

HOUSE BILL No. 2419

By Committee on Appropriations

5-2

1 AN ACT reconciling conflicting amendments to certain statutes; amending
2 K.S.A. 2016 Supp. 41-102, as amended by section 2 of chapter 99 of
3 the 2018 Session Laws of Kansas; and K.S.A. 2018 Supp. 21-5413, 38-
4 2212, 38-2232, 38-2242, 38-2243, 39-1431, 79-32,117 and 79-3602
5 and repealing the existing sections; also repealing K.S.A. 2015 Supp.
6 38-2232, as amended by section 24 of chapter 46 of the 2016 Session
7 Laws of Kansas, 38-2242, as amended by section 25 of chapter 46 of
8 the 2016 Session Laws of Kansas, and 38-2243, as amended by section
9 26 of chapter 46 of the 2016 Session Laws of Kansas; K.S.A. 2016
10 Supp. 41-102, as amended by section 10 of 2019 Senate Bill No. 70;
11 K.S.A. 2017 Supp. 79-3602, as amended by section 5 of chapter 8 of
12 the 2018 Session Laws of Kansas; and K.S.A. 2018 Supp. 21-5413a,
13 22-3302a, 38-2212a, 39-1431a and 79-32,117p.
14

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

16 Section 1. K.S.A. 2018 Supp. 21-5413 is hereby amended to read as
17 follows: 21-5413. (a) Battery is:

18 (1) Knowingly or recklessly causing bodily harm to another person;
19 or

20 (2) knowingly causing physical contact with another person when
21 done in a rude, insulting or angry manner.

22 (b) Aggravated battery is:

23 (1) (A) Knowingly causing great bodily harm to another person or
24 disfigurement of another person;

25 (B) knowingly causing bodily harm to another person with a deadly
26 weapon, or in any manner whereby great bodily harm, disfigurement or
27 death can be inflicted; or

28 (C) knowingly causing physical contact with another person when
29 done in a rude, insulting or angry manner with a deadly weapon, or in any
30 manner whereby great bodily harm, disfigurement or death can be
31 inflicted;

32 (2) (A) recklessly causing great bodily harm to another person or
33 disfigurement of another person;

34 (B) recklessly causing bodily harm to another person with a deadly
35 weapon, or in any manner whereby great bodily harm, disfigurement or
36 death can be inflicted; or

1 (3) (A) committing an act described in K.S.A. 8-1567, and
2 amendments thereto, when great bodily harm to another person or
3 disfigurement of another person results from such act; or

4 (B) committing an act described in K.S.A. 8-1567, and amendments
5 thereto, when bodily harm to another person results from such act under
6 circumstances whereby great bodily harm, disfigurement or death can
7 result from such act; or

8 (4) committing an act described in K.S.A. 8-1567, and amendments
9 thereto, when great bodily harm to another person or disfigurement of
10 another person results from such act while:

11 (A) In violation of any restriction imposed on such person's driving
12 privileges pursuant to article 10 of chapter 8 of the Kansas Statutes
13 Annotated, and amendments thereto;

14 (B) such person's driving privileges are suspended or revoked
15 pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and
16 amendments thereto; or

17 (C) such person has been deemed a habitual violator as defined in
18 K.S.A. 8-285, and amendments thereto, including at least one violation of
19 K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any
20 city in this state, any resolution of any county in this state or any law of
21 another state, which ordinance, resolution or law declares to be unlawful
22 the acts prohibited by that statute.

23 (c) Battery against a law enforcement officer is:

24 (1) Battery, as defined in subsection (a)(2), committed against a:

25 (A) Uniformed or properly identified university or campus police
26 officer while such officer is engaged in the performance of such officer's
27 duty;

28 (B) uniformed or properly identified state, county or city law
29 enforcement officer, other than a state correctional officer or employee, a
30 city or county correctional officer or employee or a juvenile detention
31 facility officer, or employee, while such officer is engaged in the
32 performance of such officer's duty;

33 (C) *uniformed or properly identified federal law enforcement officer*
34 *while such officer is engaged in the performance of such officer's duty;*

35 (D) judge, while such judge is engaged in the performance of such
36 judge's duty;

37 ~~(D)~~(E) attorney, while such attorney is engaged in the performance of
38 such attorney's duty; or

39 ~~(E)~~(F) community corrections officer or court services officer, while
40 such officer is engaged in the performance of such officer's duty;

41 (2) battery, as defined in subsection (a)(1), committed against a:

42 (A) Uniformed or properly identified university or campus police
43 officer while such officer is engaged in the performance of such officer's

1 duty; ~~or~~

2 (B) uniformed or properly identified state, county or city law
 3 enforcement officer, other than a state correctional officer or employee, a
 4 city or county correctional officer or employee or a juvenile detention
 5 facility officer, or employee, while such officer is engaged in the
 6 performance of such officer's duty;

7 (C) *uniformed or properly identified federal law enforcement officer*
 8 *while such officer is engaged in the performance of such officer's duty;*

9 (D) judge, while such judge is engaged in the performance of such
 10 judge's duty;

11 ~~(D)~~(E) attorney, while such attorney is engaged in the performance of
 12 such attorney's duty; or

13 ~~(E)~~(F) community corrections officer or court services officer, while
 14 such officer is engaged in the performance of such officer's duty; or

15 (3) battery, as defined in subsection (a) committed against a:

16 (A) State correctional officer or employee by a person in custody of
 17 the secretary of corrections, while such officer or employee is engaged in
 18 the performance of such officer's or employee's duty;

19 (B) state correctional officer or employee by a person confined in
 20 such juvenile correctional facility, while such officer or employee is
 21 engaged in the performance of such officer's or employee's duty;

22 (C) juvenile detention facility officer or employee by a person
 23 confined in such juvenile detention facility, while such officer or employee
 24 is engaged in the performance of such officer's or employee's duty; or

25 (D) city or county correctional officer or employee by a person
 26 confined in a city holding facility or county jail facility, while such officer
 27 or employee is engaged in the performance of such officer's or employee's
 28 duty.

29 (d) Aggravated battery against a law enforcement officer is:

30 (1) An aggravated battery, as defined in subsection (b)(1)(A)
 31 committed against a:

32 (A) Uniformed or properly identified state, county or city law
 33 enforcement officer while the officer is engaged in the performance of the
 34 officer's duty;

35 (B) uniformed or properly identified university or campus police
 36 officer while such officer is engaged in the performance of such officer's
 37 duty;

38 (C) *uniformed or properly identified federal law enforcement officer*
 39 *while such officer is engaged in the performance of such officer's duty;*

40 (D) judge, while such judge is engaged in the performance of such
 41 judge's duty;

42 ~~(D)~~(E) attorney, while such attorney is engaged in the performance of
 43 such attorney's duty; or

- 1 ~~(E)~~(F) community corrections officer or court services officer, while
2 such officer is engaged in the performance of such officer's duty;
- 3 (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)
4 (C), committed against a:
- 5 (A) Uniformed or properly identified state, county or city law
6 enforcement officer while the officer is engaged in the performance of the
7 officer's duty;
- 8 (B) uniformed or properly identified university or campus police
9 officer while such officer is engaged in the performance of such officer's
10 duty;
- 11 (C) *uniformed or properly identified federal law enforcement officer*
12 *while such officer is engaged in the performance of such officer's duty;*
- 13 (D) judge, while such judge is engaged in the performance of such
14 judge's duty;
- 15 ~~(D)~~(E) attorney, while such attorney is engaged in the performance of
16 such attorney's duty; or
- 17 ~~(E)~~(F) community corrections officer or court services officer, while
18 such officer is engaged in the performance of such officer's duty; or
- 19 (3) knowingly causing, with a motor vehicle, bodily harm to a:
- 20 (A) Uniformed or properly identified state, county or city law
21 enforcement officer while the officer is engaged in the performance of the
22 officer's duty; ~~or~~
- 23 (B) uniformed or properly identified university or campus police
24 officer while such officer is engaged in the performance of such officer's
25 duty; *or*
- 26 (C) *uniformed or properly identified federal law enforcement officer*
27 *while such officer is engaged in the performance of such officer's duty.*
- 28 (e) Battery against a school employee is a battery, as defined in
29 subsection (a), committed against a school employee in or on any school
30 property or grounds upon which is located a building or structure used by a
31 unified school district or an accredited nonpublic school for student
32 instruction or attendance or extracurricular activities of pupils enrolled in
33 kindergarten or any of the grades one through 12 or at any regularly
34 scheduled school sponsored activity or event, while such employee is
35 engaged in the performance of such employee's duty.
- 36 (f) Battery against a mental health employee is a battery, as defined in
37 subsection (a), committed against a mental health employee by a person in
38 the custody of the secretary for aging and disability services, while such
39 employee is engaged in the performance of such employee's duty.
- 40 (g) (1) Battery is a class B person misdemeanor.
- 41 (2) Aggravated battery as defined in:
- 42 (A) Subsection (b)(1)(A) or (b)(4) is a severity level 4, person felony;
- 43 (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person

1 felony;

2 (C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person
3 felony; and

4 (D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person
5 felony.

6 (3) Battery against a law enforcement officer as defined in:

7 (A) Subsection (c)(1) is a class A person misdemeanor;

8 (B) subsection (c)(2) is a severity level 7, person felony; and

9 (C) subsection (c)(3) is a severity level 5, person felony.

10 (4) Aggravated battery against a law enforcement officer as defined
11 in:

12 (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony;
13 and

14 (B) subsection (d)(2) is a severity level 4, person felony.

15 (5) Battery against a school employee is a class A person
16 misdemeanor.

17 (6) Battery against a mental health employee is a severity level 7,
18 person felony.

19 (h) As used in this section:

20 (1) "Correctional institution" means any institution or facility under
21 the supervision and control of the secretary of corrections;

22 (2) "state correctional officer or employee" means any officer or
23 employee of the Kansas department of corrections or any independent
24 contractor, or any employee of such contractor, whose duties include
25 working at a correctional institution;

26 (3) "juvenile detention facility officer or employee" means any officer
27 or employee of a juvenile detention facility as defined in K.S.A. 2018
28 Supp. 38-2302, and amendments thereto;

29 (4) "city or county correctional officer or employee" means any
30 correctional officer or employee of the city or county or any independent
31 contractor, or any employee of such contractor, whose duties include
32 working at a city holding facility or county jail facility;

33 (5) "school employee" means any employee of a unified school
34 district or an accredited nonpublic school for student instruction or
35 attendance or extracurricular activities of pupils enrolled in kindergarten or
36 any of the grades one through 12;

37 (6) "mental health employee" means: (A) An employee of the Kansas
38 department for aging and disability services working at Larned state
39 hospital, Osawatomie state hospital, Kansas neurological institute and
40 Parsons state hospital and training center and the treatment staff as defined
41 in K.S.A. 59-29a02, and amendments thereto; and (B) contractors and
42 employees of contractors under contract to provide services to the Kansas
43 department for aging and disability services working at any such

1 institution or facility;

2 (7) "judge" means a duly elected or appointed justice of the supreme
 3 court, judge of the court of appeals, judge of any district court of Kansas,
 4 district magistrate judge or municipal court judge;

5 (8) "attorney" means a: (A) County attorney, assistant county
 6 attorney, special assistant county attorney, district attorney, assistant
 7 district attorney, special assistant district attorney, attorney general,
 8 assistant attorney general or special assistant attorney general; and (B)
 9 public defender, assistant public defender, contract counsel for the state
 10 board of indigents' defense services or an attorney who is appointed by the
 11 court to perform services for an indigent person as provided by article 45
 12 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;

13 (9) "community corrections officer" means an employee of a
 14 community correctional services program responsible for supervision of
 15 adults or juveniles as assigned by the court to community corrections
 16 supervision and any other employee of a community correctional services
 17 program that provides enhanced supervision of offenders such as house
 18 arrest and surveillance programs; ~~and~~

19 (10) "court services officer" means an employee of the Kansas
 20 judicial branch or local judicial district responsible for supervising,
 21 monitoring or writing reports relating to adults or juveniles as assigned by
 22 the court, or performing related duties as assigned by the court; *and*

23 (11) *"federal law enforcement officer" means a law enforcement*
 24 *officer employed by the United States federal government who, as part of*
 25 *such officer's duties, is permitted to make arrests and to be armed.*

26 Sec. 2. K.S.A. 2018 Supp. 38-2212 is hereby amended to read as
 27 follows: 38-2212. (a) *Principle of appropriate access.* Information
 28 contained in confidential agency records concerning a child alleged or
 29 adjudicated to be in need of care may be disclosed as provided in this
 30 section. Disclosure shall in all cases be guided by the principle of
 31 providing access only to persons or entities with a need for information
 32 that is directly related to achieving the purposes of this code.

