

SENATE BILL No. 128

By Committee on Judiciary

1-30

1 AN ACT concerning social workers; relating to attorney-client privilege;
2 creating an exception to certain mandatory reporting obligations for
3 licensed social workers when working under the supervision of an
4 attorney; permitting attorneys to require certain licensed social workers
5 to keep ethical obligations of attorney-client privilege when working
6 under the supervision of such attorney; amending K.S.A. 38-2224, 39-
7 1402, 39-1403, 39-1431, 39-1432 and 65-6315 and K.S.A. 2024 Supp.
8 38-2223 and repealing the existing sections.
9

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

11 Section 1. K.S.A. 2024 Supp. 38-2223 is hereby amended to read as
12 follows: 38-2223. (a) *Persons making reports.* (1) *Except as provided in*
13 *subsection (a)(3), when any of the following persons has reason to suspect*
14 *that a child has been harmed as a result of physical, mental or emotional*
15 *abuse or neglect or sexual abuse, the person shall report the matter*
16 *promptly as provided in subsections (b) and (c);*

17 (A) The following persons providing medical care or treatment:
18 Persons licensed to practice the healing arts, dentistry and optometry,
19 persons engaged in postgraduate training programs approved by the state
20 board of healing arts, licensed professional or practical nurses and chief
21 administrative officers of medical care facilities;

22 (B) the following persons licensed by the state to provide mental
23 health services: Licensed psychologists, licensed masters level
24 psychologists, licensed clinical psychotherapists, licensed social workers,
25 licensed marriage and family therapists, licensed clinical marriage and
26 family therapists, licensed behavioral analysts, licensed assistant
27 behavioral analysts, licensed professional counselors, licensed clinical
28 professional counselors and registered alcohol and drug abuse counselors;

29 (C) teachers, school administrators and other employees of an
30 educational institution that the child is attending and any member of the
31 board of directors of the Kansas state high school activities association
32 referenced in K.S.A. 72-7114, and amendments thereto, and any person
33 who is employed by or is an officer of such association;

34 (D) persons licensed by the secretary of health and environment to
35 provide child care services or the employees of persons so licensed at the
36 place where the child care services are being provided to the child;

1 (E) firefighters, emergency medical services personnel, law
2 enforcement officers, juvenile intake and assessment workers, court
3 services officers, community corrections officers, case managers appointed
4 under K.S.A. 23-3508, and amendments thereto, and mediators appointed
5 under K.S.A. 23-3502, and amendments thereto; and

6 (F) any person employed by or who works as a volunteer for any
7 organization, whether for profit or not-for-profit, that provides social
8 services to pregnant teenagers, including, but not limited to, counseling,
9 adoption services and pregnancy education and maintenance.

10 (2) In addition to the reports required under subsection (a)(1), any
11 person who has reason to suspect that a child may be a child in need of
12 care may report the matter as provided in subsection (b) and (c).

13 (3) *Notwithstanding any other provisions of law, licensed social*
14 *workers described in subsection (a)(1)(B) shall not be required to report*
15 *suspected abuse or neglect of a child when a licensed social worker is*
16 *working under the supervision of an attorney and:*

17 (A) *The attorney is providing representation in a criminal, civil,*
18 *domestic or juvenile matter, and the reason to suspect that a child has*
19 *been harmed as a result of physical, mental or emotional abuse or neglect*
20 *or sexual abuse arises solely in the course of that representation; or*

21 (B) *a prospective client is seeking representation from the attorney in*
22 *a criminal, civil, domestic or juvenile matter, and the reason to suspect*
23 *that a child has been harmed as a result of physical, mental or emotional*
24 *abuse or neglect or sexual abuse arises solely in the course of seeking that*
25 *representation.*

26 (b) *Form of report.* (1) The report may be made orally and shall be
27 followed by a written report if requested. Every report shall contain, if
28 known: The names and addresses of the child and the child's parents or
29 other persons responsible for the child's care; the location of the child if
30 not at the child's residence; the child's gender, race and age; the reasons
31 why the reporter suspects the child may be a child in need of care; if abuse
32 or neglect or sexual abuse is suspected, the nature and extent of the harm
33 to the child, including any evidence of previous harm; and any other
34 information that the reporter believes might be helpful in establishing the
35 cause of the harm and the identity of the persons responsible for the harm.

