AN ACT enacting the Kansas adverse medical outcome transparency act; concerning evidence in civil actions; expression of apology, sympathy, compassion or benevolent acts by health care providers or health care administrators not admissible as evidence of an admission of liability or as evidence of an admission against interest.

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

Section 1. (a) This section may be cited as the Kansas adverse medical outcome transparency act.

(b) A health care administrator or such administrator’s designee may convene a facilitated conference for the purpose of the health care provider or providers and the health care administrator expressing benevolence, sorrow, regret, mistake, error, sympathy, apology, commiseration, condolence, compassion or a general sense of benevolence to a patient, patient's family or patient's representatives allegedly experiencing an adverse outcome of medical care in a medical care facility. Attorneys for the health care administrator, health care provider, patient, patient’s family or patient’s representative may attend the facilitated conference if there is a prior written agreement signed by all participants in the facilitated conference approving of such attorney’s attendance. The facilitated conference shall not be electronically recorded.

(c) In any claim or civil action concerning an alleged adverse outcome of medical care in a medical care facility:

(1) Any verbal statements made in such facilitated conference shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest. The fact that a facilitated conference was or was not convened shall be inadmissible.

(2) waiver of charges for medical care provided shall be inadmissible as evidence and shall not constitute an admission of liability or an admission against interest.

(d) A defendant in a medical malpractice action may waive the inadmissibility of verbal statements that are attributable to such defendant by expressly stating, in writing, the intent to make such a waiver. If a defendant waives such inadmissibility of a verbal statement, such waiver shall not be construed to be a failure to assist with such defendant’s
medical malpractice insurance carrier in the defense of the claim.

(e) As used in this section:

(1) “Health care provider” has the meaning prescribed in K.S.A. 65-4915, and amendments thereto.

(2) "Health care administrator" means the individual directly responsible for planning, organizing, directing and controlling the operation of a medical care facility.

(3) “Adverse outcome” means the outcome of a medical treatment or procedure, whether or not resulting from an intentional act, that differs from an intended result of such medical treatment or procedure.

(4) "Facilitated conference" means a specially called conference by a health care administrator or such administrator’s designee with a health care provider or providers and the patient, patient's family or patient's representatives for the purpose of facilitating an open and compassionate dialogue among the participants in the facilitated conference.

(5) "Medical care facility" means a general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

(6) “Verbal statements” means any statements, affirmations, gestures, activities or conduct.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.