

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **HB 2229** be amended on page 2, following line 26, by inserting:

"Sec. 2. K.S.A. 2020 Supp. 21-5802 is hereby amended to read as follows: 21-5802. (a) Theft of property lost, mislaid or delivered by mistake is obtaining control of property of another by a person who:

(1) Knows or learns the identity of the owner thereof;

(2) fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by a mistake; and

(3) intends to permanently deprive the owner of the possession, use or benefit of the property.

(b) Theft of property lost, mislaid or delivered by mistake of the value of:

(1) \$100,000 or more is a severity level 5, nonperson felony;

(2) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(3) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(4) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(c) As used in this section, "property delivered by mistake" includes, but is not limited to, a mistake as to the:

(1) Nature or amount of the property; or

(2) identity of the recipient of the property.

Sec. 3. K.S.A. 2020 Supp. 21-5813 is hereby amended to read as follows: 21-5813. (a)

Criminal damage to property is by means other than by fire or explosive:

(1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(b) Aggravated criminal damage to property is criminal damage to property, as defined in subsection (a)(1), if the value or amount of damage exceeds \$5,000, committed with the intent to obtain any regulated scrap metal as defined in K.S.A. 2020 Supp. 50-6,109, and amendments thereto, or any items listed in K.S.A. 2020 Supp. 50-6,111(d), and amendments thereto, upon:

(1) Any building, structure, personal property or place used primarily for worship or any religious purpose;

(2) any building, structure or place used as a school or as an educational facility;

(3) any building, structure or place used by a non-profit or charitable business, corporation, firm, service or association;

(4) any grave, cemetery, mortuary or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead;

(5) any agricultural property or agricultural infrastructure;

(6) any construction, mining or recycling facility, structure or site;

(7) any utility, utility service, telecommunication, telecommunication service, cable or video service facility, property, building, structure, site or component thereof;

(8) any municipal, county or state building, structure, site or property;

(9) any residential, commercial, industrial or agricultural irrigation, sprinkler or watering system or component thereof;

- (10) the infrastructure of any residence, building or structure;
- (11) any historical marker, plaque or work of art;
- (12) any vehicle or transportation building, facility, structure, site or property; or
- (13) any other building, structure, residence, facility, site, place, property, vehicle or any infrastructure thereof.

(c) Criminal damage to property if the property:

- (1) Is damaged to the extent of \$25,000 or more is a severity level 7, nonperson felony;
- (2) is damaged to the extent of at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony; and

(3) damaged is of the value of less than ~~\$1,000~~ \$1,500 or is of the value of ~~\$1,000~~ \$1,500 or more and is damaged to the extent of less than ~~\$1,000~~ \$1,500 is a class B nonperson misdemeanor.

(d) Aggravated criminal damage to property is a severity level 6, nonperson felony.

(e) (1) As used in subsection (b):

(A) "Infrastructure" includes any fixture to, attachment upon or part of a residence, building or structure's framework, electrical wiring and appurtenances, plumbing or heating and air systems; and

(B) "site" includes any area, place or location set aside for specific use or uses, including, but not limited to, storage, staging, repair, sorting, transportation, planning or organization.

(2) Any of the items or locations listed in subsection (b) shall include the curtilage, adjoining land and any improvements thereupon.

(3) Nothing in subsection (b) shall be construed to require the:

(A) Construction or existence of any door, gate, fence, barrier or wall; or

(B) existence of notice, postings or signs to potential trespassers.

(f) In determining the amount of damage to property, damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property.

Sec. 4. K.S.A. 2020 Supp. 21-5821 is hereby amended to read as follows: 21-5821. (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check on any financial institution for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check that the maker or drawer has no deposit in or credits with the financial institution or has not sufficient funds in, or credits with, the financial institution for the payment of such check in full upon its presentation.

(b) Giving a worthless check is a:

(1) Severity level 7, nonperson felony if:

(A) The check is drawn for \$25,000 or more; or

(B) more than one worthless check is given within a seven-day period and the combined total of the checks is \$25,000 or more;

(2) severity level 9, nonperson felony if:

(A) The check is drawn for at least ~~\$1,000~~ \$1,500 but less than \$25,000;

(B) more than one worthless check is given within a seven-day period and the combined total of the checks is at least ~~\$1,000~~ \$1,500 but less than \$25,000; or

(C) the person giving the worthless check has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times; and

(3) class A nonperson misdemeanor if the check is drawn for less than ~~\$1,000~~ \$1,500.

(c) As used in this section and K.S.A. 2020 Supp. 21-5822, and amendments thereto:

(1) "Check" is any check, order or draft on a financial institution;

(2) "financial institution" means any bank, credit union, savings and loan association or depository; and

(3) "notice" includes oral or written notice to the person entitled thereto.