36 (2) When reporting a suspicion that a child may be in need of care,
37 the reporter shall disclose protected health information freely and
38 cooperate fully with the secretary and law enforcement throughout the
39 investigation and any subsequent legal process.

40 (c) *To whom made.* Reports made pursuant to this section shall be
41 made to the secretary, except as follows:

42 (1) When the Kansas department for children and families is not open
43 for business, reports shall be made to the appropriate law enforcement

1 agency. On the next day that the department is open for business, the law
2 enforcement agency shall report to the department any report received and
3 any investigation initiated pursuant to K.S.A. 38-2226, and amendments
4 thereto. The reports may be made orally or, on request of the secretary, in
5 writing.

6 (2) Reports of child abuse or neglect occurring in an institution
7 operated by the Kansas department of corrections shall be made to the
8 attorney general or the secretary of corrections. Reports of child abuse or
9 neglect occurring in an institution operated by the Kansas department for
10 aging and disability services shall be made to the appropriate law
11 enforcement agency. All other reports of child abuse or neglect by persons
12 employed by the Kansas department for aging and disability services or
13 the Kansas department for children and families, or of children of persons
14 employed by either department, shall be made to the appropriate law
15 enforcement agency.

16 (d) *Death of child.* Any person who is required by this section to
17 report a suspicion that a child is in need of care and who knows of
18 information relating to the death of a child shall immediately notify the
19 coroner as provided by K.S.A. 22a-242, and amendments thereto.

20 (e) *Violations.* (1) Willful and knowing failure to make a report
21 required by this section is a class B misdemeanor. It is not a defense that
22 another mandatory reporter made a report.

23 (2) Intentionally preventing or interfering with the making of a report
24 required by this section is a class B misdemeanor.

25 (3) Any person who willfully and knowingly makes a false report
26 pursuant to this section or makes a report that such person knows lacks
27 factual foundation is guilty of a class B misdemeanor.

28 (f) *Immunity from liability.* Anyone who, without malice, participates
29 in the making of a report to the secretary or a law enforcement agency
30 relating to a suspicion a child may be a child in need of care or who
31 participates in any activity or investigation relating to the report or who
32 participates in any judicial proceeding resulting from the report shall have
33 immunity from any civil liability that might otherwise be incurred or
34 imposed.

35 Sec. 2. K.S.A. 38-2224 is hereby amended to read as follows: 38-
36 2224. (a) *Except as provided in subsection (b),* no employer shall
37 terminate the employment of, prevent or impair the practice or occupation
38 of, or impose any other sanction on, any employee because the employee
39 made an oral or written report to, or cooperated with an investigation by, a
40 law enforcement agency or the secretary relating to harm inflicted upon a
41 child which was suspected by the employee of having resulted from the
42 physical, mental or emotional abuse or neglect or sexual abuse of the
43 child.

1 (b) *An attorney may require a licensed social worker with reporting*
2 *obligations pursuant to K.S.A. 38-2223(a)(1)(B), and amendments thereto,*
3 *to maintain the confidentiality of information in compliance with the*
4 *attorney's ethical obligation under the Kansas rules of professional*
5 *conduct when the licensed social worker is working under the supervision*
6 *of such attorney and:*

7 (1) *The attorney is providing representation in a criminal, civil,*
8 *domestic or juvenile matter, and the reason to suspect that a child has*
9 *been harmed as a result of physical, mental or emotional abuse or neglect*
10 *or sexual abuse arises solely in the course of that representation; or*

11 (2) *a prospective client is seeking representation from the attorney in*
12 *a criminal, civil, domestic or juvenile matter, and the reason to suspect*
13 *that a child has been harmed as a result of physical, mental or emotional*
14 *abuse or neglect or sexual abuse arises solely in the course of seeking that*
15 *representation.*

16 (c) Violation of this section is a class B misdemeanor.

