

2013 Summary of Legislation



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INTRODUCTION

This publication includes summaries of the legislation enacted by the 2013 Legislature. Not summarized are bills of a limited, local, technical, clarifying, or repealing nature, and bills that were vetoed (sustained). However, these bills are listed beginning on page 142.

During the 2013 Session, 663 bills were introduced: 247 in the Senate and 416 in the House. Of these 663 bills, 136 (20.5 percent) became law: 47 Senate bills and 89 House bills. Further, of the 136 bills becoming law, 123 (90.4 percent) were introduced by committees and 13 (9.6 percent) were introduced by individual legislators.

The Governor vetoed two bills and ten line items. All vetoes were sustained. A total of 512 bills will be carried over to the 2014 Session of the Legislature.

This publication does not include a summary of any legislation associated with the 2013 Special Session. The Special Session has been called to commence on Tuesday, September 3, 2013, and will be summarized in a separate publication.

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ABORTION

Abortion—Civil Actions; SB 142

SB 142 creates a new section of law prohibiting civil actions for a claim of wrongful life or wrongful birth. The bill also prohibits recovery of damages in any civil action for any physical condition of a minor that existed at birth if such damages arise out of a claim that a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill defines "claim of wrongful birth" as a cause of action brought by a parent, guardian, or individual required to provide for the support of a minor seeking damages due to a physical condition of the minor that existed at the time of birth, and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill defines "claim of wrongful life" as a cause of action brought by or for a minor seeking damages for the minor due to a physical condition existing at birth, and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill clarifies that nothing in the new section should be deemed to create a new cause of action or preclude any otherwise proper cause of action based on a claim that, but for a person's wrongful action or omission, the death or physical injury of the mother would not have occurred, or the handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated so that the health and life of the individual was preserved.

The bill also amends the wrongful death statute to include "unborn child" within the definition of "person" for purposes of the statute. This change allows a wrongful death action for the death of an unborn child caused by the wrongful act or omission of another. "Unborn child" is defined as a living individual organism of the species *homo sapiens*, in *utero*, at any stage of gestation from fertilization to birth.

The bill clarifies that the provisions of the wrongful death statute do not apply to the death of an unborn child by means of an act committed by the mother, any lawful medical procedure performed by a physician or other licensed medical professional at the request of the pregnant woman or her guardian, the lawful dispensation or administration of lawfully prescribed medication, or a legal abortion.

Both the new section and the amendments to the wrongful death section include a severability clause.

Abortion Restrictions and Declaration that Life Begins at Fertilization; HB 2253

HB 2253 prohibits certain abortions related to the gender of the unborn child, revises the general and late-term abortion statutes, and declares that the life of each human being begins at fertilization.

Abortion Solely Because of the Unborn Child's Sex

The bill prohibits persons from performing or inducing abortions or attempting to perform or induce abortions in instances where the person has knowledge the pregnant woman is seeking an abortion solely on account of the sex of the unborn child.

The bill allows the following persons, unless the pregnancy resulted from the plaintiff's criminal conduct, to obtain appropriate relief in a civil action:

- A woman upon whom an abortion is performed or induced, or upon whom there is an attempt to perform or induce an abortion (in violation of the law enacted by the bill);
- The father, if married to the woman at the time of the abortion; and
- The parents or custodial guardians of the woman, if she has not attained the age of 18 at the time of the abortion.

Relief as applied in the bill includes:

- Money damages for all injuries, psychological and physical, occasioned by the violation;
- Statutory damages equal to three times the cost of the abortion;
- Injunctive relief; and
- Reasonable attorney fees.

The bill further provides that a woman upon whom an abortion is performed cannot be prosecuted under the provisions created by the bill for a conspiracy to violate these provisions pursuant to Kansas law (KSA 2012 Supp. 21-5302). The bill provides that nothing in the provisions is to be construed to create a right to an abortion. Notwithstanding any provision of the section of law created by the bill, a person will not be allowed to perform an abortion that is prohibited by law.

The bill provides that upon a first conviction for violation of the section of law created by the bill, a person will be guilty of a class A person misdemeanor. Upon a second or subsequent provision, a person will be guilty of a severity level 10, person felony.

"Abortion," as used in the bill, means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes *in utero*, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy.

