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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: March 16, 2021
Subject: Bill Brief for HB 2126

House Bill 2126, as amended by House Committee, provides immunity from civil liability for COVID-19 claims for certain covered facilities, including adult care homes, community mental health centers, crisis intervention centers, community service providers and community developmental disability organizations.

Current law in K.S.A. 60-5502 and 60-5506, part of the COVID-19 response and reopening for business liability protection act, provides that an adult care facility, defined as a nursing facility, assisted living facility or residential healthcare facility, shall have an affirmative defense to liability in a civil action for a COVID-19 claim if the facility is acting in substantial compliance with public health directives and: (1) Was required by law to reaccept a resident who had been removed for treatment of COVID-19; or (2) treats a resident who has tested positive for COVID-19 in compliance with law.

The bill amends K.S.A. 60-5502 to expand the definition of an adult care facility to include an “adult care home” as defined in K.S.A. 39-923 and include a center approved by the centers for Medicare and Medicaid services as a program for all-inclusive care for the elderly (PACE) that provides services only to PACE participants. The House Committee on Judiciary added amendments to expand “adult care facility” to “covered facility” and expand the definition to include a “community mental health center” and a “crisis intervention center” as defined in K.S.A. 39-2002 and include a “community service provider,” a “community developmental disability organization” and an “institution” as defined in K.S.A. 39-1803.

The bill, as amended by the House Committee on Judiciary, amends K.S.A. 60-5506 to provide that these facilities are immune from liability for a COVID-19 claim if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued. “Public health directives” is defined to mean any

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of the following that are required by law to be followed related to COVID-19: (1) State statutes or rules and regulations; or (2) federal statutes or regulations from federal agencies, including the United States centers for disease control and prevention and the occupational safety and health administration of the United States department of labor. The immunity shall not apply when gross negligence or willful, wanton or reckless conduct is established.

Finally, the bill amends K.S.A. 60-5508 to provide that the amendments made to K.S.A. 60-5506 by this act shall apply retroactively to any cause of action accruing on or after March 12, 2020, and through the end of the state of disaster emergency related to COVID-19.

If passed, the bill would become effective on publication in the Kansas register.