17 Sec. 3. K.S.A. 39-1402 is hereby amended to read as follows: 39-
18 1402. (a) *Except as provided in subsection (d), any person who is licensed*
19 *to practice any branch of the healing arts, a licensed psychologist, a*
20 *licensed master level psychologist, a licensed clinical psychotherapist, a*
21 *chief administrative officer of a medical care facility, an adult care home*
22 *administrator or operator, a licensed social worker, a licensed professional*
23 *nurse, a licensed practical nurse, a licensed marriage and family therapist,*
24 *a licensed clinical marriage and family therapist, licensed professional*
25 *counselor, licensed clinical professional counselor, registered alcohol and*
26 *drug abuse counselor, a teacher, a bank trust officer and any other officers*
27 *of financial institutions, a legal representative, a governmental assistance*
28 *provider or an emergency medical service provider who has reasonable*
29 *cause to believe that a resident is being or has been abused, neglected or*
30 *exploited, or is in a condition that is the result of such abuse, neglect or*
31 *exploitation or is in need of protective services, shall report immediately*
32 *such information or cause a report of such information to be made in any*
33 *reasonable manner to the Kansas department for aging and disability*
34 *services with respect to residents defined under K.S.A. 39-1401(a)(1), and*
35 *amendments thereto, to the department of health and environment with*
36 *respect to residents defined under K.S.A. 39-1401(a)(2), and amendments*
37 *thereto, and to the Kansas department for children and families and*
38 *appropriate law enforcement agencies with respect to all other residents.*
39 *Reports made to one department that are required by this subsection to be*
40 *made to the other department shall be referred by the department to which*
41 *the report is made to the appropriate department for that report, and any*
42 *such report shall constitute compliance with this subsection. Reports shall*
43 *be made during the normal working week days and hours of operation of*

1 such departments. Reports shall be made to law enforcement agencies
2 during the time the departments are not open for business. Law
3 enforcement agencies shall submit the report and appropriate information
4 to the appropriate department on the first working day that such
5 department is open for business. A report made pursuant to K.S.A. 65-
6 4923 or 65-4924, and amendments thereto, shall be deemed a report under
7 this section.

8 (b) The report made pursuant to subsection (a) shall contain the name
9 and address of the person making the report and of the caretaker caring for
10 the resident, the name and address of the involved resident, information
11 regarding the nature and extent of the abuse, neglect or exploitation, the
12 name of the next of kin of the resident, if known, and any other
13 information that the person making the report believes might be helpful in
14 an investigation of the case and the protection of the resident.

15 (c) Any other person, not listed in subsection (a), having reasonable
16 cause to suspect or believe that a resident is being or has been abused,
17 neglected or exploited or is in a condition that is the result of such abuse,
18 neglect or exploitation or is in need of protective services may report such
19 information to the Kansas department for aging and disability services
20 with respect to residents defined under K.S.A. 39-1401(a)(1), and
21 amendments thereto, to the department of health and environment with
22 respect to residents defined under K.S.A. 39-1401(a)(2), and amendments
23 thereto, and to the Kansas department for children and families with
24 respect to all other residents. Reports made to the incorrect department
25 under this section shall be referred by such department to the appropriate
26 department for that report.

27 (d) *Notwithstanding any other provisions of law, licensed social
28 workers described in subsection (a) shall not be required to report
29 suspected abuse or neglect of a resident when a licensed social worker is
30 working under the supervision of an attorney and:*

31 (1) *The attorney is providing representation in a criminal, civil,
32 domestic or juvenile matter, and the reasonable cause to believe that a
33 resident is being or has been abused, neglected or exploited, or is in a
34 condition that is the result of such abuse, neglect or exploitation or is in
35 need of protective services arises solely in the course of that
36 representation; or*

37 (2) *a prospective client is seeking representation from the attorney in
38 a criminal, civil, domestic or juvenile matter; and the reasonable cause to
39 believe that a resident is being or has been abused, neglected or exploited,
40 or is in a condition that is the result of such abuse, neglect or exploitation
41 or is in need of protective services arises solely in the course of seeking
42 that representation.*

43 (e) Notice of the requirements of this act and the department to which

1 a report is to be made under this act shall be posted in a conspicuous
2 public place in every adult care home and medical care facility in this
3 state.