33 (b) *Free exchange of information.* Pursuant to K.S.A. 2018 Supp. 38-
 34 2210, and amendments thereto, the secretary and juvenile intake and
 35 assessment agencies shall participate in the free exchange of information
 36 concerning a child who is alleged or adjudicated to be in need of care.

37 (c) *Necessary access.* The following persons or entities shall have
 38 access to information from agency records. Access shall be limited to
 39 information reasonably necessary to carry out their lawful responsibilities,
 40 to maintain their personal safety and the personal safety of individuals in
 41 their care, or to educate, diagnose, treat, care for or protect a child alleged
 42 to be in need of care. Information authorized to be disclosed pursuant to
 43 this subsection shall not contain information—~~which~~ *that* identifies a

1 reporter of a child who is alleged or adjudicated to be a child in need of
2 care.

3 (1) A child named in the report or records, a guardian ad litem
4 appointed for the child and the child's attorney.

5 (2) A parent or other person responsible for the welfare of a child, or
6 such person's legal representative.

7 (3) A court-appointed special advocate for a child, a citizen review
8 board or other advocate ~~which~~ that reports to the court.

9 (4) A person licensed to practice the healing arts or mental health
10 profession in order to diagnose, care for, treat or supervise: (A) A child
11 whom such service provider reasonably suspects may be in need of care;
12 (B) a member of the child's family; or (C) a person who allegedly abused
13 or neglected the child.

14 (5) A person or entity licensed or registered by the secretary of health
15 and environment or approved by the secretary for children and families to
16 care for, treat or supervise a child in need of care.

17 (6) A coroner or medical examiner when such person is determining
18 the cause of death of a child.

19 (7) The state child death review board established under K.S.A. 22a-
20 243, and amendments thereto.

21 (8) An attorney for a private party who files a petition pursuant to
22 K.S.A. 2018 Supp. 38-2233(b), and amendments thereto.

23 (9) A foster parent, prospective foster parent, permanent custodian,
24 prospective permanent custodian, adoptive parent or prospective adoptive
25 parent. In order to assist such persons in making an informed decision
26 regarding acceptance of a particular child, to help the family anticipate
27 problems ~~which~~ that may occur during the child's placement, and to help
28 the family meet the needs of the child in a constructive manner, the
29 secretary shall seek and shall provide the following information to such
30 persons as the information becomes available to the secretary:

31 (A) Strengths, needs and general behavior of the child;

32 (B) circumstances ~~which~~ that necessitated placement;

33 (C) information about the child's family and the child's relationship to
34 the family ~~which~~ that may affect the placement;

35 (D) important life experiences and relationships ~~which~~ that may
36 affect the child's feelings, behavior, attitudes or adjustment;

37 (E) medical history of the child, including third-party coverage ~~which~~
38 that may be available to the child; and

39 (F) education history, to include present grade placement, special
40 strengths and weaknesses.

41 (10) The state protection and advocacy agency as provided by K.S.A.
42 65-5603(a)(10) or K.S.A. 74-5515(a)(2)(A) and (B), and amendments
43 thereto.

1 (11) Any educational institution to the extent necessary to enable the
2 educational institution to provide the safest possible environment for its
3 pupils and employees.

4 (12) Any educator to the extent necessary to enable the educator to
5 protect the personal safety of the educator and the educator's pupils.

6 (13) Any other federal, state or local government executive branch
7 entity or any agent of such entity, having a need for such information in
8 order to carry out such entity's responsibilities under the law to protect
9 children from abuse and neglect.

10 (d) *Specified access.* The following persons or entities shall have
11 access to information contained in agency records as specified.
12 Information authorized to be disclosed pursuant to this subsection shall not
13 contain information—~~which~~ *that* identifies a reporter of a child who is
14 alleged or adjudicated to be a child in need of care.

15 (1) Information from confidential agency records of the *Kansas*
16 department for children and families, a law enforcement agency or any
17 juvenile intake and assessment worker of a child alleged or adjudicated to
18 be in need of care shall be available to members of the standing house or
19 senate committee on judiciary, house committee on corrections and
20 juvenile justice, house committee on appropriations, senate committee on
21 ways and means, legislative post audit committee and any joint committee
22 with authority to consider children's and families' issues, when carrying
23 out such member's or committee's official functions in accordance with
24 K.S.A. 75-4319, and amendments thereto, in a closed or executive
25 meeting. Except in limited conditions established by $\frac{2}{3}$ of the members of
26 such committee, records and reports received by the committee shall not
27 be further disclosed. Unauthorized disclosure may subject such member to
28 discipline or censure from the house of representatives or senate. The
29 secretary for children and families shall not summarize the outcome of
30 department actions regarding a child alleged to be a child in need of care
31 in information available to members of such committees.

32 (2) The secretary for children and families may summarize the
33 outcome of department actions regarding a child alleged to be a child in
34 need of care to a person having made such report.

35 (3) Information from confidential reports or records of a child alleged
36 or adjudicated to be a child in need of care may be disclosed to the public
37 when:

38 (A) The individuals involved or their representatives have given
39 express written consent; or

40 (B) the investigation of the abuse or neglect of the child or the filing
41 of a petition alleging a child to be in need of care has become public
42 knowledge, provided, however, that the agency shall limit disclosure to
43 confirmation of procedural details relating to the handling of the case by

1 professionals.

2 (e) *Court order.* Notwithstanding the provisions of this section, a
3 court of competent jurisdiction, after in camera inspection, may order
4 disclosure of confidential agency records pursuant to a determination that
5 the disclosure is in the best interests of the child who is the subject of the
6 reports or that the records are necessary for the proceedings of the court.
7 The court shall specify the terms of disclosure and impose appropriate
8 limitations.

9 (f) (1) Notwithstanding any other provision of law to the contrary,
10 except as provided in paragraph (6), in the event that child abuse or
11 neglect results in a child fatality or near fatality, reports or records of a
12 child alleged or adjudicated to be in need of care received by the secretary,
13 a law enforcement agency or any juvenile intake and assessment worker
14 shall become a public record and subject to disclosure pursuant to K.S.A.
15 45-215, and amendments thereto.

16 (2) Within seven days of receipt of a request in accordance with the
17 procedures adopted under K.S.A. 45-220, and amendments thereto, the
18 secretary shall notify any affected individual that an open records request
19 has been made concerning such records. The secretary or any affected
20 individual may file a motion requesting the court to prevent disclosure of
21 such record or report, or any select portion thereof. Notice of the filing of
22 such motion shall be provided to all parties requesting the records or
23 reports, and such party or parties shall have a right to hearing, upon
24 request, prior to the entry of any order on such motion. If the affected
25 individual does not file such motion within seven days of notification, and
26 the secretary has not filed a motion, the secretary shall release the reports
27 or records. If such motion is filed, the court shall consider the effect such
28 disclosure may have upon an ongoing criminal investigation, a pending
29 prosecution, or the privacy of the child, if living, or the child's siblings,
30 parents or guardians, and the public's interest in the disclosure of such
31 records or reports. The court shall make written findings on the record
32 justifying the closing of the records and shall provide a copy of the journal
33 entry to the affected parties and the individual requesting disclosure
34 pursuant to the Kansas open records act, K.S.A. 45-215 et seq., and
35 amendments thereto.

36 (3) Notwithstanding the provisions of paragraph (2), in the event that
37 child abuse or neglect results in a child fatality, the secretary shall release
38 the following information in response to an open records request made
39 pursuant to the Kansas open records act, within seven business days of
40 receipt of such request, as allowed by applicable law:

41 (A) Age and sex of the child;

42 (B) date of the fatality;

43 (C) a summary of any previous reports of abuse or neglect received

1 by the secretary involving the child, along with the findings of such
2 reports; and

3 (D) any department recommended services provided to the child.

4 (4) Notwithstanding the provisions of paragraph (2), in the event that
5 a child fatality occurs while such child was in the custody of the secretary
6 for children and families, the secretary shall release the following
7 information in response to an open records request made pursuant to the
8 Kansas open records act, within seven business days of receipt of such
9 request, as allowed by applicable law:

10 (A) Age and sex of the child;

11 (B) date of the fatality; and

12 (C) a summary of the facts surrounding the death of the child.

13 (5) For reports or records requested pursuant to this subsection, the
14 time limitations specified in this subsection shall control to the extent of
15 any inconsistency between this subsection and K.S.A. 45-218, and
16 amendments thereto. As used in this section, "near fatality" means an act
17 that, as certified by a person licensed to practice medicine and surgery,
18 places the child in serious or critical condition.

19 (6) Nothing in this subsection shall allow the disclosure of reports,
20 records or documents concerning the child and such child's biological
21 parents that were created prior to such child's adoption. Nothing herein is
22 intended to require that an otherwise privileged communication lose its
23 privileged character.

24 Sec. 3. K.S.A. 2018 Supp. 38-2232 is hereby amended to read as
25 follows: 38-2232. (a) (1) To the extent possible, when any law
26 enforcement officer takes into custody a child under the age of 18 years
27 without a court order, the child shall promptly be delivered to the custody
28 of the child's parent or other custodian unless there are reasonable grounds
29 to believe that such action would not be in the best interests of the child.

30 (2) Except as provided in subsection (b), if the child is not delivered
31 to the custody of the child's parent or other custodian, the child shall
32 promptly be delivered to a:

33 (A) (i) Shelter facility designated by the court;

34 (ii) court services officer;

35 (iii) juvenile intake and assessment worker;

36 (iv) licensed attendant care center;

37 (v) juvenile crisis intervention center after written authorization by a
38 community mental health center; or

39 (vi) other person;

40 (B) if the child is 15 years of age or younger, to a facility or person
41 designated by the secretary; or

42 (C) if the child is 16 or 17 years of age and the child has no
43 identifiable parental or family resources or shows signs of physical,

1 mental, emotional or sexual abuse, to a facility or person designated by the
2 secretary.

3 (3) If, after delivery of the child to a shelter facility, the person in
4 charge of the shelter facility at that time and the law enforcement officer
5 determine that the child will not remain in the shelter facility and if the
6 child is presently alleged, but not yet adjudicated, to be a child in need of
7 care solely pursuant to K.S.A. 2018 Supp. 38-2202(d)(9) or (d)(10), and
8 amendments thereto, the law enforcement officer shall deliver the child to
9 a ~~juvenile detention facility or other~~ secure facility, designated by the
10 court, where the child shall be detained for not more than 24 hours,
11 excluding Saturdays, Sundays, legal holidays, and days on which the
12 office of the clerk of the court is not accessible.

13 (4) No child taken into custody pursuant to this code shall be placed
14 in a ~~juvenile detention facility or other~~ secure facility, except as authorized
15 by this section and by K.S.A. 2018 Supp. 38-2242, 38-2243 and 38-2260,
16 and amendments thereto.

17 (5) It shall be the duty of the law enforcement officer to furnish to the
18 county or district attorney, without unnecessary delay, all the information
19 in the possession of the officer pertaining to the child, the child's parents or
20 other persons interested in or likely to be interested in the child and all
21 other facts and circumstances which caused the child to be taken into
22 custody.

23 (b) (1) When any law enforcement officer takes into custody any
24 child as provided in K.S.A. 2018 Supp. 38-2231(b)(2), and amendments
25 thereto, proceedings shall be initiated in accordance with the provisions of
26 the interstate compact on juveniles, K.S.A. 38-1001 et seq., and
27 amendments thereto, or K.S.A. 2018 Supp. 38-1008, and amendments
28 thereto, when effective. Any child taken into custody pursuant to the
29 interstate compact on juveniles may be detained in a juvenile detention
30 facility or other secure facility.

31 (2) When any law enforcement officer takes into custody any child as
32 provided in K.S.A. 2018 Supp. 38-2231(b)(3), and amendments thereto,
33 the law enforcement officer shall place the child in protective custody and
34 may deliver the child to a staff secure facility. The law enforcement officer
35 shall contact the department for children and families to begin an
36 assessment to determine safety, placement and treatment needs for the
37 child. Such child shall not be placed in a ~~juvenile detention facility or~~
38 ~~other~~ secure facility, except as authorized by this section and by K.S.A.
39 2018 Supp. 38-2242, 38-2243 and 38-2260, and amendments thereto.

40 (3) When any law enforcement officer takes into custody any child as
41 provided in K.S.A. 2018 Supp. 38-2231(b)(4), and amendments thereto,
42 the law enforcement officer shall place the child in protective custody and
43 may deliver the child to a juvenile crisis intervention center after written

1 authorization by a community mental health center. Such child shall not be
2 placed in a juvenile detention facility or other secure facility.

3 (c) Whenever a child under the age of 18 years is taken into custody
4 by a law enforcement officer without a court order and is thereafter placed
5 as authorized by subsection (a), the facility or person shall, upon written
6 application of the law enforcement officer, have physical custody and
7 provide care and supervision for the child. The application shall state:

8 (1) The name and address of the child, if known;

9 (2) the names and addresses of the child's parents or nearest relatives
10 and persons with whom the child has been residing, if known; and

11 (3) the officer's belief that the child is a child in need of care and that
12 there are reasonable grounds to believe that the circumstances or condition
13 of the child is such that the child would be harmed unless placed in the
14 immediate custody of the shelter facility or other person.

15 (d) A copy of the application shall be furnished by the facility or
16 person receiving the child to the county or district attorney without
17 unnecessary delay.

18 (e) The shelter facility or other person designated by the court who
19 has custody of the child pursuant to this section shall discharge the child
20 not later than 72 hours following admission, excluding Saturdays,
21 Sundays, legal holidays, and days on which the office of the clerk of the
22 court is not accessible, unless a court has entered an order pertaining to
23 temporary custody or release.

24 (f) In absence of a court order to the contrary, the county or district
25 attorney or the placing law enforcement agency shall have the authority to
26 direct the release of the child at any time.

27 (g) When any law enforcement officer takes into custody any child as
28 provided in K.S.A. 2018 Supp. 38-2231(d), and amendments thereto, the
29 child shall promptly be delivered to the school in which the child is
30 enrolled, any location designated by the school in which the child is
31 enrolled or the child's parent or other custodian.

32 Sec. 4. K.S.A. 2018 Supp. 38-2242 is hereby amended to read as
33 follows: 38-2242. (a) The court, upon verified application, may issue ex
34 parte an order directing that a child be held in protective custody and, if
35 the child has not been taken into custody, an order directing that the child
36 be taken into custody. The application shall state for each child:

37 (1) The applicant's belief that the child is a child in need of care;

38 (2) that the child is likely to sustain harm if not immediately removed
39 from the home;

40 (3) that allowing the child to remain in the home is contrary to the
41 welfare of the child; and

42 (4) the facts relied upon to support the application, including efforts
43 known to the applicant to maintain the family unit and prevent the

1 unnecessary removal of the child from the child's home, or the specific
2 facts supporting that an emergency exists which threatens the safety of the
3 child.

4 (b) (1) The order of protective custody may be issued only after the
5 court has determined there is probable cause to believe the allegations in
6 the application are true. The order shall remain in effect until the
7 temporary custody hearing provided for in K.S.A. 2018 Supp. 38-2243,
8 and amendments thereto, unless earlier rescinded by the court.

9 (2) No child shall be held in protective custody for more than 72
10 hours, excluding Saturdays, Sundays, legal holidays, and days on which
11 the office of the clerk of the court is not accessible, unless within the 72-
12 hour period a determination is made as to the necessity for temporary
13 custody in a temporary custody hearing. The time spent in custody
14 pursuant to K.S.A. 2018 Supp. 38-2232, and amendments thereto, shall be
15 included in calculating the 72-hour period. Nothing in this subsection shall
16 be construed to mean that the child must remain in protective custody for
17 72 hours. If a child is in the protective custody of the secretary, the
18 secretary shall allow at least one supervised visit between the child and the
19 parent or parents within such time period as the child is in protective
20 custody. The court may prohibit such supervised visit if the court
21 determines it is not in the best interest of the child.

22 (c) (1) Whenever the court determines the necessity for an order of
23 protective custody, the court may place the child in the protective custody
24 of:

25 (A) A parent or other person having custody of the child and may
26 enter a restraining order pursuant to subsection (e);

27 (B) a person, other than the parent or other person having custody,
28 who shall not be required to be licensed under article 5 of chapter 65 of the
29 Kansas Statutes Annotated, and amendments thereto;

30 (C) a youth residential facility;

31 (D) a shelter facility;

32 (E) a staff secure facility, notwithstanding any other provision of law,
33 if the child has been subjected to human trafficking or aggravated human
34 trafficking, as defined by K.S.A. 2018 Supp. 21-5426, and amendments
35 thereto, or commercial sexual exploitation of a child, as defined by K.S.A.
36 2018 Supp. 21-6422, and amendments thereto, or the child committed an
37 act which, if committed by an adult, would constitute a violation of K.S.A.
38 2018 Supp. 21-6419, and amendments thereto;

39 (F) after written authorization by a community mental health center, a
40 juvenile crisis intervention center as described in K.S.A. 65-536, and
41 amendments thereto; or

42 (G) the secretary, if the child is 15 years of age or younger, or 16 or
43 17 years of age if the child has no identifiable parental or family resources

1 or shows signs of physical, mental, emotional or sexual abuse.

2 (2) If the secretary presents the court with a plan to provide services
3 to a child or family which the court finds will assure the safety of the
4 child, the court may only place the child in the protective custody of the
5 secretary until the court finds the services are in place. The court shall
6 have the authority to require any person or entity agreeing to participate in
7 the plan to perform as set out in the plan. When the child is placed in the
8 protective custody of the secretary, the secretary shall have the
9 discretionary authority to place the child with a parent or to make other
10 suitable placement for the child. When the child is placed in the temporary
11 custody of the secretary and the child has been subjected to human
12 trafficking or aggravated human trafficking, as defined by K.S.A. 2018
13 Supp. 21-5426, and amendments thereto, or commercial sexual
14 exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and
15 amendments thereto, or the child committed an act which, if committed by
16 an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419, and
17 amendments thereto, the secretary shall have the discretionary authority to
18 place the child in a staff secure facility, notwithstanding any other
19 provision of law. When the child is presently alleged, but not yet
20 adjudicated, to be a child in need of care solely pursuant to K.S.A. 2018
21 Supp. 38-2202(d)(9) or (d)(10), and amendments thereto, the child may be
22 placed in a ~~juvenile detention facility or other~~ secure facility pursuant to an
23 order of protective custody for a period of not to exceed 24 hours,
24 excluding Saturdays, Sundays, legal holidays, and days on which the
25 office of the clerk of the court is not accessible.

26 (d) The order of protective custody shall be served pursuant to K.S.A.
27 2018 Supp. 38-2237(a), and amendments thereto, on the child's parents
28 and any other person having legal custody of the child. The order shall
29 prohibit the removal of the child from the court's jurisdiction without the
30 court's permission.

31 (e) If the court issues an order of protective custody, the court may
32 also enter an order restraining any alleged perpetrator of physical, sexual,
33 mental or emotional abuse of the child from residing in the child's home;
34 visiting, contacting, harassing or intimidating the child, other family
35 member or witness; or attempting to visit, contact, harass or intimidate the
36 child, other family member or witness. Such restraining order shall be
37 served by personal service pursuant to K.S.A. 2018 Supp. 38-2237(a), and
38 amendments thereto, on any alleged perpetrator to whom the order is
39 directed.

40 (f) (1) The court shall not enter the initial order removing a child
41 from the custody of a parent pursuant to this section unless the court first
42 finds probable cause that: (A) (i) The child is likely to sustain harm if not
43 immediately removed from the home;

1 (ii) allowing the child to remain in home is contrary to the welfare of
2 the child; or

3 (iii) immediate placement of the child is in the best interest of the
4 child; and

5 (B) reasonable efforts have been made to maintain the family unit and
6 prevent the unnecessary removal of the child from the child's home or that
7 an emergency exists which threatens the safety to the child.

8 (2) Such findings shall be included in any order entered by the court.

9 If the child is placed in the custody of the secretary, the court shall provide
10 the secretary with a written copy of any orders entered upon making the
11 order.

12 Sec. 5. K.S.A. 2018 Supp. 38-2243 is hereby amended to read as
13 follows: 38-2243. (a) Upon notice and hearing, the court may issue an
14 order directing who shall have temporary custody and may modify the
15 order during the pendency of the proceedings as will best serve the child's
16 welfare.

17 (b) A hearing pursuant to this section shall be held within 72 hours,
18 excluding Saturdays, Sundays, legal holidays, and days on which the
19 office of the clerk of the court is not accessible, following a child having
20 been taken into protective custody.

21 (c) Whenever it is determined that a temporary custody hearing is
22 required, the court shall immediately set the time and place for the hearing.
23 Notice of a temporary custody hearing shall be given to all parties and
24 interested parties.

25 (d) Notice of the temporary custody hearing shall be given at least 24
26 hours prior to the hearing. The court may continue the hearing to afford the
27 24 hours prior notice or, with the consent of the party or interested party,
28 proceed with the hearing at the designated time. If an order of temporary
29 custody is entered and the parent or other person having custody of the
30 child has not been notified of the hearing, did not appear or waive
31 appearance and requests a rehearing, the court shall rehear the matter
32 without unnecessary delay.

33 (e) Oral notice may be used for giving notice of a temporary custody
34 hearing where there is insufficient time to give written notice. Oral notice
35 is completed upon filing a certificate of oral notice.

36 (f) The court may enter an order of temporary custody after
37 determining there is probable cause to believe that the: (1) Child is
38 dangerous to self or to others; (2) child is not likely to be available within
39 the jurisdiction of the court for future proceedings; (3) health or welfare of
40 the child may be endangered without further care; (4) child has been
41 subjected to human trafficking or aggravated human trafficking, as defined
42 by K.S.A. 2018 Supp. 21-5426, and amendments thereto, or commercial
43 sexual exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422,

1 and amendments thereto; (5) child is experiencing a mental health crisis
2 and is in need of treatment; or (6) child committed an act which, if
3 committed by an adult, would constitute a violation of K.S.A. 2018 Supp.
4 21-6419, and amendments thereto.

5 (g) (1) Whenever the court determines the necessity for an order of
6 temporary custody the court may place the child in the temporary custody
7 of:

8 (A) A parent or other person having custody of the child and may
9 enter a restraining order pursuant to subsection (h);

10 (B) a person, other than the parent or other person having custody,
11 who shall not be required to be licensed under article 5 of chapter 65 of the
12 Kansas Statutes Annotated, and amendments thereto;

13 (C) a youth residential facility;

14 (D) a shelter facility;

15 (E) a staff secure facility, notwithstanding any other provision of law,
16 if the child has been subjected to human trafficking or aggravated human
17 trafficking, as defined by K.S.A. 2018 Supp. 21-5426, and amendments
18 thereto, or commercial sexual exploitation of a child, as defined by K.S.A.
19 2018 Supp. 21-6422, and amendments thereto, or the child committed an
20 act which, if committed by an adult, would constitute a violation of K.S.A.
21 2018 Supp. 21-6419, and amendments thereto;

22 (F) after written authorization by a community mental health center, a
23 juvenile crisis intervention center, as described in K.S.A. 65-536, and
24 amendments thereto; or

25 (G) the secretary, if the child is 15 years of age or younger, or 16 or
26 17 years of age if the child has no identifiable parental or family resources
27 or shows signs of physical, mental, emotional or sexual abuse.

