Session of 2025

SENATE BILL No. 127

By Committee on Judiciary

1-30

AN ACT concerning the rules of evidence; relating to hearsay; expanding the exception to the hearsay rule for statements made to a physician to other healthcare providers; amending K.S.A. 2024 Supp. 60-460 and repealing the existing section.

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

Section 1. K.S.A. 2024 Supp. 60-460 is hereby amended to read as follows: 60-460. Evidence of a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated, is hearsay evidence and inadmissible except:

(a) *Previous statements of persons present.* A statement previously made by a person who is present at the hearing and available for cross-examination with respect to the statement and its subject matter, provided the statement would be admissible if made by the declarant while testifying as a witness.

(b) *Affidavits.* Affidavits, to the extent admissible by the statutes of this state.

(c) *Depositions and prior testimony.* Subject to the same limitations and objections as though the declarant were testifying in person: (1) Testimony in the form of a deposition taken in compliance with the law of this state for use as testimony in the trial of the action in which offered; or (2) if the judge finds that the declarant is unavailable as a witness at the hearing, testimony given as a witness in another action or in a preliminary hearing or former trial in the same action, or in a deposition taken in compliance with law for use as testimony in the trial of another action, when: (A) The testimony is offered against a party who offered it in the party's own behalf on the former occasion or against the successor in interest of such party; or (B) the issue is such that the adverse party on the former occasion had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the testimony is offered, but the provisions of this subsection shall not apply in criminal actions if it denies to the accused the right to meet the witness face to face.

(d) *Contemporaneous statements and statements admissible on ground of necessity generally.* A statement which the judge finds was made: (1) While the declarant was perceiving the event or condition which

the statement narrates, describes or explains; (2) while the declarant was under the stress of a nervous excitement caused by such perception; or (3) if the declarant is unavailable as a witness, by the declarant at a time when the matter had been recently perceived by the declarant and while the declarant's recollection was clear and was made in good faith prior to the commencement of the action and with no incentive to falsify or to distort.

(e) *Dying declarations.* A statement by a person unavailable as a witness because of the person's death if the judge finds that it was made: (1) Voluntarily and in good faith; and (2) while the declarant was conscious of the declarant's impending death and believed that there was no hope of recovery.

(f) *Confessions.* In a criminal proceeding as against the accused, a previous statement by the accused relative to the offense charged, but only if the judge finds that the accused: (1) When making the statement was conscious and was capable of understanding what the accused said and did; and (2) was not induced to make the statement: (A) Under compulsion or by infliction or threats of infliction of suffering upon the accused or another, or by prolonged interrogation under such circumstances as to render the statement involuntary; or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same.

(g) *Admissions by parties.* As against a party, a statement by the person who is the party to the action in the person's individual or a representative capacity and, if the latter, who was acting in such representative capacity in making the statement.

(h) *Authorized and adoptive admissions.* As against a party, a statement: (1) By a person authorized by the party to make a statement or statements for the party concerning the subject of the statement; or (2) of which the party with knowledge of the content thereof has, by words or other conduct, manifested the party's adoption or belief in its truth.

(i) *Vicarious admissions.* As against a party, a statement which would be admissible if made by the declarant at the hearing if: (1) The statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship; (2) the party and the declarant were participating in a plan to commit a crime or a civil wrong and the statement was relevant to the plan or its subject matter and was made while the plan was in existence and before its complete execution or other termination; or (3) one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability.

(j) *Declarations against interest.* Subject to the limitations of the exception in subsection (f), a statement which the judge finds was at the time of the assertion so far contrary to the declarant's pecuniary or proprietary interest or so far subjected the declarant to civil or criminal liability or so far rendered invalid a claim by the declarant against another or created such risk of making the declarant an object of hatred, ridicule or social disapproval in the community that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.

(k) *Voter's statements.* A statement by a voter concerning the voter's qualifications to vote or the fact or content of the voter's vote.

(l) *Statements of physical or mental condition of declarant.* Unless the judge finds it was made in bad faith, a statement of the declarant's: (1) Then existing state of mind, emotion or physical sensation, including statements of intent, plan, motive, design, mental feeling, pain and bodily health, but not including memory or belief to prove the fact remembered or believed, when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant; or (2) previous symptoms, pain or physical sensation, made to a ~~physician~~ *healthcare provider as defined in K.S.A. 65-4915, and amendments thereto,* consulted for treatment or for diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition.

(m) *Business entries and the like.* Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the following conditions are shown by the testimony of the custodian or other qualified witness, or by a certification that complies with K.S.A. 60-465(b)(7) or (8), and amendments thereto: (1) They were made in the regular course of a business at or about the time of the act, condition or event recorded; and (2) the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness.

If the procedure specified by K.S.A. 60-245a(b), and amendments thereto, for providing business records has been complied with and no party has required the personal attendance of a custodian of the records or the production of the original records, the affidavit or declaration of the custodian shall be prima facie evidence that the records satisfy the requirements of this subsection.

(n) *Absence of entry in business records.* Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if the judge finds that it was the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time

thereafter and to preserve them.