4 ~~(e)~~(f) Any person required to report information or cause a report of
5 information to be made under subsection (a) who knowingly fails to make
6 such report or cause such report to be made shall be guilty of a class B
7 misdemeanor.

8 Sec. 4. K.S.A. 39-1403 is hereby amended to read as follows: 39-
9 1403. (a) Anyone participating in the making of any report pursuant to this
10 act, or in any follow-up activity to or investigation of such report or any
11 other report of abuse, neglect or exploitation of an adult or who testifies in
12 any administrative or judicial proceeding arising from such report shall not
13 be subject to any civil liability on account of such report, investigation or
14 testimony, unless such person acted in bad faith or with malicious purpose.

15 (b) *Except as provided in subsection (c), no employer shall terminate*
16 *the employment of, prevent or impair the practice or occupation of or*
17 *impose any other sanction on any employee solely for the reason that such*
18 *employee made or caused to be made a report under this act.*

19 (c) *An attorney may require a licensed social worker with reporting*
20 *obligations pursuant to K.S.A. 39-1402(a), and amendments thereto, to*
21 *maintain the confidentiality of information in compliance with the*
22 *attorney's ethical obligation under the Kansas rules of professional*
23 *conduct when the licensed social worker is working under the supervision*
24 *of such attorney and:*

25 (1) *The attorney is providing representation in a criminal, civil,*
26 *domestic or juvenile matter, and the reasonable cause to believe that a*
27 *resident is being or has been abused, neglected or exploited, or is in a*
28 *condition that is the result of such abuse, neglect or exploitation or is in*
29 *need of protective services arises solely in the course of that*
30 *representation; or*

31 (2) *a prospective client is seeking representation from the attorney in*
32 *a criminal, civil, domestic or juvenile matter, and the reasonable cause to*
33 *believe that a resident is being or has been abused, neglected or exploited,*
34 *or is in a condition that is the result of such abuse, neglect or exploitation*
35 *or is in need of protective services arises solely in the course of seeking*
36 *that representation.*

37 Sec. 5. K.S.A. 39-1431 is hereby amended to read as follows: 39-
38 1431. (a) (1) *Except as provided in subsection (a)(3), when any of the*
39 *following persons has reasonable cause to suspect or believe that an adult*
40 *is in need of protective services or being harmed as a result of abuse,*
41 *neglect or financial exploitation, such person shall promptly report the*
42 *matter as provided by the provisions of this section:*

43 (A) Persons licensed to practice the healing arts;

1 (B) persons engaged in postgraduate training programs approved by
2 the state board of healing arts;

3 (C) persons licensed by the Kansas dental board to engage in the
4 practice of dentistry;

5 (D) persons licensed by the board of examiners in optometry to
6 engage in the practice of optometry;

7 (E) persons licensed by the board of nursing to engage in the practice
8 of nursing;

9 (F) chief administrative officers of medical care facilities;

10 (G) persons licensed by the behavioral sciences regulatory board to
11 provide mental health services, including psychologists, masters level
12 psychologists, bachelors level social workers, masters level social workers,
13 clinical social workers, marriage and family therapists, clinical marriage
14 and family therapists, professional counselors, clinical professional
15 counselors, behavior analysts, addiction counselors and clinical addiction
16 counselors;

17 (H) teachers, school administrators or other employees of any Kansas
18 educational institution, as defined in K.S.A. 75-53,112, and amendments
19 thereto, that the adult is attending;

20 (I) firefighters, law enforcement officers and emergency medical
21 services personnel;

22 (J) court services officers, community corrections officers, case
23 managers appointed under K.S.A. 23-3508, and amendments thereto, and
24 mediators appointed under K.S.A. 23-3502, and amendments thereto;

25 (K) bank trust officers or any other officers of financial institutions;

26 (L) rehabilitation counselors;

27 (M) legal representatives;

28 (N) governmental assistance providers;

29 (O) independent living counselors;

30 (P) owners or operators of residential care facilities, as defined in
31 K.S.A. 39-2002, and amendments thereto;

32 (Q) the chief administrative officer of a licensed home health agency,
33 as defined in K.S.A. 65-5101, and amendments thereto;

34 (R) the chief administrative officer of an adult family home, as
35 defined in K.S.A. 39-1501, and amendments thereto; and

36 (S) the chief administrative officer of any provider of community
37 services and affiliates thereof operated or funded by the Kansas
38 department for children and families or licensed under K.S.A. 39-2001 et
39 seq., and amendments thereto.