28 (2) If the secretary presents the court with a plan to provide services
29 to a child or family which the court finds will assure the safety of the
30 child, the court may only place the child in the temporary custody of the
31 secretary until the court finds the services are in place. The court shall
32 have the authority to require any person or entity agreeing to participate in
33 the plan to perform as set out in the plan. When the child is placed in the
34 temporary custody of the secretary, the secretary shall have the
35 discretionary authority to place the child with a parent or to make other
36 suitable placement for the child. When the child is placed in the temporary
37 custody of the secretary and the child has been subjected to human
38 trafficking or aggravated human trafficking, as defined by K.S.A. 2018
39 Supp. 21-5426, and amendments thereto, or commercial sexual
40 exploitation of a child, as defined by K.S.A. 2018 Supp. 21-6422, and
41 amendments thereto, or the child committed an act which, if committed by
42 an adult, would constitute a violation of K.S.A. 2018 Supp. 21-6419, and
43 amendments thereto, the secretary shall have the discretionary authority to

1 place the child in a staff secure facility, notwithstanding any other
2 provision of law. When the child is presently alleged, but not yet
3 adjudicated to be a child in need of care solely pursuant to K.S.A. 2018
4 Supp. 38-2202(d)(9) or (d)(10), and amendments thereto, the child may be
5 placed in a ~~juvenile detention facility or other~~ secure facility, but the total
6 amount of time that the child may be held in such facility under this
7 section and K.S.A. 2018 Supp. 38-2242, and amendments thereto, shall
8 not exceed 24 hours, excluding Saturdays, Sundays, legal holidays, and
9 days on which the office of the clerk of the court is not accessible. The
10 order of temporary custody shall remain in effect until modified or
11 rescinded by the court or an adjudication order is entered but not
12 exceeding 60 days, unless good cause is shown and stated on the record.

13 (h) If the court issues an order of temporary custody, the court may
14 also enter an order restraining any alleged perpetrator of physical, sexual,
15 mental or emotional abuse of the child from residing in the child's home;
16 visiting, contacting, harassing or intimidating the child; or attempting to
17 visit, contact, harass or intimidate the child, other family members or
18 witnesses. Such restraining order shall be served by personal service
19 pursuant to K.S.A. 2018 Supp. 38-2237(a), and amendments thereto, on
20 any alleged perpetrator to whom the order is directed.

21 (i) (1) The court shall not enter the initial order removing a child from
22 the custody of a parent pursuant to this section unless the court first finds
23 probable cause that: (A) (i) The child is likely to sustain harm if not
24 immediately removed from the home;

25 (ii) allowing the child to remain in home is contrary to the welfare of
26 the child; or

27 (iii) immediate placement of the child is in the best interest of the
28 child; and

29 (B) reasonable efforts have been made to maintain the family unit and
30 prevent the unnecessary removal of the child from the child's home or that
31 an emergency exists which threatens the safety to the child.

32 (2) Such findings shall be included in any order entered by the court.
33 If the child is placed in the custody of the secretary, upon making the order
34 the court shall provide the secretary with a written copy.

35 (j) If the court enters an order of temporary custody that provides for
36 placement of the child with a person other than the parent, the court shall
37 make a child support determination pursuant to K.S.A. 2018 Supp. 38-
38 2277, and amendments thereto.

39 Sec. 6. K.S.A. 2018 Supp. 39-1431 is hereby amended to read as
40 follows: 39-1431. (a) Any person who is licensed to practice any branch of
41 the healing arts, a licensed psychologist, a licensed master level
42 psychologist, a licensed clinical psychotherapist, the chief administrative
43 officer of a medical care facility, a teacher, a licensed social worker, a

1 licensed professional nurse, a licensed practical nurse, a licensed dentist, a
2 licensed marriage and family therapist, a licensed clinical marriage and
3 family therapist, licensed professional counselor, licensed clinical
4 professional counselor, registered alcohol and drug abuse counselor, a law
5 enforcement officer, an emergency medical services attendant, a case
6 manager, a rehabilitation counselor, a bank trust officer or any other
7 officers of financial institutions, a legal representative, a governmental
8 assistance provider, an owner or operator of a residential care facility, an
9 independent living counselor and the chief administrative officer of a
10 licensed home health agency, the chief administrative officer of an adult
11 family home and the chief administrative officer of a provider of
12 community services and affiliates thereof operated or funded by the
13 Kansas department for aging and disability services or licensed under
14 K.S.A. 2018 Supp. 39-2001 et seq., and amendments thereto, who has
15 reasonable cause to believe that an adult is being or has been abused,
16 neglected or exploited or is in need of protective services shall report,
17 immediately from receipt of the information, such information or cause a
18 report of such information to be made in any reasonable manner. An
19 employee of a domestic violence center shall not be required to report
20 information or cause a report of information to be made under this
21 subsection. Other state agencies receiving reports that are to be referred to
22 the Kansas department for children and families and the appropriate law
23 enforcement agency, shall submit the report to the department and agency
24 within six hours, during normal work days, of receiving the information.
25 Reports shall be made to the Kansas department for children and families
26 during the normal working week days and hours of operation. Reports
27 shall be made to law enforcement agencies during the time the Kansas
28 department for children and families is not in operation. Law enforcement
29 shall submit the report and appropriate information to the Kansas
30 department for children and families on the first working day that the
31 Kansas department for children and families is in operation after receipt of
32 such information.

33 (b) The report made pursuant to subsection (a) shall contain the name
34 and address of the person making the report and of the caretaker caring for
35 the involved adult, the name and address of the involved adult, information
36 regarding the nature and extent of the abuse, neglect or exploitation, the
37 name of the next of kin of the involved adult, if known, and any other
38 information ~~which~~ *that* the person making the report believes might be
39 helpful in the investigation of the case and the protection of the involved
40 adult.

41 (c) Any other person, not listed in subsection (a), having reasonable
42 cause to suspect or believe that an adult is being or has been abused,
43 neglected or exploited or is in need of protective services may report such

1 information to the Kansas department for children and families. Reports
2 shall be made to law enforcement agencies during the time the Kansas
3 department for children and families is not in operation.

4 (d) A person making a report under subsection (a) shall not be
5 required to make a report under K.S.A. 39-1401 through 39-1410, and
6 amendments thereto.

7 (e) Any person required to report information or cause a report of
8 information to be made under subsection (a) who knowingly fails to make
9 such report or cause such report not to be made shall be guilty of a class B
10 misdemeanor.

11 (f) Notice of the requirements of this act and the department to which
12 a report is to be made under this act shall be posted in a conspicuous
13 public place in every adult family home as defined in K.S.A. 39-1501, and
14 amendments thereto, and every provider of community services and
15 affiliates thereof operated or funded by the Kansas department for aging
16 and disability services or other facility licensed under K.S.A. 2018 Supp.
17 39-2001 et seq., and amendments thereto, and other institutions included in
18 subsection (a).

19 Sec. 7. K.S.A. 2016 Supp. 41-102, as amended by section 2 of
20 chapter 99 of the 2018 Session Laws of Kansas, is hereby amended to read
21 as follows: 41-102. As used in this act, unless the context clearly requires
22 otherwise:

23 (a) "Alcohol" means the product of distillation of any fermented
24 liquid, whether rectified or diluted, whatever its origin, and includes
25 synthetic ethyl alcohol but does not include denatured alcohol or wood
26 alcohol.

27 (b) "Alcoholic candy" means:

28 (1) For purposes of manufacturing, any candy or other confectionery
29 product with an alcohol content greater than 0.5% alcohol by volume; and

30 (2) for purposes of sale at retail, any candy or other confectionery
31 product with an alcohol content greater than 1% alcohol by volume.

32 (c) "Alcoholic liquor" means alcohol, spirits, wine, beer, alcoholic
33 candy and every liquid or solid, patented or not, containing alcohol, spirits,
34 wine or beer and capable of being consumed by a human being, but shall
35 not include any cereal malt beverage.

36 (d) "Beer" means a beverage, containing more than 3.2% alcohol by
37 weight, obtained by alcoholic fermentation of an infusion or concoction of
38 barley, or other grain, malt and hops in water and includes beer, ale, stout,
39 lager beer, porter and similar beverages having such alcoholic content.

40 (e) "Caterer" has the meaning provided by K.S.A. 41-2601, and
41 amendments thereto.

42 (f) "Cereal malt beverage" has the meaning provided by K.S.A. 41-
43 2701, and amendments thereto.

1 (g) "Club" has the meaning provided by K.S.A. 41-2601, and
2 amendments thereto.

3 (h) "Director" means the director of alcoholic beverage control of the
4 department of revenue.

5 (i) "Distributor" means the person importing or causing to be
6 imported into the state, or purchasing or causing to be purchased within
7 the state, alcoholic liquor for sale or resale to retailers licensed under this
8 act or cereal malt beverage for sale or resale to retailers licensed under
9 K.S.A. 41-2702, and amendments thereto.

10 (j) "Domestic beer" means beer which contains not more than 15%
11 alcohol by weight and which is manufactured in this state.

12 (k) "Domestic fortified wine" means wine which contains more than
13 14%, but not more than 20% alcohol by volume and which is
14 manufactured in this state.

15 (l) "Domestic table wine" means wine which contains not more than
16 14% alcohol by volume and which is manufactured without rectification or
17 fortification in this state.

18 (m) "Drinking establishment" has the meaning provided by K.S.A.
19 41-2601, and amendments thereto.

20 (n) "Farm winery" means a winery licensed by the director to
21 manufacture, store and sell domestic table wine and domestic fortified
22 wine.

23 (o) "Hard cider" means any alcoholic beverage that:

24 (1) Contains less than 8.5% alcohol by volume;

25 (2) has a carbonation level that does not exceed 6.4 grams per liter;
26 and

27 (3) is obtained by the normal alcoholic fermentation of the juice of
28 sound, ripe apples or pears, including such beverages containing sugar
29 added for the purpose of correcting natural deficiencies.

30 (p) "Manufacture" means to distill, rectify, ferment, brew, make, mix,
31 concoct, process, blend, bottle or fill an original package with any
32 alcoholic liquor, beer or cereal malt beverage.

33 (q) (1) "Manufacturer" means every brewer, fermenter, distiller,
34 rectifier, wine maker, blender, processor, bottler or person who fills or
35 refills an original package and others engaged in brewing, fermenting,
36 distilling, rectifying or bottling alcoholic liquor, beer or cereal malt
37 beverage.

38 (2) "Manufacturer" does not include a microbrewery, microdistillery
39 or a farm winery.

40 (r) "Microbrewery" means a brewery licensed by the director to
41 manufacture, store and sell domestic beer and hard cider.

42 (s) "Microdistillery" means a facility which produces spirits from any
43 source or substance that is licensed by the director to manufacture, store

1 and sell spirits.

2 (t) "Minor" means any person under 21 years of age.

3 (u) "Nonbeverage user" means any manufacturer of any of the
4 products set forth and described in K.S.A. 41-501, and amendments
5 thereto, when the products contain alcohol or wine, and all laboratories
6 using alcohol for nonbeverage purposes.

7 (v) "Original package" means any bottle, flask, jug, can, cask, barrel,
8 keg, hogshead or other receptacle or container whatsoever, used, corked or
9 capped, sealed and labeled by the manufacturer of alcoholic liquor, to
10 contain and to convey any alcoholic liquor. Original container does not
11 include a sleeve.

12 (w) "Person" means any natural person, corporation, partnership, trust
13 or association.

14 (x) "Powdered alcohol" means alcohol that is prepared in a powdered
15 or crystal form for either direct use or for reconstitution in a nonalcoholic
16 liquid.

17 (y) "Primary American source of supply" means the manufacturer, the
18 owner of alcoholic liquor at the time it becomes a marketable product or
19 the manufacturer's or owner's exclusive agent who, if the alcoholic liquor
20 cannot be secured directly from such manufacturer or owner by American
21 wholesalers, is the source closest to such manufacturer or owner in the
22 channel of commerce from which the product can be secured by American
23 wholesalers.

24 (z) (1) "Retailer" means a person who is licensed under the Kansas
25 liquor control act and sells at retail, or offers for sale at retail, alcoholic
26 liquors or cereal malt beverages.

27 (2) "Retailer" does not include a microbrewery, microdistillery or a
28 farm winery.