Revised Abortion Statutes; Declaration that Life Begins at Fertilization

The bill also revises the general and late-term abortion statutes, the Woman's-Right-To-Know Act, and the state tax statutes. In addition, the bill adds a new statutory provision that declares the life of each human being begins at fertilization, with all state laws to be interpreted and construed to protect the rights, privileges, and immunities of the unborn child, subject only

to the *U.S. Constitution* and the judicial decisions and interpretations of the U.S. Supreme Court.

The bill further provides that nothing in the new provisions shall apply to an abortion that is necessary to preserve the life of the pregnant woman.

The bill prohibits the use of public funding, tax credits, tax preferences, and state-provided public health care services from being used in any manner to facilitate abortions or in facilities where abortions are performed. The bill clarifies a restriction in the tax credit laws regarding health care deductions and limits a prohibition to include only expenses paid or incurred for abortion coverage.

The bill also prohibits any school district and its employees, agents, and education service providers from offering abortion services. The bill restricts school districts from allowing an abortion services provider and its employees, agents, and volunteers from offering, sponsoring or furnishing any course materials or instruction related to human sexuality or sexually transmitted diseases.

A statute applying to late-term restrictions is amended to include a reference to attempts to perform or induce an abortion as being prohibited. The bill redefines one term currently in statute, “medical emergency,” regarding a pregnant woman, and adds these two definitions for the terms “bodily function” and “fertilization” in the general abortion statutes:

- “Medical emergency” regarding a pregnant woman means “a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining gestational age to avert the death of the woman or for which a delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function.” The concluding new language states that “no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.”
- “Bodily function” means physical functions only. The term “bodily function” does not include mental or emotional functions.
- “Fertilization” means the fusion of a human spermatozoon with a human ovum.

The Secretary of the Department of Health and Environment (KDHE) is required to provide information about Down Syndrome and other prenatally or postnatally diagnosed conditions and is permitted to authorize and oversee certain activities, including the awarding of grants, contracts or cooperative agreements to eligible entities. Information about counseling assistance for medically challenging pregnancies and perinatal hospice services is required as an addition to a KDHE listing of websites for national perinatal assistance. The Secretary is required to submit a report on or before January 12, 2015, to the Legislature and the Governor on the effectiveness of the grants, contracts and cooperative agreements.

The bill also amends the Woman’s Right to Know Act to prescribe new language for signage to be posted in an office, clinic, or other facility in which abortions are performed.

Additional new language also is required in certain printed materials to inform pregnant women about the development of an unborn child, legal responsibilities for the unborn child, and a link to the KDHE website materials and organizations to assist the pregnant woman.

The bill addresses the University of Kansas Hospital Authority, and amends the law regarding abortions to allow for an abortion to be performed at the hospital in the case of a medical emergency as defined in the bill. In addition, the bill allows any member of the physician faculty of the University of Kansas School of Medicine to perform abortions whenever an abortion is performed outside the scope of any member's employment and on property not controlled by the University of Kansas Hospital Authority.

The bill includes a severability clause, should any provision or clause be held invalid.

AGRICULTURE AND NATURAL RESOURCES

County Fair Recognition; SB 56

SB 56 transfers the responsibility of recognizing official county fair associations to the board of county commissioners of the county where the association is located. Previously, that responsibility resided with the Secretary of Agriculture. A new provision of law states a county fair association or livestock show association officially recognized by the Secretary of Agriculture prior to July 1, 2013, retains that official recognition unless it was revoked by a vote of the county commissioners in the county where the association is located. The bill requires the Secretary of Agriculture, prior to January 1, 2014, to notify the board of county commissioners of any county in which the Secretary of Agriculture has recognized an official county fair association.

Disease Testing; Poultry Improvement Plan and Domesticated Deer; Sub. for SB 57

Sub. for SB 57 creates new law regarding penalties and testing for chronic wasting disease. The bill also amends the law regarding the National Poultry Improvement Plan and domesticated deer.

The bill requires all tests for chronic wasting disease to be conducted in laboratories in a method approved by the U.S. Department of Agriculture's (USDA) Animal Plant Health Inspection Service.

The bill eliminates previous provisions of law that named the Kansas Poultry Improvement Association the designated official state agency for the purpose of carrying out the National Poultry Improvement Plan. In its place, the bill grants this authority to the Kansas Department of Agriculture (KDA).