40 (2) An employee of a domestic violence center shall not be required
41 to report information or cause a report of information to be made under
42 this subsection.

43 (3) *Notwithstanding any other provisions of law, a licensed social*

1 worker described in subsection (a)(1)(G) shall not be required to report
2 the need for protective services for or harm to an adult as defined in
3 K.S.A. 39-1430(b), and amendments thereto, when the licensed social
4 worker is working under the supervision of an attorney and:

5 (A) The attorney is providing representation in a criminal, civil,
6 domestic or juvenile matter, and the reasonable cause to suspect or believe
7 that an adult is in need of protective services or being harmed as a result
8 of abuse, neglect or financial exploitation arises solely in the course of
9 that representation; or

10 (B) a prospective client is seeking representation from the attorney in
11 a criminal, civil, domestic or juvenile matter, and the reasonable cause to
12 suspect or believe that an adult is in need of protective services or being
13 harmed as a result of abuse, neglect or financial exploitation arises solely
14 in the course of seeking that representation.

15 (b) Other state agencies receiving reports that are to be referred to the
16 Kansas department for children and families and the appropriate law
17 enforcement agency, shall submit the report to the department and agency
18 within six hours, during normal work days, of receiving the information.
19 Reports shall be made to the Kansas department for children and families
20 during the normal working week days and hours of operation. Reports
21 shall be made to law enforcement agencies during the time the Kansas
22 department for children and families is not in operation. Law enforcement
23 shall submit the report and appropriate information to the Kansas
24 department for children and families on the first working day that the
25 Kansas department for children and families is in operation after receipt of
26 such information.

27 (c) The report made pursuant to this section shall contain the name
28 and address of the person making the report and of the caretaker caring for
29 the involved adult, the name and address of the involved adult, information
30 regarding the nature and extent of the abuse, neglect or financial
31 exploitation, the name of the next of kin of the involved adult, if known,
32 and any other information that the person making the report believes might
33 be helpful in the investigation of the case and the protection of the
34 involved adult.

35 (d) Any other person, not listed in subsection (a) who has reasonable
36 cause to suspect or believe that an adult is being or has been harmed as a
37 result of abuse, neglect or financial exploitation may report such
38 information to the Kansas department for children and families. Reports
39 shall be made to law enforcement agencies during the time the Kansas
40 department for children and families is not in operation.

41 (e) A person making a report under subsection (a) shall not be
42 required to make a report under K.S.A. 39-1401 through 39-1410, and
43 amendments thereto.

1 (f) Any person required to report information or cause a report of
2 information to be made under subsection (a) who knowingly fails to make
3 such report or knowingly causes such report not to be made shall be guilty
4 of a class B misdemeanor.

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

13 Sec. 6. K.S.A. 39-1432 is hereby amended to read as follows: 39-
14 1432. (a) Anyone participating in the making of any report pursuant to this
15 act, or in any follow-up activity to the report, including providing records
16 upon request of the Kansas department for children and families, or
17 investigation of such report or who testifies in any administrative or
18 judicial proceeding arising from such report shall not be subject to any
19 civil liability on account of such report, investigation or testimony, unless
20 such person acted in bad faith or with malicious purpose.

