AN ACT concerning schools and school districts; relating to seclusion and restraint of pupils.

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

Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the freedom from unsafe restraint and seclusion act.

Sec. 2. As used in this statute, the following terms shall have the meanings specified herein:

(a) "Altercation" means a fight involving a student. Any student possessing a weapon in such a manner as to pose an immediate danger also qualifies as an alteration.

(b) "Chemical restraint" means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement.

(c) "District" means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(d) "Department" means the state department of education.

(e) "Emergency safety intervention" means the use of seclusion or physical restraint when a student presents an immediate danger to themself or others. Violent action that is destructive of property may necessitate the use of an emergency safety intervention if the property destruction poses an immediate danger. Use of an emergency safety intervention for purposes of discipline, punishment or for the convenience of a school employee shall not meet the standard of immediate danger.

(f) "Immediate danger" means an immediate and impending threat of a student causing serious physical harm to themself or others.

(g) "Mechanical restraint" means any device or object used to limit a student's movement.

(h) "Parent" means: (1) A natural parent; (2) an adoptive parent; (3) a person acting as a parent as defined in K.S.A. 72-1046(d)(2); (4) a legal guardian; (5) an education advocate for a student with an exceptionality; (6) a foster parent, unless the student is a child with an exceptionality; or (7) a student who has reached the age of majority or is an emancipated
"Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location.

"Physical restraint" means bodily force used to substantially limit a student's movement, except that consensual, solicited or unintentional contact and contact to provide comfort, assistance or instruction shall not be deemed to be physical restraint.

"School" means any learning environment, including any nonprofit institutional day or residential school and any accredited nonpublic school, that receives public funding or over which the Kansas state department of education has regulatory authority.

"Seclusion," when used with a student, means that all the following conditions are met:

1. The student is placed in an enclosed area by school personnel;
2. the student is purposefully isolated from adults and peers; and
3. the student is prevented from leaving, or reasonably believes that such student will be prevented from leaving, the enclosed area.

"Time-out" means a behavioral intervention in which a student is temporarily removed from a learning activity without being confined.

Sec. 3. (a) The use of prone, or face down, physical restraint on a student, supine, or face up, physical restraint on a student; physical restraint that obstructs the airway of a student; or any physical restraint that impacts a student's primary mode of communication is prohibited.

(b) The use of chemical restraint on a student is prohibited, except as prescribed treatments for a student's medical or psychiatric condition by a person appropriately licensed to issue such treatments.

(c) The use of mechanical restraints on a student is prohibited, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure the student during transportation.

(d) Emergency safety intervention shall be used only if a student's behavior creates an immediate and impending threat of causing serious physical harm to themself or others. Violent action that is destructive of property may necessitate the use of an emergency safety intervention if the property destruction poses an immediate danger. Use of an emergency safety intervention for purposes of discipline, punishment or for the convenience of a school employee shall not meet the standard of immediate danger. However, if the student is involved in an altercation, then physical restraint may still be used even if the immediate danger standard is not met.
(e) A student shall not be subjected to an emergency safety intervention except by a school employee who has been trained in the appropriate use of emergency safety interventions, consistent with nationally recognized training programs. This training requirement shall not apply if the student is involved in an altercation.

(f) A student shall not be subjected to seclusion if the student is known to have a medical condition that could put the student in mental or physical danger as a result of seclusion. The existence of such medical condition must be indicated in a written statement from the student's licensed health care provider, a copy of which has been provided to the school and placed in the student’s file.

(g) A student shall not be subjected to seclusion if the student is known to have a medical condition that a licensed health care provider has indicated, in a written statement that is provided to the school and that is on file with the school, which precludes this action.

(h) While in a seclusion, school personnel must be able to see and hear the student at all times.

(i) All seclusion rooms equipped with a locking door shall ensure that the lock automatically disengages when the teacher or attendant viewing the student walks away from the seclusion room, or in cases of emergency, such as fire or severe weather.

(j) If a school uses a seclusion room, such room will be a safe place with proportional and similar characteristics as other rooms where students frequent. It shall be free of any condition that could be a danger to the student, be well-ventilated and sufficiently lighted.

Sec. 4. (a) When any student is subjected to an emergency safety intervention, the school employee who conducted the emergency safety intervention, or an employee who witnessed its use, shall document the use of the seclusion or the physical restraint. The school shall attempt to notify the parent the same day the emergency safety intervention was used. This documentation shall be completed and provided to the parent no later than the school day following the day on which the seclusion or physical restraint is used. The parent shall be given a copy of the standards of when restraint and seclusion can be used, a flyer on their rights, including complaint rights through the local dispute resolution process and the complaint process of the state board of education, and information that will help them navigate the complaint process, including contact information for the parent training and information center and protection and advocacy system. Parents will also have 30 days from being informed of the use of emergency safety intervention to file a complaint through the local dispute resolution process. Parents will have at least 30 days from the final decision from the local dispute resolution process to file a complaint under the state board of education complaint process pursuant to section 5,
and amendments thereto.

(b) Each public school district shall submit information and data on the use of seclusion and restraint as required by the department. At a minimum, the department shall collect sufficient information and data to ensure the patrons, policymakers and the public can gain a clear picture of the depth and breadth of the use of seclusion and restraint in Kansas schools. The purpose of the information and data collected is to provide detailed information so that policymakers can identify trends and opportunities in order to help reduce the use of seclusion and restraint in public schools.

(c) The department shall compile the reports from the schools and provide the results to the public, the governor and the committees on education in the senate and the house of representatives by January 20, 2016, and annually thereafter, and publish any school policy adopted by the state board of education pursuant to section 5, and amendments thereto, to ensure uniformity and compliance with this act. In issuing these reports, the department will ensure that as much information and data as possible are provided on the use of seclusion and restraint in order to allow patrons, policymakers and the public to be able to compare the data regarding the use and incidences between school districts and individual schools. In compiling the aggregate data, individual student confidentiality shall be protected in accordance with the family educational rights and privacy act (FERPA) to ensure that personally identifiable information is not included.

(d) A copy of this policy shall be distributed to each public school employee at the start of the school year or upon employment.

Sec. 5. The state board of education shall adopt rules and regulations as necessary to implement the provisions of this act including rules and regulations regarding:

(a) A process for a parent to submit a complaint to the Kansas state department of education alleging that a public school is violating or has violated a provision of sections 1 through 5, and amendments thereto, or K.A.R. 91-42-1 through 91-42-2, and any other rules and regulations promulgated regarding emergency safety interventions. This complaint process to the Kansas state department of education shall be an option for parents after they have completed the local dispute resolution process.

(b) A process for investigating a complaint submitted under subsection (a).

(c) A process for ensuring that parents and schools are treated equally in the complaint process.

(d) A process for completion of a written report of findings of facts and conclusions.

(e) A process for determining sanctions if a district fails to comply
with identified corrective actions.

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