Regarding domesticated deer, the bill amends prior law to state it is unlawful for any person to "possess" domesticated deer, rather than "engage in the business of raising" domesticated deer, without a permit issued by the Animal Health Commissioner. The fee cap for the permit increases from \$150 to \$400. Failure to obtain a permit results in a class C nonperson misdemeanor and, upon conviction, punishable by a fine not exceeding \$1,000 (increased from the prior fine of up to \$150). The bill imposes a civil fine of up to \$1,000 for each violation of Article 21 of Chapter 47 of the *Kansas Statutes Annotated* (domesticated deer), as determined by the Animal Health Commissioner.

The Animal Health Commissioner, or the Commissioner's representatives, could inspect any premises that are issued a domesticated deer permit and the premises' records, but not more than once each year. Upon discovery of a violation of the law dealing with domesticated deer or upon complaint that the deer premises are not being operated, managed or maintained in accordance with appropriate rules and regulations, the Commissioner, or the Commissioner's representatives, could inspect premises and records more often than once per year. Unlicensed premises also could be inspected when the Commissioner has reasonable grounds to believe a person is violating the section of law requiring those possessing domesticated deer to obtain a domesticated deer permit. Additionally, on an annual basis (rather than the prior quarterly basis), the Commissioner is be required to transmit a current list of persons issued a domesticated deer permit to the Secretary of Wildlife, Parks and Tourism (KDWPT). The KDA could request assistance from KDWPT to implement and enforce the domesticated deer laws.

The Animal Health Commissioner is granted additional authority to adopt rules and regulations. This new authority to promulgate rules and regulations to enforce the provisions of the law dealing with domesticated deer and to ensure compliance with federal requirements and protect domestic animals and wildlife from disease risks related to domestic deer production.

The bill repeals outdated or unnecessary statutes in Chapter 47 (livestock and domestic animals) of the *Kansas Statutes Annotated*. In addition, one section of law regarding stockyards is amended to make it clear that the Animal Health Commissioner or the Commissioner's designee is to work in conjunction with the federal government to prohibit or prevent contagious animal diseases.

Kansas Farmers' Market Promotion Act; SB 120

SB 120 enacts the Kansas Farmers' Market Promotion Act. The bill establishes a central registration of farmers' markets in Kansas, maintained by the Kansas Department of Agriculture (KDA). The registration will be used to encourage and promote farmers' markets across Kansas and assist KDA in promoting Kansas agriculture by more efficiently connecting producers with consumers. The bill allows farmers' market operators to voluntarily register with the Secretary of Agriculture on forms provided by the Secretary. There will be no charge for registration. The bill requires the Secretary to maintain a list of all registered entities for dissemination to the public.

The bill also designates the Secretary as the registration authority for all farmers' markets in Kansas. The bill allows the Secretary to apply for any federal, state, local, or private grants or funding opportunities that will assist in the creation or promotion of farmers' markets in Kansas.

The bill also provides limited liability for farmers' markets by stating any participant will assume the inherent risk of attending, participating, or selling goods at a registered farmers' market, when the participant takes part in any activity in conjunction with the farmers' market. The bill allows a registered farmers' market to plead the affirmative defense of assumption of risk by the participant in any action for damages against the farmers' market. The bill will not prevent or limit the liability of a registered farmers' market operator if:

- The registered farmers' market operator injures the participant by intentional or willful misconduct; or
- The registered farmers' market operator has actual knowledge of a dangerous condition in the land, facilities, or equipment used in the farmers' market activity, or the dangerous propensity of a particular animal used in such activity, and does not make the dangerous condition known to the participant and the dangerous condition causes injuries to the participant.

In addition, the bill defines various terms used in the Act, including "department," "farmers' market," "farmers' market operator," "participant," and "secretary."

Limiting Nuisance Actions Against Certain Agricultural Activities; SB 168

SB 168 amends law relating to the protection of farmland and agricultural activities from certain nuisance actions.

Compensatory Damages

The bill creates a new section setting out compensatory damages that may be awarded to a claimant from a nuisance action against farmland used primarily for agricultural activity. The bill divides the level of damages based on whether the nuisance is permanent or temporary. If the nuisance is determined to be permanent, compensatory damages are limited to the reduction in the fair market value of the claimant's property caused by such nuisance, but cannot exceed the fair market value of the claimant's property. If the nuisance is deemed temporary, compensatory damages are limited to the lesser of:

- The diminution in fair rental value of the claimant's property;
- The value of the loss of the use and enjoyment of the claimant's property; or
- The reasonable cost to repair or mitigate any injury to the claimant caused by the nuisance.