21 (b) *Except as provided in subsection (c), no employer shall terminate*
22 *the employment of, prevent or impair the practice or occupation of or*
23 *impose any other sanction on any employee solely for the reason that such*
24 *employee made or caused to be made a report, or cooperated with an*
25 *investigation, under this act. A court, in addition to other damages and*
26 *remedies, may assess reasonable attorney fees against an employer who*
27 *has been found to have violated the provisions of this subsection.*

28 (c) *An attorney may require a licensed social worker with reporting*
29 *obligations pursuant to K.S.A. 39-1431(a)(1)(G), and amendments thereto,*
30 *to maintain the confidentiality of information in compliance with the*
31 *attorney's ethical obligation under the Kansas rules of professional*
32 *conduct when the licensed social worker is working under the supervision*
33 *of such attorney and:*

34 (1) *The attorney is providing representation in a criminal, civil,*
35 *domestic or juvenile matter, and the reasonable cause to suspect or believe*
36 *that an adult is in need of protective services or being harmed as a result*
37 *of abuse, neglect or financial exploitation arises solely in the course of*
38 *that representation; or*

39 (2) *a prospective client is seeking representation from the attorney in*
40 *a criminal, civil, domestic or juvenile matter, and the reasonable cause to*
41 *suspect or believe that an adult is in need of protective services or being*
42 *harmed as a result of abuse, neglect or financial exploitation arises solely*
43 *in the course of seeking that representation.*

1 Sec. 7. K.S.A. 65-6315 is hereby amended to read as follows: 65-
2 6315. (a) No licensed social work associate or licensed baccalaureate
3 social worker, secretary, stenographer or clerk of a licensed social work
4 associate or licensed baccalaureate social worker or anyone who
5 participates in delivery of social work services or anyone working under
6 supervision of a licensed social worker may disclose any information such
7 person may have acquired from persons consulting such person in the
8 person's professional capacity or be compelled to disclose such
9 information except:

10 (1) With the written consent of the client, or in the case of death or
11 disability, of the personal representative of the client, other person
12 authorized to sue or the beneficiary of an insurance policy on the client's
13 life, health or physical condition;

14 (2) when the person is a child under the age of 18 years and the
15 information acquired by the licensed social worker indicated that the child
16 was the victim or subject of a crime, the licensed social worker may be
17 required to testify fully in relation thereto upon any examination, trial or
18 other proceeding in which the commission of such a crime is a subject of
19 inquiry, *unless the information is acquired while working under the*
20 *supervision of an attorney providing services to a client in a criminal,*
21 *civil, domestic or juvenile matter, or when a prospective client sought*
22 *representation in a criminal, civil, domestic or juvenile matter, and the*
23 *information was obtained solely in the course of that work under the*
24 *supervision of the attorney;*

25 (3) when the person waives the privilege by bringing charges against
26 the licensed social worker but only to the extent that such information is
27 relevant under the circumstances.

28 (b) The confidential relations and communications between a licensed
29 master social worker's or a licensed specialist clinical social worker's client
30 are placed on the same basis as provided by law for those between an
31 attorney and an attorney's client.

32 (c) *Notwithstanding the provisions of subsection (a)(2) and K.S.A.*
33 *38-2223(a)(3), 39-1402(d) and 39-1431(a)(3), and amendments thereto,*
34 *nothing in this section or in this act shall be construed to prohibit any*
35 *licensed social worker from testifying in court hearings concerning matters*
36 *of adult abuse, adoption, child abuse, child neglect, or other matters*
37 *pertaining to the welfare of children or from seeking collaboration or*
38 *consultation with professional colleagues or administrative superiors, or*
39 *both, on behalf of the client.*

40 (d) There is no privilege under this section for information which is
41 required to be reported to a public official, *except for information acquired*
42 *while working under the supervision of an attorney providing services to a*
43 *client in a criminal, civil, domestic or juvenile matter, or when a*

1 *prospective client sought representation in a criminal, civil, domestic or*
2 *juvenile matter; and the information was obtained solely in the course of*
3 *that work under the supervision of the attorney.*

4 Sec. 8. K.S.A. 38-2224, 39-1402, 39-1403, 39-1431, 39-1432 and 65-
5 6315 and K.S.A. 2024 Supp. 38-2223 are hereby repealed.

6 Sec. 9. This act shall take effect and be in force from and after its
7 publication in the statute book.