(d) In any prosecution against the maker or drawer of a check, payment of which has been refused by the financial institution on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the financial institution:

(1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding \$30 for each check, within seven days after notice has been given to the maker or drawer that such check has not been paid by the financial institution. Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check; or

(2) if a postdated date is placed on the check without the knowledge or consent of the payee.

(e) It shall not be a defense to a prosecution under this section that the check upon which such prosecution is based was:

(1) Postdated, unless such check was presented for payment prior to the postdated date;

or

(2) given to a payee who had knowledge or had been informed, when the payee accepted such check that the maker did not have sufficient funds in the hands of the financial

institution to pay such check upon presentation, unless such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(f) In addition to all other costs and fees allowed by law, each prosecutor who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed \$10 for each check. If the issuer of the check is convicted in a district court, the administrative handling costs may be assessed as part of the court costs in the matter. The moneys collected pursuant to this subsection shall be deposited into a trust fund which shall be administered by the board of county commissioners. The funds shall be expended only with the approval of the board of county commissioners, but may be used to help fund the normal operating expenses of the county or district attorney's office.

Sec. 5. K.S.A. 2020 Supp. 21-5825 is hereby amended to read as follows: 21-5825. (a) Counterfeiting is manufacturing, using, displaying, advertising, distributing or possessing with intent to distribute any item or services knowing such item or services bear or are identified by a counterfeit mark.

(b) Counterfeiting is a:

(1) Severity level 7, nonperson felony if:

(A) The retail value of such item or service is \$25,000 or more;

(B) such counterfeiting involves 1,000 or more items bearing a counterfeit mark; or

(C) a third or subsequent violation of this section;

(2) severity level 9, nonperson felony if:

(A) The retail value of such item or service is at least ~~\$1,000~~ \$1,500 but less than \$25,000;

(B) such counterfeiting involves more than 100 but less than 1,000 items bearing a

counterfeit mark; or

(C) a second violation of this section; and

(3) class A nonperson misdemeanor, if the retail value of such item or service is less than ~~\$1,000~~ \$1,500.

(c) A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to distribute.

(d) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(e) As used in this section:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property;

(2) "intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 81-202, and amendments thereto; and

(3) "retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(f) The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes or possesses.

Sec. 6. K.S.A. 2020 Supp. 21-5828 is hereby amended to read as follows: 21-5828. (a)

Criminal use of a financial card is any of the following acts done with intent to defraud and to obtain money, goods, property or services:

(1) Using a financial card without the consent of the cardholder;

(2) using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) Criminal use of a financial card is a:

(1) Severity level 7, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of \$25,000 or more;

(2) severity level 9, nonperson felony if the money, goods, property or services obtained within any seven-day period are of the value of at least ~~\$1,000~~ \$1,500 but less than \$25,000; and

(3) class A nonperson misdemeanor if the money, goods, property or services obtained within a seven-day period are of the value of less than ~~\$1,000~~ \$1,500.

(c) As used in this section:

(1) "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property or services or to conduct other financial transactions; and

(2) "cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

(d) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

Sec. 7. K.S.A. 2020 Supp. 21-5830 is hereby amended to read as follows: 21-5830. (a) Impairing a security interest is, with intent to defraud the secured party:

(1) Damaging, destroying or concealing any personal property subject to a security interest;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written consent of the secured party, where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement; or

(3) failing to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest, where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the secured party under the terms of the security agreement or otherwise.

(b) Impairing a security interest, when the personal property subject to the security interest is of the value of:

(1) \$25,000 or more and is subject to a security interest of \$25,000 or more is a severity level 7, nonperson felony;

(2) at least ~~\$1,000~~ \$1,500 and is subject to a security interest of at least ~~\$1,000~~ \$1,500 and either the value of the property or the security interest is less than \$25,000 is a severity level 9, nonperson felony; and

(3) less than ~~\$1,000~~ \$1,500, or of the value of ~~\$1,000~~ \$1,500 or more but subject to a security interest of less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

Sec. 8. K.S.A. 2020 Supp. 21-5927 is hereby amended to read as follows: 21-5927. (a) Medicaid fraud is:

(1) With intent to defraud, making, presenting, submitting, offering or causing to be

made, presented, submitted or offered:

(A) Any false or fraudulent claim for payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(B) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(C) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(D) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(E) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(F) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(G) any wholly or partially false or fraudulent book, record, document, data or

instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(H) any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the Kansas department for aging and disability services, Kansas department of health and environment, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program; or

(I) any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the medicaid program; or

(2) intentionally executing or attempting to execute a scheme or artifice to defraud the medicaid program or any contractor or subcontractor thereof.