29 (aa) "Sale" means any transfer, exchange or barter in any manner or
30 by any means whatsoever for a consideration and includes all sales made
31 by any person, whether principal, proprietor, agent, servant or employee.

32 (bb) "Salesperson" means any natural person who:

33 (1) Procures or seeks to procure an order, bargain, contract or
34 agreement for the sale of alcoholic liquor or cereal malt beverage; or

35 (2) is engaged in promoting the sale of alcoholic liquor or cereal malt
36 beverage, or in promoting the business of any person, firm or corporation
37 engaged in the manufacturing and selling of alcoholic liquor or cereal malt
38 beverage, whether the seller resides within the state of Kansas and sells to
39 licensed buyers within the state of Kansas, or whether the seller resides
40 without the state of Kansas and sells to licensed buyers within the state of
41 Kansas.

42 (cc) "Sample" means a serving of alcoholic liquor that contains not
43 more than: (1) One-half ounce of distilled spirits; (2) one ounce of wine;

1 or (3) two ounces of beer or cereal malt beverage. A sample of a mixed
2 alcoholic beverage shall contain not more than ½ ounce of distilled
3 spirits.

4 (dd) "Secretary" means the secretary of revenue.

5 ~~(dd)~~(ee) (1) "Sell at retail" and "sale at retail" refer to and mean sales
6 for use or consumption and not for resale in any form and sales to clubs,
7 licensed drinking establishments, licensed caterers or holders of temporary
8 permits.

9 (2) "Sell at retail" and "sale at retail" do not refer to or mean sales by
10 a distributor, a microbrewery, a farm winery, a licensed club, a licensed
11 drinking establishment, a licensed caterer or a holder of a temporary
12 permit.

13 ~~(ee)~~(ff) "To sell" includes to solicit or receive an order for, to keep or
14 expose for sale and to keep with intent to sell.

15 ~~(ff)~~(gg) "Sleeve" means a package of two or more 50-milliliter (3.2-
16 fluid-ounce) containers of spirits.

17 ~~(gg)~~(hh) "Spirits" means any beverage which contains alcohol
18 obtained by distillation, mixed with water or other substance in solution,
19 and includes brandy, rum, whiskey, gin or other spirituous liquors, and
20 such liquors when rectified, blended or otherwise mixed with alcohol or
21 other substances.

22 ~~(hh)~~(ii) "Supplier" means a manufacturer of alcoholic liquor or cereal
23 malt beverage or an agent of such manufacturer, other than a salesperson.

24 ~~(ii)~~(jj) "Temporary permit" has the meaning provided by K.S.A. 41-
25 2601, and amendments thereto.

26 ~~(jj)~~(kk) "Wine" means any alcoholic beverage obtained by the normal
27 alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or
28 other agricultural products, including such beverages containing added
29 alcohol or spirits or containing sugar added for the purpose of correcting
30 natural deficiencies. The term "wine" shall include hard cider and any
31 other product that is commonly known as a subset of wine.

32 Sec. 8. K.S.A. 2018 Supp. 79-32,117 is hereby amended to read as
33 follows: 79-32,117. (a) The Kansas adjusted gross income of an individual
34 means such individual's federal adjusted gross income for the taxable year,
35 with the modifications specified in this section.

36 (b) There shall be added to federal adjusted gross income:

37 (i) Interest income less any related expenses directly incurred in the
38 purchase of state or political subdivision obligations, to the extent that the
39 same is not included in federal adjusted gross income, on obligations of
40 any state or political subdivision thereof, but to the extent that interest
41 income on obligations of this state or a political subdivision thereof issued
42 prior to January 1, 1988, is specifically exempt from income tax under the
43 laws of this state authorizing the issuance of such obligations, it shall be

1 excluded from computation of Kansas adjusted gross income whether or
2 not included in federal adjusted gross income. Interest income on
3 obligations of this state or a political subdivision thereof issued after
4 December 31, 1987, shall be excluded from computation of Kansas
5 adjusted gross income whether or not included in federal adjusted gross
6 income.

7 (ii) Taxes on or measured by income or fees or payments in lieu of
8 income taxes imposed by this state or any other taxing jurisdiction to the
9 extent deductible in determining federal adjusted gross income and not
10 credited against federal income tax. This paragraph shall not apply to taxes
11 imposed under the provisions of K.S.A. 79-1107 or 79-1108, and
12 amendments thereto, for privilege tax year 1995, and all such years
13 thereafter.

14 (iii) The federal net operating loss deduction, except that the federal
15 net operating loss deduction shall not be added to an individual's federal
16 adjusted gross income for tax years beginning after December 31, 2016.

17 (iv) Federal income tax refunds received by the taxpayer if the
18 deduction of the taxes being refunded resulted in a tax benefit for Kansas
19 income tax purposes during a prior taxable year. Such refunds shall be
20 included in income in the year actually received regardless of the method
21 of accounting used by the taxpayer. For purposes hereof, a tax benefit shall
22 be deemed to have resulted if the amount of the tax had been deducted in
23 determining income subject to a Kansas income tax for a prior year
24 regardless of the rate of taxation applied in such prior year to the Kansas
25 taxable income, but only that portion of the refund shall be included as
26 bears the same proportion to the total refund received as the federal taxes
27 deducted in the year to which such refund is attributable bears to the total
28 federal income taxes paid for such year. For purposes of the foregoing
29 sentence, federal taxes shall be considered to have been deducted only to
30 the extent such deduction does not reduce Kansas taxable income below
31 zero.

32 (v) The amount of any depreciation deduction or business expense
33 deduction claimed on the taxpayer's federal income tax return for any
34 capital expenditure in making any building or facility accessible to the
35 handicapped, for which expenditure the taxpayer claimed the credit
36 allowed by K.S.A. 79-32,177, and amendments thereto.

37 (vi) Any amount of designated employee contributions picked up by
38 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,
39 and amendments thereto.

40 (vii) The amount of any charitable contribution made to the extent the
41 same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-
42 32,196, and amendments thereto.

43 (viii) The amount of any costs incurred for improvements to a swine

1 facility, claimed for deduction in determining federal adjusted gross
2 income, to the extent the same is claimed as the basis for any credit
3 allowed pursuant to K.S.A. 2018 Supp. 79-32,204, and amendments
4 thereto.

5 (ix) The amount of any ad valorem taxes and assessments paid and
6 the amount of any costs incurred for habitat management or construction
7 and maintenance of improvements on real property, claimed for deduction
8 in determining federal adjusted gross income, to the extent the same is
9 claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203,
10 and amendments thereto.

11 (x) Amounts received as nonqualified withdrawals, as defined by
12 K.S.A. 2018 Supp. 75-643, and amendments thereto, if, at the time of
13 contribution to a family postsecondary education savings account, such
14 amounts were subtracted from the federal adjusted gross income pursuant
15 to K.S.A. 79-32,117(c)(xv), and amendments thereto, or if such amounts
16 are not already included in the federal adjusted gross income.

17 (xi) The amount of any contribution made to the same extent the
18 same is claimed as the basis for the credit allowed pursuant to K.S.A. 74-
19 50,154, and amendments thereto.

20 (xii) For taxable years commencing after December 31, 2004,
21 amounts received as withdrawals not in accordance with the provisions of
22 K.S.A. 74-50,204, and amendments thereto, if, at the time of contribution
23 to an individual development account, such amounts were subtracted from
24 the federal adjusted gross income pursuant to subsection (c)(xiii), or if
25 such amounts are not already included in the federal adjusted gross
26 income.

27 (xiii) The amount of any expenditures claimed for deduction in
28 determining federal adjusted gross income, to the extent the same is
29 claimed as the basis for any credit allowed pursuant to K.S.A. 2018 Supp.
30 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

31 (xiv) The amount of any amortization deduction claimed in
32 determining federal adjusted gross income to the extent the same is
33 claimed for deduction pursuant to K.S.A. 2018 Supp. 79-32,221, and
34 amendments thereto.

35 (xv) The amount of any expenditures claimed for deduction in
36 determining federal adjusted gross income, to the extent the same is
37 claimed as the basis for any credit allowed pursuant to K.S.A. 2018 Supp.
38 79-32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233
39 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-
40 32,248 or 79-32,251 through 79-32,254, and amendments thereto.

41 (xvi) The amount of any amortization deduction claimed in
42 determining federal adjusted gross income to the extent the same is
43 claimed for deduction pursuant to K.S.A. 2018 Supp. 79-32,227, 79-

1 32,232, 79-32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments
2 thereto.

3 (xvii) The amount of any amortization deduction claimed in
4 determining federal adjusted gross income to the extent the same is
5 claimed for deduction pursuant to K.S.A. 2018 Supp. 79-32,256, and
6 amendments thereto.

7 (xviii) For taxable years commencing after December 31, 2006, the
8 amount of any ad valorem or property taxes and assessments paid to a state
9 other than Kansas or local government located in a state other than Kansas
10 by a taxpayer who resides in a state other than Kansas, when the law of
11 such state does not allow a resident of Kansas who earns income in such
12 other state to claim a deduction for ad valorem or property taxes or
13 assessments paid to a political subdivision of the state of Kansas in
14 determining taxable income for income tax purposes in such other state, to
15 the extent that such taxes and assessments are claimed as an itemized
16 deduction for federal income tax purposes.

17 (xix) For taxable years beginning after December 31, 2012, and
18 ending before January 1, 2017, the amount of any: (1) Loss from business
19 as determined under the federal internal revenue code and reported from
20 schedule C and on line 12 of the taxpayer's form 1040 federal individual
21 income tax return; (2) loss from rental real estate, royalties, partnerships, S
22 corporations, except those with wholly owned subsidiaries subject to the
23 Kansas privilege tax, estates, trusts, residual interest in real estate
24 mortgage investment conduits and net farm rental as determined under the
25 federal internal revenue code and reported from schedule E and on line 17
26 of the taxpayer's form 1040 federal individual income tax return; and (3)
27 farm loss as determined under the federal internal revenue code and
28 reported from schedule F and on line 18 of the taxpayer's form 1040
29 federal income tax return; all to the extent deducted or subtracted in
30 determining the taxpayer's federal adjusted gross income. For purposes of
31 this subsection, references to the federal form 1040 and federal schedule
32 C, schedule E, and schedule F, shall be to such form and schedules as they
33 existed for tax year 2011, and as revised thereafter by the internal revenue
34 service.

35 (xx) For taxable years beginning after December 31, 2012, and
36 ending before January 1, 2017, the amount of any deduction for self-
37 employment taxes under section 164(f) of the federal internal revenue
38 code as in effect on January 1, 2012, and amendments thereto, in
39 determining the federal adjusted gross income of an individual taxpayer, to
40 the extent the deduction is attributable to income reported on schedule C,
41 E or F and on line 12, 17 or 18 of the taxpayer's form 1040 federal income
42 tax return.

43 (xxi) For taxable years beginning after December 31, 2012, and

1 ending before January 1, 2017, the amount of any deduction for pension,
2 profit sharing, and annuity plans of self-employed individuals under
3 section 62(a)(6) of the federal internal revenue code as in effect on January
4 1, 2012, and amendments thereto, in determining the federal adjusted gross
5 income of an individual taxpayer.

6 (xxii) For taxable years beginning after December 31, 2012, and
7 ending before January 1, 2017, the amount of any deduction for health
8 insurance under section 162(l) of the federal internal revenue code as in
9 effect on January 1, 2012, and amendments thereto, in determining the
10 federal adjusted gross income of an individual taxpayer.

11 (xxiii) For taxable years beginning after December 31, 2012, and
12 ending before January 1, 2017, the amount of any deduction for domestic
13 production activities under section 199 of the federal internal revenue code
14 as in effect on January 1, 2012, and amendments thereto, in determining
15 the federal adjusted gross income of an individual taxpayer.

16 (xxiv) For taxable years commencing after December 31, 2013, that
17 portion of the amount of any expenditure deduction claimed in
18 determining federal adjusted gross income for expenses paid for medical
19 care of the taxpayer or the taxpayer's spouse or dependents when such
20 expenses were paid or incurred for an abortion, or for a health benefit plan,
21 as defined in K.S.A. 65-6731, and amendments thereto, for the purchase of
22 an optional rider for coverage of abortion in accordance with K.S.A. 2018
23 Supp. 40-2,190, and amendments thereto, to the extent that such taxes and
24 assessments are claimed as an itemized deduction for federal income tax
25 purposes.

26 (xxv) For taxable years commencing after December 31, 2013, that
27 portion of the amount of any expenditure deduction claimed in
28 determining federal adjusted gross income for expenses paid by a taxpayer
29 for health care when such expenses were paid or incurred for abortion
30 coverage, a health benefit plan, as defined in K.S.A. 65-6731, and
31 amendments thereto, when such expenses were paid or incurred for
32 abortion coverage or amounts contributed to health savings accounts for
33 such taxpayer's employees for the purchase of an optional rider for
34 coverage of abortion in accordance with K.S.A. 2018 Supp. 40-2,190, and
35 amendments thereto, to the extent that such taxes and assessments are
36 claimed as a deduction for federal income tax purposes.

37 (xxvi) For all taxable years beginning after December 31, 2016, the
38 amount of any charitable contribution made to the extent the same is
39 claimed as the basis for the credit allowed pursuant to K.S.A. 72-99a07,
40 and amendments thereto, and is also claimed as an itemized deduction for
41 federal income tax purposes.

42 (c) There shall be subtracted from federal adjusted gross income:

43 (i) Interest or dividend income on obligations or securities of any

1 authority, commission or instrumentality of the United States and its
2 possessions less any related expenses directly incurred in the purchase of
3 such obligations or securities, to the extent included in federal adjusted
4 gross income but exempt from state income taxes under the laws of the
5 United States.

6 (ii) Any amounts received which are included in federal adjusted
7 gross income but which are specifically exempt from Kansas income
8 taxation under the laws of the state of Kansas.

9 (iii) The portion of any gain or loss from the sale or other disposition
10 of property having a higher adjusted basis for Kansas income tax purposes
11 than for federal income tax purposes on the date such property was sold or
12 disposed of in a transaction in which gain or loss was recognized for
13 purposes of federal income tax that does not exceed such difference in
14 basis, but if a gain is considered a long-term capital gain for federal
15 income tax purposes, the modification shall be limited to that portion of
16 such gain which is included in federal adjusted gross income.

17 (iv) The amount necessary to prevent the taxation under this act of
18 any annuity or other amount of income or gain which was properly
19 included in income or gain and was taxed under the laws of this state for a
20 taxable year prior to the effective date of this act, as amended, to the
21 taxpayer, or to a decedent by reason of whose death the taxpayer acquired
22 the right to receive the income or gain, or to a trust or estate from which
23 the taxpayer received the income or gain.

24 (v) The amount of any refund or credit for overpayment of taxes on
25 or measured by income or fees or payments in lieu of income taxes
26 imposed by this state, or any taxing jurisdiction, to the extent included in
27 gross income for federal income tax purposes.

28 (vi) Accumulation distributions received by a taxpayer as a
29 beneficiary of a trust to the extent that the same are included in federal
30 adjusted gross income.

31 (vii) Amounts received as annuities under the federal civil service
32 retirement system from the civil service retirement and disability fund and
33 other amounts received as retirement benefits in whatever form which
34 were earned for being employed by the federal government or for service
35 in the armed forces of the United States.

36 (viii) Amounts received by retired railroad employees as a
37 supplemental annuity under the provisions of 45 U.S.C. §§ 228b (a) and
38 228c (a)(1) et seq.

39 (ix) Amounts received by retired employees of a city and by retired
40 employees of any board of such city as retirement allowances pursuant to
41 K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter
42 ordinance exempting a city from the provisions of K.S.A. 13-14,106, and
43 amendments thereto.

1 (x) For taxable years beginning after December 31, 1976, the amount
2 of the federal tentative jobs tax credit disallowance under the provisions of
3 26 U.S.C. § 280 C. For taxable years ending after December 31, 1978, the
4 amount of the targeted jobs tax credit and work incentive credit
5 disallowances under 26 U.S.C. § 280 C.

6 (xi) For taxable years beginning after December 31, 1986, dividend
7 income on stock issued by Kansas venture capital, inc.

8 (xii) For taxable years beginning after December 31, 1989, amounts
9 received by retired employees of a board of public utilities as pension and
10 retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249,
11 and amendments thereto.

12 (xiii) For taxable years beginning after December 31, 2004, amounts
13 contributed to and the amount of income earned on contributions deposited
14 to an individual development account under K.S.A. 74-50,201 et seq., and
15 amendments thereto.

16 (xiv) For all taxable years commencing after December 31, 1996, that
17 portion of any income of a bank organized under the laws of this state or
18 any other state, a national banking association organized under the laws of
19 the United States, an association organized under the savings and loan
20 code of this state or any other state, or a federal savings association
21 organized under the laws of the United States, for which an election as an
22 S corporation under subchapter S of the federal internal revenue code is in
23 effect, which accrues to the taxpayer who is a stockholder of such
24 corporation and which is not distributed to the stockholders as dividends of
25 the corporation. For taxable years beginning after December 31, 2012, and
26 ending before January 1, 2017, the amount of modification under this
27 subsection shall exclude the portion of income or loss reported on schedule
28 E and included on line 17 of the taxpayer's form 1040 federal individual
29 income tax return.

30 (xv) For all taxable years beginning after December 31, ~~2006~~ 2017,
31 *the cumulative* amounts not exceeding \$3,000, or \$6,000 for a married
32 couple filing a joint return, for each designated beneficiary ~~which~~ *that* are
33 contributed to: (1) A family postsecondary education savings account
34 established under the Kansas postsecondary education savings program or
35 a qualified tuition program established and maintained by another state or
36 agency or instrumentality thereof pursuant to section 529 of the internal
37 revenue code of 1986, as amended, for the purpose of paying the qualified
38 higher education expenses of a designated beneficiary ~~at an institution of~~
39 ~~postsecondary education~~; or (2) *an achieving a better life experience*
40 *(ABLE) account established under the Kansas ABLE savings program or a*
41 *qualified ABLE program established and maintained by another state or*
42 *agency or instrumentality thereof pursuant to section 529A of the internal*
43 *revenue code of 1986, as amended, for the purpose of saving private funds*

1 *to support an individual with a disability.* The terms and phrases used in
2 this paragraph shall have the meaning respectively ascribed thereto by the
3 provisions of K.S.A. 2018 Supp. 75-643 *and* 75-652, and amendments
4 thereto, and the provisions of such ~~section~~ *sections* are hereby incorporated
5 by reference for all purposes thereof.

6 (xvi) For all taxable years beginning after December 31, 2004,
7 amounts received by taxpayers who are or were members of the armed
8 forces of the United States, including service in the Kansas army and air
9 national guard, as a recruitment, sign up or retention bonus received by
10 such taxpayer as an incentive to join, enlist or remain in the armed services
11 of the United States, including service in the Kansas army and air national
12 guard, and amounts received for repayment of educational or student loans
13 incurred by or obligated to such taxpayer and received by such taxpayer as
14 a result of such taxpayer's service in the armed forces of the United States,
15 including service in the Kansas army and air national guard.

16 (xvii) For all taxable years beginning after December 31, 2004,
17 amounts received by taxpayers who are eligible members of the Kansas
18 army and air national guard as a reimbursement pursuant to K.S.A. 48-
19 281, and amendments thereto, and amounts received for death benefits
20 pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section
21 1 or section 2 of chapter 207 of the 2005 Session Laws of Kansas, and
22 amendments thereto, to the extent that such death benefits are included in
23 federal adjusted gross income of the taxpayer.

24 (xviii) For the taxable year beginning after December 31, 2006,
25 amounts received as benefits under the federal social security act which
26 are included in federal adjusted gross income of a taxpayer with federal
27 adjusted gross income of \$50,000 or less, whether such taxpayer's filing
28 status is single, head of household, married filing separate or married filing
29 jointly; and for all taxable years beginning after December 31, 2007,
30 amounts received as benefits under the federal social security act which
31 are included in federal adjusted gross income of a taxpayer with federal
32 adjusted gross income of \$75,000 or less, whether such taxpayer's filing
33 status is single, head of household, married filing separate or married filing
34 jointly.

35 (xix) Amounts received by retired employees of Washburn university
36 as retirement and pension benefits under the university's retirement plan.

37 (xx) For taxable years beginning after December 31, 2012, and
38 ending before January 1, 2017, the amount of any: (1) Net profit from
39 business as determined under the federal internal revenue code and
40 reported from schedule C and on line 12 of the taxpayer's form 1040
41 federal individual income tax return; (2) net income, not including
42 guaranteed payments as defined in section 707(c) of the federal internal
43 revenue code and as reported to the taxpayer from federal schedule K-1,

1 (form 1065-B), in box 9, code F or as reported to the taxpayer from federal
2 schedule K-1, (form 1065) in box 4, from rental real estate, royalties,
3 partnerships, S corporations, estates, trusts, residual interest in real estate
4 mortgage investment conduits and net farm rental as determined under the
5 federal internal revenue code and reported from schedule E and on line 17
6 of the taxpayer's form 1040 federal individual income tax return; and (3)
7 net farm profit as determined under the federal internal revenue code and
8 reported from schedule F and on line 18 of the taxpayer's form 1040
9 federal income tax return; all to the extent included in the taxpayer's
10 federal adjusted gross income. For purposes of this subsection, references
11 to the federal form 1040 and federal schedule C, schedule E, and schedule
12 F, shall be to such form and schedules as they existed for tax year 2011
13 and as revised thereafter by the internal revenue service.

14 (xxi) For all taxable years beginning after December 31, 2013,
15 amounts equal to the unreimbursed travel, lodging and medical
16 expenditures directly incurred by a taxpayer while living, or a dependent
17 of the taxpayer while living, for the donation of one or more human organs
18 of the taxpayer, or a dependent of the taxpayer, to another person for
19 human organ transplantation. The expenses may be claimed as a
20 subtraction modification provided for in this section to the extent the
21 expenses are not already subtracted from the taxpayer's federal adjusted
22 gross income. In no circumstances shall the subtraction modification
23 provided for in this section for any individual, or a dependent, exceed
24 \$5,000. As used in this section, "human organ" means all or part of a liver,
25 pancreas, kidney, intestine, lung or bone marrow. The provisions of this
26 paragraph shall take effect on the day the secretary of revenue certifies to
27 the director of the budget that the cost for the department of revenue of
28 modifications to the automated tax system for the purpose of
29 implementing this paragraph will not exceed \$20,000.

30 (xxii) For taxable years beginning after December 31, 2012, and
31 ending before January 1, 2017, the amount of net gain from the sale of: (1)
32 Cattle and horses, regardless of age, held by the taxpayer for draft,
33 breeding, dairy or sporting purposes, and held by such taxpayer for 24
34 months or more from the date of acquisition; and (2) other livestock,
35 regardless of age, held by the taxpayer for draft, breeding, dairy or
36 sporting purposes, and held by such taxpayer for 12 months or more from
37 the date of acquisition. The subtraction from federal adjusted gross income
38 shall be limited to the amount of the additions recognized under the
39 provisions of subsection (b)(xix) attributable to the business in which the
40 livestock sold had been used. As used in this paragraph, the term
41 "livestock" shall not include poultry.

42 (xxiii) For all taxable years beginning after December 31, 2012,
43 amounts received under either the Overland Park, Kansas police

1 department retirement plan or the Overland Park, Kansas fire department
2 retirement plan, both as established by the city of Overland Park, pursuant
3 to the city's home rule authority.

4 (xxiv) For taxable years beginning after December 31, 2013, and
5 ending before January 1, 2017, the net gain from the sale from Christmas
6 trees grown in Kansas and held by the taxpayer for six years or more.

7 (d) There shall be added to or subtracted from federal adjusted gross
8 income the taxpayer's share, as beneficiary of an estate or trust, of the
9 Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and
10 amendments thereto.

11 (e) The amount of modifications required to be made under this
12 section by a partner which relates to items of income, gain, loss, deduction
13 or credit of a partnership shall be determined under K.S.A. 79-32,131, and
14 amendments thereto, to the extent that such items affect federal adjusted
15 gross income of the partner.