(o) *Content of official record.* Subject to K.S.A. 60-461, and amendments thereto: (1) If meeting the requirements of authentication under K.S.A. 60-465, and amendments thereto, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein; (2) to prove the absence of a record in a specified office, a writing made by the official custodian of the official records of the office, reciting diligent search and failure to find such record; or (3) to prove the absence of a record in the criminal justice information system central repository maintained by the Kansas bureau of investigation pursuant to K.S.A. 22-4705, and amendments thereto, a writing made by a person purporting to be an official custodian of the records of the Kansas bureau of investigation, reciting diligent search of criminal history record information and electronically stored information, as defined in K.S.A. 22-4701, and amendments thereto, and failure to find such record.

(p) *Certificate of marriage.* Subject to K.S.A. 60-461, and amendments thereto, certificates that the maker thereof performed marriage ceremonies, to prove the truth of the recitals thereof, if the judge finds that: (1) The maker of the certificates, at the time and place certified as the times and places of the marriages, was authorized by law to perform marriage ceremonies; and (2) the certificate was issued at that time or within a reasonable time thereafter.

(q) *Records of documents affecting an interest in property.* Subject to K.S.A. 60-461, and amendments thereto, the official record of a document purporting to establish or affect an interest in property, to prove the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the judge finds that: (1) The record is in fact a record of an office of a state or nation or of any governmental subdivision thereof; and (2) an applicable statute authorized such a document to be recorded in that office.

(r) *Judgment of previous conviction.* Evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment.

(s) *Judgment against persons entitled to indemnity.* To prove the wrong of the adverse party and the amount of damages sustained by the judgment creditor, evidence of a final judgment if offered by a judgment debtor in an action in which the debtor seeks to recover partial or total indemnity or exoneration for money paid or liability incurred by the debtor because of the judgment, provided the judge finds that the judgment was rendered for damages sustained by the judgment creditor as a result of the wrong of the adverse party to the present action.

(t) *Judgment determining public interest in land.* To prove any fact which was essential to the judgment, evidence of a final judgment

determining the interest or lack of interest of the public or of a state or nation or governmental division thereof in land, if offered by a party in an action in which any such fact or such interest or lack of interest is a material matter.

(u) *Statement concerning one's own family history.* A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry or other similar fact of the declarant's family history, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the judge finds that the declarant is unavailable.

(v) *Statement concerning family history of another.* A statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage or other similar fact of the family history of a person other than the declarant if the judge finds that the declarant: (1) Was related to the other by blood or marriage, or was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared, and made the statement as upon information received from the other or from a person related by blood or marriage to the other or as upon repute in the other's family; and (2) is unavailable as a witness.

(w) *Statement concerning family history based on statement of another declarant.* A statement of a declarant that a statement admissible under the exceptions in subsections (u) or (v) was made by another declarant, offered as tending to prove the truth of the matter declared by both declarants, if the judge finds that both declarants are unavailable as witnesses.

(x) *Reputation in family concerning family history.* Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage.

(y) *Reputation—boundaries, general history, family history.* Evidence of reputation in a community as tending to prove the truth of the matter reputed, if the reputation concerns: (1) Boundaries of or customs affecting, land in the community and the judge finds that the reputation, if any, arose before controversy; (2) an event of general history of the community or of the state or nation of which the community is a part and the judge finds that the event was of importance to the community; or (3) the birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, or race-ancestry of a person resident in the community at the time of the reputation, or some other similar fact of the person's family history or of the person's personal status or condition which the judge finds likely to have been the subject of a reliable reputation in that community.

(z) *Reputation as to character.* If a trait of a person's character at a

specified time is material, evidence of the person's reputation with reference thereto at a relevant time in the community in which the person then resided or in a group with which the person then habitually associated, to prove the truth of the matter reputed.

(aa) *Recitals in documents affecting property.* Evidence of a statement relevant to a material matter, contained in a deed of conveyance or a will or other document purporting to affect an interest in property, offered as tending to prove the truth of the matter stated, if the judge finds that: (1) The matter stated would be relevant upon an issue as to an interest in the property; and (2) the dealings with the property since the statement was made have not been inconsistent with the truth of the statement.

(bb) *Commercial lists and the like.* Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical or other published compilation, to prove the truth of any relevant matter so stated, if the judge finds that the compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them.

(cc) *Learned treatises.* A published treatise, periodical or pamphlet on a subject of history, science or art, to prove the truth of a matter stated therein, if the judge takes judicial notice, or a witness expert in the subject testifies, that the treatise, periodical or pamphlet is a reliable authority in the subject.

(dd) *Actions involving children.* In a criminal proceeding or a proceeding pursuant to the revised Kansas juvenile justice code or in a proceeding to determine if a child is a child in need of care under the revised Kansas code for care of children, a statement made by a child, to prove the crime or that a child is a juvenile offender or a child in need of care, if:

(1) The child is alleged to be a victim of the crime or offense or a child in need of care; and

(2) the trial judge finds, after a hearing on the matter, that the child is disqualified or unavailable as a witness, the statement is apparently reliable and the child was not induced to make the statement falsely by use of threats or promises.

If a statement is admitted pursuant to this subsection in a trial to a jury, the trial judge shall instruct the jury that it is for the jury to determine the weight and credit to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, the nature of the statement, the circumstances under which the statement was made, any possible threats or promises that might have been made to the child to obtain the statement and any other relevant factor.

(ee) *Certified motor vehicle certificate of title history.* Subject to K.S.A. 60-461, and amendments thereto, a certified motor vehicle

certificate of title history prepared by the division of vehicles of the Kansas department of revenue.

Sec. 2. K.S.A. 2024 Supp. 60-460 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.