(b) (1) Except as provided in subsection (b)(2), for each individual count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2), where the aggregate amount of payments illegally claimed is:

(A) \$250,000 or more, medicaid fraud is a severity level 3, nonperson felony;

(B) at least \$100,000 but less than \$250,000, medicaid fraud is a severity level 5, nonperson felony;

(C) at least \$25,000 but less than \$100,000, medicaid fraud is a severity level 7,

nonperson felony;

(D) at least ~~\$1,000~~ \$1,500 but less than \$25,000, medicaid fraud is a severity level 9, nonperson felony; and

(E) less than ~~\$1,000~~ \$1,500, medicaid fraud is a class A nonperson misdemeanor.

(2) For each individual count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2):

(A) When great bodily harm results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 4, person felony, except as provided in subsection (b)(2)(B); and

(B) when death results from such act, regardless of the aggregate amount of payments illegally claimed, medicaid fraud is a severity level 1, person felony.

(3) Medicaid fraud as defined in subsection (a)(1)(H) or (a)(1)(I) is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(1)(F), the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

(d) In sentencing for medicaid fraud, ~~subsection (e)(3)~~ of K.S.A. 2020 Supp. 21-6815(c)(3), and amendments thereto, shall not apply and an act or omission by the defendant that resulted in any medicaid recipient receiving any service that was of lesser quality or amount than the service to which such recipient was entitled may be considered an aggravating factor in determining whether substantial and compelling reasons for departure exist pursuant to K.S.A. 2020 Supp. 21-6801 through 21-6824, and amendments thereto.

(e) A person who violates the provisions of this section may also be prosecuted for,

convicted of, and punished for any form of battery or homicide.

Sec. 9. K.S.A. 2020 Supp. 21-6002 is hereby amended to read as follows: 21-6002. (a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:

(1) Knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another;

(2) knowingly failing to serve civil process when required by law;

(3) using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to intentionally cause harm to another;

(4) except as authorized by law, with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract;

(5) except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime; or

(6) knowingly submitting to a governmental entity a claim for expenses ~~which~~ that is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in:

(A) Subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor;

(B) subsection (a)(5) is a:

(i) Severity level 8, nonperson felony if the evidence is evidence of a crime ~~which~~ that is a felony; and

(ii) class A nonperson misdemeanor if the evidence is evidence of a crime ~~which~~ that is a misdemeanor; and

(C) subsection (a)(6) if the claim is:

(i) \$25,000 or more is a severity level 7, nonperson felony;

(ii) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(iii) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property ~~which~~ that:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) constitutes misuse of public funds, as defined in K.S.A. 2020 Supp. 21-6005, and amendments thereto.

(d) As used in this section, "confidential" means any information that is not subject to

mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

Sec. 10. K.S.A. 2020 Supp. 21-6004 is hereby amended to read as follows: 21-6004. (a) Presenting a false claim is, with the intent to defraud, presenting a claim or demand ~~which~~ that is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

(b) Permitting a false claim is the auditing, allowing or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or public employee who knows such claim or demand is false or fraudulent in whole or in part.

(c) (1) Presenting a false claim or permitting a false claim for:

(A) \$25,000 or more is a severity level 7, nonperson felony;

(B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

Sec. 11. K.S.A. 2020 Supp. 21-6005 is hereby amended to read as follows: 21-6005. (a) Misuse of public funds is knowingly using, lending or permitting another to use public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of such person's official position.

(b) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is:

(A) \$100,000 or more is a severity level 5, nonperson felony;

(B) at least \$25,000 but less than \$100,000 is a severity level 7, nonperson felony;

(C) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(D) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

(2) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

(c) As used in this section, "public money" means any money or negotiable instrument ~~which~~ that belongs to the state of Kansas or any political subdivision thereof.

Sec. 12. K.S.A. 2020 Supp. 21-6205 is hereby amended to read as follows: 21-6205. (a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being; or

(2) recklessly, by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) Criminal desecration as defined in:

(1) ~~Subsections~~ Subsection (a)(2)(B), (a)(2)(C) or (a)(2)(D) if the property is damaged to the extent of:

(A) \$25,000 or more is a severity level 7, nonperson felony;

(B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9, nonperson felony;

and

(C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor; and

(2) ~~subsections~~ subsection (a)(1) or (a)(2)(A) is a class A nonperson misdemeanor.";

Also on page 2, in line 27, by striking "is" and inserting ", 21-5802, 21-5813, 21-5821, 21-5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-6004, 21-6005 and 21-6205 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, by striking "theft" and inserting "property crimes"; also in line 2, after the second semicolon by inserting "increasing felony loss thresholds for certain property crimes;"; in line 3, after "21-5801" by inserting ", 21-5802, 21-5813, 21-5821, 21-5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-6004, 21-6005 and 21-6205"; in line 4, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson