the attorney general.

(b) If one of the officers listed in subsection (a) has commenced a prosecution or proceeding related to any election law, the other officer listed in subsection (a) may provide assistance to the prosecuting office but may not commence a separate prosecution or proceeding.

And by renumbering the remaining sections accordingly

Upon the showing of five hands, a roll call vote was requested.

On roll call, the vote was: Yeas 19, Nays 20, Present and Passing 0, Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Kelsey, King, Love, Lynn, Marshall, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Schmidt A, Steineger, Taddiken, Wagle.

Nays: Brungardt, Emler, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Longbine, McGinn, Morris, Owens, Reitz, Schmidt V, Schodorf, Teichman, Umbarger, Vratil.

Absent or Not Voting: Donovan.

The motion failed and the amendment was rejected.

**HB 2147** be amended by adoption of the committee amendments, be further amended by motion of Senator A. Schmidt, on page 2, in line 33, after the period by inserting the following: "Any home plus that provides care for more than eight individuals after the effective date of this act shall increase staffing personnel and resources to meet the increased need in order to maintain the current level of nursing care standards." and **HB 2147** be passed as further amended.

**Senate Sub for HB 2080** be passed over and retain a place on the calendar.

On motion of Senator Emler the Senate adjourned until 9:00 a.m., Wednesday, March 23, 2011.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks*.  
PAT SAVILLE, *Secretary of the Senate*.