16 (f) No taxpayer shall be assessed penalties and interest from the
17 underpayment of taxes due to changes to this section that became law on
18 July 1, 2017, so long as such underpayment is rectified on or before April
19 17, 2018.

20 Sec. 9. K.S.A. 2018 Supp. 79-3602 is hereby amended to read as
21 follows: 79-3602. Except as otherwise provided, as used in the Kansas
22 retailers' sales tax act:

23 (a) "Agent" means a person appointed by a seller to represent the
24 seller before the member states.

25 (b) "Agreement" means the multistate agreement entitled the
26 streamlined sales and use tax agreement approved by the streamlined sales
27 tax implementing states at Chicago, Illinois on November 12, 2002.

28 (c) "Alcoholic beverages" means beverages that are suitable for
29 human consumption and contain 0.05% or more of alcohol by volume.

30 (d) "Certified automated system (CAS)" means software certified
31 under the agreement to calculate the tax imposed by each jurisdiction on a
32 transaction, determine the amount of tax to remit to the appropriate state
33 and maintain a record of the transaction.

34 (e) "Certified service provider (CSP)" means an agent certified under
35 the agreement to perform all the seller's sales and use tax functions, other
36 than the seller's obligation to remit tax on its own purchases.

37 (f) "Computer" means an electronic device that accepts information
38 in digital or similar form and manipulates it for a result based on a
39 sequence of instructions.

40 (g) "Computer software" means a set of coded instructions designed
41 to cause a computer or automatic data processing equipment to perform a
42 task.

43 (h) "Delivered electronically" means delivered to the purchaser by

1 means other than tangible storage media.

2 (i) "Delivery charges" means charges by the seller of personal
3 property or services for preparation and delivery to a location designated
4 by the purchaser of personal property or services including, but not limited
5 to, transportation, shipping, postage, handling, crating and packing.
6 Delivery charges shall not include charges for delivery of direct mail if the
7 charges are separately stated on an invoice or similar billing document
8 given to the purchaser.

9 (j) "Direct mail" means printed material delivered or distributed by
10 United States mail or other delivery services to a mass audience or to
11 addressees on a mailing list provided by the purchaser or at the direction of
12 the purchaser when the cost of the items are not billed directly to the
13 recipients. Direct mail includes tangible personal property supplied
14 directly or indirectly by the purchaser to the direct mail seller for inclusion
15 in the package containing the printed material. Direct mail does not
16 include multiple items of printed material delivered to a single address.

17 (k) "Director" means the state director of taxation.

18 (l) "Educational institution" means any nonprofit school, college and
19 university that offers education at a level above the 12th grade, and
20 conducts regular classes and courses of study required for accreditation by,
21 or membership in, the higher learning commission, the state board of
22 education, or that otherwise qualify as an "educational institution," as
23 defined by K.S.A. 74-50,103, and amendments thereto. Such phrase shall
24 include: (1) A group of educational institutions that operates exclusively
25 for an educational purpose; (2) nonprofit endowment associations and
26 foundations organized and operated exclusively to receive, hold, invest
27 and administer moneys and property as a permanent fund for the support
28 and sole benefit of an educational institution; (3) nonprofit trusts,
29 foundations and other entities organized and operated principally to hold
30 and own receipts from intercollegiate sporting events and to disburse such
31 receipts, as well as grants and gifts, in the interest of collegiate and
32 intercollegiate athletic programs for the support and sole benefit of an
33 educational institution; and (4) nonprofit trusts, foundations and other
34 entities organized and operated for the primary purpose of encouraging,
35 fostering and conducting scholarly investigations and industrial and other
36 types of research for the support and sole benefit of an educational
37 institution.

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

40 (n) "Food and food ingredients" means substances, whether in liquid,
41 concentrated, solid, frozen, dried or dehydrated form, that are sold for
42 ingestion or chewing by humans and are consumed for their taste or
43 nutritional value. "Food and food ingredients" does not include alcoholic

1 beverages or tobacco.

2 (o) "Gross receipts" means the total selling price or the amount
3 received as defined in this act, in money, credits, property or other
4 consideration valued in money from sales at retail within this state; and
5 embraced within the provisions of this act. The taxpayer, may take credit
6 in the report of gross receipts for: (1) An amount equal to the selling price
7 of property returned by the purchaser when the full sale price thereof,
8 including the tax collected, is refunded in cash or by credit; and (2) an
9 amount equal to the allowance given for the trade-in of property.

10 (p) "Ingredient or component part" means tangible personal property
11 which is necessary or essential to, and which is actually used in and
12 becomes an integral and material part of tangible personal property or
13 services produced, manufactured or compounded for sale by the producer,
14 manufacturer or compounder in its regular course of business. The
15 following items of tangible personal property are hereby declared to be
16 ingredients or component parts, but the listing of such property shall not be
17 deemed to be exclusive nor shall such listing be construed to be a
18 restriction upon, or an indication of, the type or types of property to be
19 included within the definition of "ingredient or component part" as herein
20 set forth:

21 (1) Containers, labels and shipping cases used in the distribution of
22 property produced, manufactured or compounded for sale which are not to
23 be returned to the producer, manufacturer or compounder for reuse.

24 (2) Containers, labels, shipping cases, paper bags, drinking straws,
25 paper plates, paper cups, twine and wrapping paper used in the distribution
26 and sale of property taxable under the provisions of this act by wholesalers
27 and retailers and which is not to be returned to such wholesaler or retailer
28 for reuse.

29 (3) Seeds and seedlings for the production of plants and plant
30 products produced for resale.

31 (4) Paper and ink used in the publication of newspapers.

32 (5) Fertilizer used in the production of plants and plant products
33 produced for resale.

34 (6) Feed for animals, fowl and aquatic plants and animals, the
35 primary purpose of which is use in agriculture or aquaculture, as defined in
36 K.S.A. 47-1901, and amendments thereto, the production of food for
37 human consumption, the production of animal, dairy, poultry or aquatic
38 plant and animal products, fiber, fur, or the production of offspring for use
39 for any such purpose or purposes.

40 (q) "Isolated or occasional sale" means the nonrecurring sale of
41 tangible personal property, or services taxable hereunder by a person not
42 engaged at the time of such sale in the business of selling such property or
43 services. Any religious organization which makes a nonrecurring sale of

1 tangible personal property acquired for the purpose of resale shall be
2 deemed to be not engaged at the time of such sale in the business of selling
3 such property. Such term shall include: (1) Any sale by a bank, savings and
4 loan institution, credit union or any finance company licensed under the
5 provisions of the Kansas uniform consumer credit code of tangible
6 personal property which has been repossessed by any such entity; and (2)
7 any sale of tangible personal property made by an auctioneer or agent on
8 behalf of not more than two principals or households if such sale is
9 nonrecurring and any such principal or household is not engaged at the
10 time of such sale in the business of selling tangible personal property.

11 (r) "Lease or rental" means any transfer of possession or control of
12 tangible personal property for a fixed or indeterminate term for
13 consideration. A lease or rental may include future options to purchase or
14 extend.

15 (1) Lease or rental does not include: (A) A transfer of possession or
16 control of property under a security agreement or deferred payment plan
17 that requires the transfer of title upon completion of the required
18 payments;

19 (B) a transfer or possession or control of property under an agreement
20 that requires the transfer of title upon completion of required payments and
21 payment of an option price does not exceed the greater of \$100 or 1% of
22 the total required payments; or

23 (C) providing tangible personal property along with an operator for a
24 fixed or indeterminate period of time. A condition of this exclusion is that
25 the operator is necessary for the equipment to perform as designed. For the
26 purpose of this subsection, an operator must do more than maintain,
27 inspect or set-up the tangible personal property.

28 (2) Lease or rental does include agreements covering motor vehicles
29 and trailers where the amount of consideration may be increased or
30 decreased by reference to the amount realized upon sale or disposition of
31 the property as defined in 26 U.S.C. § 7701(h)(1).

32 (3) This definition shall be used for sales and use tax purposes
33 regardless if a transaction is characterized as a lease or rental under
34 generally accepted accounting principles, the internal revenue code, the
35 uniform commercial code, K.S.A. 84-1-101 et seq., and amendments
36 thereto, or other provisions of federal, state or local law.

37 (4) This definition will be applied only prospectively from the
38 effective date of this act and will have no retroactive impact on existing
39 leases or rentals.

40 (s) "Load and leave" means delivery to the purchaser by use of a
41 tangible storage media where the tangible storage media is not physically
42 transferred to the purchaser.

43 (t) "Member state" means a state that has entered in the agreement,

1 pursuant to provisions of article VIII of the agreement.

2 (u) "Model 1 seller" means a seller that has selected a CSP as its
3 agent to perform all the seller's sales and use tax functions, other than the
4 seller's obligation to remit tax on its own purchases.

5 (v) "Model 2 seller" means a seller that has selected a CAS to
6 perform part of its sales and use tax functions, but retains responsibility for
7 remitting the tax.

8 (w) "Model 3 seller" means a seller that has sales in at least five
9 member states, has total annual sales revenue of at least \$500,000,000, has
10 a proprietary system that calculates the amount of tax due each jurisdiction
11 and has entered into a performance agreement with the member states that
12 establishes a tax performance standard for the seller. As used in this
13 subsection a seller includes an affiliated group of sellers using the same
14 proprietary system.

15 (x) "Municipal corporation" means any city incorporated under the
16 laws of Kansas.

17 (y) "Nonprofit blood bank" means any nonprofit place, organization,
18 institution or establishment that is operated wholly or in part for the
19 purpose of obtaining, storing, processing, preparing for transfusing,
20 furnishing, donating or distributing human blood or parts or fractions of
21 single blood units or products derived from single blood units, whether or
22 not any remuneration is paid therefor, or whether such procedures are done
23 for direct therapeutic use or for storage for future use of such products.

24 (z) "Persons" means any individual, firm, copartnership, joint
25 adventure, association, corporation, estate or trust, receiver or trustee, or
26 any group or combination acting as a unit, and the plural as well as the
27 singular number; and shall specifically mean any city or other political
28 subdivision of the state of Kansas engaging in a business or providing a
29 service specifically taxable under the provisions of this act.

30 (aa) "Political subdivision" means any municipality, agency or
31 subdivision of the state which is, or shall hereafter be, authorized to levy
32 taxes upon tangible property within the state or which certifies a levy to a
33 municipality, agency or subdivision of the state which is, or shall hereafter
34 be, authorized to levy taxes upon tangible property within the state. Such
35 term also shall include any public building commission, housing, airport,
36 port, metropolitan transit or similar authority established pursuant to law
37 and the horsethief reservoir benefit district established pursuant to K.S.A.
38 82a-2201, and amendments thereto.

39 (bb) "Prescription" means an order, formula or recipe issued in any
40 form of oral, written, electronic or other means of transmission by a duly
41 licensed practitioner authorized by the laws of this state.

42 (cc) "Prewritten computer software" means computer software,
43 including prewritten upgrades, which is not designed and developed by the

1 author or other creator to the specifications of a specific purchaser. The
2 combining of two or more prewritten computer software programs or
3 prewritten portions thereof does not cause the combination to be other than
4 prewritten computer software. Prewritten computer software includes
5 software designed and developed by the author or other creator to the
6 specifications of a specific purchaser when it is sold to a person other than
7 the purchaser. Where a person modifies or enhances computer software of
8 which the person is not the author or creator, the person shall be deemed to
9 be the author or creator only of such person's modifications or
10 enhancements. Prewritten computer software or a prewritten portion
11 thereof that is modified or enhanced to any degree, where such
12 modification or enhancement is designed and developed to the
13 specifications of a specific purchaser, remains prewritten computer
14 software, except that where there is a reasonable, separately stated charge
15 or an invoice or other statement of the price given to the purchaser for
16 such modification or enhancement, such modification or enhancement
17 shall not constitute prewritten computer software.

18 (dd) "Property which is consumed" means tangible personal property
19 which is essential or necessary to and which is used in the actual process
20 of and consumed, depleted or dissipated within one year in: (1) The
21 production, manufacture, processing, mining, drilling, refining or
22 compounding of tangible personal property; (2) the providing of services;
23 (3) the irrigation of crops, for sale in the regular course of business; or (4)
24 the storage or processing of grain by a public grain warehouse or other
25 grain storage facility, and which is not reusable for such purpose. The
26 following is a listing of tangible personal property, included by way of
27 illustration but not of limitation, which qualifies as property which is
28 consumed:

29 (A) Insecticides, herbicides, germicides, pesticides, fungicides,
30 fumigants, antibiotics, biologicals, pharmaceuticals, vitamins and
31 chemicals for use in commercial or agricultural production, processing or
32 storage of fruit, vegetables, feeds, seeds, grains, animals or animal
33 products whether fed, injected, applied, combined with or otherwise used;

34 (B) electricity, gas and water; and

35 (C) petroleum products, lubricants, chemicals, solvents, reagents and
36 catalysts.

37 (ee) "Purchase price" applies to the measure subject to use tax and
38 has the same meaning as sales price.

39 (ff) "Purchaser" means a person to whom a sale of personal property
40 is made or to whom a service is furnished.

41 (gg) "Quasi-municipal corporation" means any county, township,
42 school district, drainage district or any other governmental subdivision in
43 the state of Kansas having authority to receive or hold moneys or funds.

1 (hh) "Registered under this agreement" means registration by a seller
2 with the member states under the central registration system provided in
3 article IV of the agreement.

4 (ii) "Retailer" means a seller regularly engaged in the business of
5 selling, leasing or renting tangible personal property at retail or furnishing
6 electrical energy, gas, water, services or entertainment, and selling only to
7 the user or consumer and not for resale.

8 (jj) "Retail sale" or "sale at retail" means any sale, lease or rental for
9 any purpose other than for resale, sublease or subrent.

10 (kk) "Sale" or "sales" means the exchange of tangible personal
11 property, as well as the sale thereof for money, and every transaction,
12 conditional or otherwise, for a consideration, constituting a sale, including
13 the sale or furnishing of electrical energy, gas, water, services or
14 entertainment taxable under the terms of this act and including, except as
15 provided in the following provision, the sale of the use of tangible personal
16 property by way of a lease, license to use or the rental thereof regardless of
17 the method by which the title, possession or right to use the tangible
18 personal property is transferred. The term "sale" or "sales" shall not mean
19 the sale of the use of any tangible personal property used as a dwelling by
20 way of a lease or rental thereof for a term of more than 28 consecutive
21 days.

22 (ll) (1) "Sales or selling price" applies to the measure subject to sales
23 tax and means the total amount of consideration, including cash, credit,
24 property and services, for which personal property or services are sold,
25 leased or rented, valued in money, whether received in money or
26 otherwise, without any deduction for the following:

- 27 (A) The seller's cost of the property sold;
28 (B) the cost of materials used, labor or service cost, interest, losses,
29 all costs of transportation to the seller, all taxes imposed on the seller and
30 any other expense of the seller;
31 (C) charges by the seller for any services necessary to complete the
32 sale, other than delivery and installation charges;
33 (D) delivery charges; and
34 (E) installation charges.

35 (2) "Sales or selling price" includes consideration received by the
36 seller from third parties if:

37 (A) The seller actually receives consideration from a party other than
38 the purchaser and the consideration is directly related to a price reduction
39 or discount on the sale;

40 (B) the seller has an obligation to pass the price reduction or discount
41 through to the purchaser;

42 (C) the amount of the consideration attributable to the sale is fixed
43 and determinable by the seller at the time of the sale of the item to the

1 purchaser; and

2 (D) one of the following criteria is met:

3 (i) The purchaser presents a coupon, certificate or other
4 documentation to the seller to claim a price reduction or discount where
5 the coupon, certificate or documentation is authorized, distributed or
6 granted by a third party with the understanding that the third party will
7 reimburse any seller to whom the coupon, certificate or documentation is
8 presented;

9 (ii) the purchaser identifies to the seller that the purchaser is a
10 member of a group or organization entitled to a price reduction or
11 discount. A preferred customer card that is available to any patron does not
12 constitute membership in such a group; or

13 (iii) the price reduction or discount is identified as a third party price
14 reduction or discount on the invoice received by the purchaser or on a
15 coupon, certificate or other documentation presented by the purchaser.

16 (3) "Sales or selling price" shall not include:

17 (A) Discounts, including cash, term or coupons that are not
18 reimbursed by a third party that are allowed by a seller and taken by a
19 purchaser on a sale;

20 (B) interest, financing and carrying charges from credit extended on
21 the sale of personal property or services, if the amount is separately stated
22 on the invoice, bill of sale or similar document given to the purchaser;

23 (C) any taxes legally imposed directly on the consumer that are
24 separately stated on the invoice, bill of sale or similar document given to
25 the purchaser;

26 (D) the amount equal to the allowance given for the trade-in of
27 property, if separately stated on the invoice, billing or similar document
28 given to the purchaser; and

29 (E) commencing on July 1, 2018, and ending on June 30, 2021, cash
30 rebates granted by a manufacturer to a purchaser or lessee of a new motor
31 vehicle if paid directly to the retailer as a result of the original sale.

32 (mm) "Seller" means a person making sales, leases or rentals of
33 personal property or services.

34 (nn) "Service" means those services described in and taxed under the
35 provisions of K.S.A. 79-3603, and amendments thereto.

36 (oo) "Sourcing rules" means the rules set forth in K.S.A. 2018 Supp.
37 79-3670 through 79-3673, K.S.A. 12-191 and 12-191a, and amendments
38 thereto, which shall apply to identify and determine the state and local
39 taxing jurisdiction sales or use taxes to pay, or collect and remit on a
40 particular retail sale.

41 (pp) "Tangible personal property" means personal property that can
42 be seen, weighed, measured, felt or touched, or that is in any other manner
43 perceptible to the senses. Tangible personal property includes electricity,

1 water, gas, steam and prewritten computer software.

2 (qq) "Taxpayer" means any person obligated to account to the
3 director for taxes collected under the terms of this act.

4 (rr) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or
5 any other item that contains tobacco.

6 (ss) "Entity-based exemption" means an exemption based on who
7 purchases the product or who sells the product. An exemption that is
8 available to all individuals shall not be considered an entity-based
9 exemption.

10 (tt) "Over-the-counter drug" means a drug that contains a label that
11 identifies the product as a drug as required by 21 C.F.R. § 201.66. The
12 over-the-counter drug label includes: (1) A drug facts panel; or (2) a
13 statement of the active ingredients with a list of those ingredients
14 contained in the compound, substance or preparation. Over-the-counter
15 drugs do not include grooming and hygiene products such as soaps,
16 cleaning solutions, shampoo, toothpaste, antiperspirants and sun tan
17 lotions and screens.

18 (uu) "Ancillary services" means services that are associated with or
19 incidental to the provision of telecommunications services, including, but
20 not limited to, detailed telecommunications billing, directory assistance,
21 vertical service and voice mail services.

22 (vv) "Conference bridging service" means an ancillary service that
23 links two or more participants of an audio or video conference call and
24 may include the provision of a telephone number. Conference bridging
25 service does not include the telecommunications services used to reach the
26 conference bridge.

27 (ww) "Detailed telecommunications billing service" means an
28 ancillary service of separately stating information pertaining to individual
29 calls on a customer's billing statement.

30 (xx) "Directory assistance" means an ancillary service of providing
31 telephone number information or address information, or both.

32 (yy) "Vertical service" means an ancillary service that is offered in
33 connection with one or more telecommunications services, which offers
34 advanced calling features that allow customers to identify callers and to
35 manage multiple calls and call connections, including conference bridging
36 services.

37 (zz) "Voice mail service" means an ancillary service that enables the
38 customer to store, send or receive recorded messages. Voice mail service
39 does not include any vertical services that the customer may be required to
40 have in order to utilize the voice mail service.

41 (aaa) "Telecommunications service" means the electronic
42 transmission, conveyance or routing of voice, data, audio, video or any
43 other information or signals to a point, or between or among points. The

1 term telecommunications service includes such transmission, conveyance
2 or routing in which computer processing applications are used to act on the
3 form, code or protocol of the content for purposes of transmissions,
4 conveyance or routing without regard to whether such service is referred to
5 as voice over internet protocol services or is classified by the federal
6 communications commission as enhanced or value added.
7 Telecommunications service does not include:

8 (1) Data processing and information services that allow data to be
9 generated, acquired, stored, processed or retrieved and delivered by an
10 electronic transmission to a purchaser where such purchaser's primary
11 purpose for the underlying transaction is the processed data or
12 information;

13 (2) installation or maintenance of wiring or equipment on a
14 customer's premises;

15 (3) tangible personal property;

16 (4) advertising, including, but not limited to, directory advertising;

17 (5) billing and collection services provided to third parties;

18 (6) internet access service;

19 (7) radio and television audio and video programming services,
20 regardless of the medium, including the furnishing of transmission,
21 conveyance and routing of such services by the programming service
22 provider. Radio and television audio and video programming services shall
23 include, but not be limited to, cable service as defined in 47 U.S.C. §
24 522(6) and audio and video programming services delivered by
25 commercial mobile radio service providers, as defined in 47 C.F.R. § 20.3;

26 (8) ancillary services; or

27 (9) digital products delivered electronically, including, but not limited
28 to, software, music, video, reading materials or ring tones.

29 (bbb) "800 service" means a telecommunications service that allows a
30 caller to dial a toll-free number without incurring a charge for the call. The
31 service is typically marketed under the name 800, 855, 866, 877 and 888
32 toll-free calling, and any subsequent numbers designated by the federal
33 communications commission.

34 (ccc) "900 service" means an inbound toll telecommunications
35 service purchased by a subscriber that allows the subscriber's customers to
36 call in to the subscriber's prerecorded announcement or live service. 900
37 service does not include the charge for collection services provided by the
38 seller of the telecommunications services to the subscriber, or service or
39 product sold by the subscriber to the subscriber's customer. The service is
40 typically marketed under the name 900 service, and any subsequent
41 numbers designated by the federal communications commission.

42 (ddd) "Value-added non-voice data service" means a service that
43 otherwise meets the definition of telecommunications services in which

1 computer processing applications are used to act on the form, content,
2 code or protocol of the information or data primarily for a purpose other
3 than transmission, conveyance or routing.

4 (eee) "International" means a telecommunications service that
5 originates or terminates in the United States and terminates or originates
6 outside the United States, respectively. United States includes the District
7 of Columbia or a U.S. territory or possession.

8 (fff) "Interstate" means a telecommunications service that originates
9 in one United States state, or a United States territory or possession, and
10 terminates in a different United States state or a United States territory or
11 possession.

12 (ggg) "Intrastate" means a telecommunications service that originates
13 in one United States state or a United States territory or possession, and
14 terminates in the same United States state or a United States territory or
15 possession.

16 (*hhh*) *"Cereal malt beverage" shall have the same meaning as such*
17 *term is defined in K.S.A. 41-2701, and amendments thereto, except that*
18 *for the purposes of the Kansas retailers sales tax act and for no other*
19 *purpose, such term shall include beer containing not more than 6%*
20 *alcohol by volume when such beer is sold by a retailer licensed under the*
21 *Kansas cereal malt beverage act.*

22 Sec. 10. K.S.A. 2015 Supp. 38-2232, as amended by section 24 of
23 chapter 46 of the 2016 Session Laws of Kansas, 38-2242, as amended by
24 section 25 of chapter 46 of the 2016 Session Laws of Kansas, and 38-
25 2243, as amended by section 26 of chapter 46 of the 2016 Session Laws of
26 Kansas; K.S.A. 2016 Supp. 41-102, as amended by section 2 of chapter 99
27 of the 2018 Session Laws of Kansas, and 41-102, as amended by section
28 10 of 2019 Senate Bill No. 70; K.S.A. 2017 Supp. 79-3602, as amended by
29 section 5 of chapter 8 of the 2018 Session Laws of Kansas; and K.S.A.
30 2018 Supp. 21-5413, 21-5413a, 22-3302a, 38-2212, 38-2212a, 38-2232,
31 38-2242, 38-2243, 39-1431, 39-1341a, 79-32,117, 79-32,117p and 79-
32 3602 are hereby repealed.

33 Sec. 11. This act shall take effect and be in force from and after its
34 publication in the statute book.