The bill limits compensatory damages awarded to a claimant or a claimant's successor for a nuisance action brought against the same defendant or defendant's successors for an alleged nuisance related to the same or similar agricultural activity to the reduction in the fair market value of the claimant's property. Any damages from a previous court order against the defendant or defendant's successors are to be considered in any subsequent case to determine that the total amount of damages awarded does not exceed the fair market value of the claimant's property.

If a defendant makes a good faith effort to abate the alleged nuisance and the effort is unsuccessful, the nuisance is to be deemed not capable of abatement and any compensatory damages are limited to the reduction in the fair market value of the claimant's property.

The bill prevents a person from bringing an action for private nuisance unless the person has an ownership interest in the property alleged to be affected by the nuisance.

Agricultural Activities

The bill allows any agricultural activity conducted on farmland, if consistent with good agricultural practices and established prior to surrounding agricultural or non-agricultural activities, to be presumed reasonable and to not constitute a nuisance. The bill presumes an agricultural activity that is undertaken in conformity with federal, state, and local laws and rules and regulations to be considered good agricultural practice.

The bill provides certain rights to an owner of farmland who conducts agricultural activity protected under the Act, enumerated as follows:

- The owner may reasonably expand the scope of the agricultural activity, including, but not limited to, increasing the acreage or number of animal units or changing agricultural activities, without losing protections so long as the agricultural activity complies with all applicable local, state, and federal environmental codes, resolutions, laws, and rules and regulations;

- The owner may assign or transfer the protections to any successor in interest; and
- The owner will not be deemed to waive the protections by temporarily ceasing or decreasing the scope of the agricultural activity.

The bill amends the definition of the term “agricultural activity” to include the handling, storage, and transportation of agricultural commodities.

Wounded Warrior Deer Permits; HB 2030

HB 2030 authorizes the Kansas Department of Wildlife, Parks and Tourism to make available not more than ten wounded warrior deer permits (primarily nonresident) each calendar year. These wounded warrior deer permits will be available to disabled veterans who sustained injuries in combat and have a service-connected disability of not less than 30 percent. The Department will conduct a random drawing if the number of eligible individuals exceeds the number of authorized deer permits. Individuals awarded these permits will pay the price for the deer permit established by rules and regulations for the highest value for the type of permit awarded. These wounded warrior permits will be subject to the restrictions of the season, sex, equipment type, or hunt units as issued on the deer permits.

Confined Animal Feeding Facility Regulation; Sub. for HB 2207

Sub. for HB 2207 amends provisions of the law dealing with the regulation of confined animal feeding facilities (CAFOs) by the Kansas Department of Health and Environment (KDHE).

Specifically, the bill continues the requirement that any CAFO with an animal unit capacity of 300 or more must register with the Secretary of Health and Environment (Secretary) and pay a fee of \$25. The bill requires the receipt of the registration to be acknowledged and published by the Secretary. The registration will be required to indicate the prescribed tract of land where the proposed construction will occur and that the separation distances for the CAFO comply with the requirements listed in the bill. The bill requires KDHE to identify any significant water pollution potential or separation distance violations within 30 days of receiving the registration.

If a CAFO with an animal unit capacity of 300 or more, but less than 1,000, poses no identified water pollution potential, the bill requires the Secretary to certify that no permit is required. If no permit is required, the bill requires the Secretary to certify that the separation distances comply with separation distance requirements. If the separation distances do not comply, the Secretary could reduce the separation distance requirements pursuant to existing law (written agreement with owners of habitable structures within the separation distance, upon request by the board of county commissioners, if there are no substantial objections, or if existing technology meets or exceeds the effect of the required separation distance) and certify the reduction or report to the registrant the conditions necessary to receive certification.

If a CAFO requires a permit, the bill requires an application for a permit to be submitted no later than 18 months after the date the registration is received or the registration would expire. The bill permits the registrant to petition the Secretary to extend the application period by an additional 18 months if the Secretary believes the extension is reasonable.

Further, the bill requires the Secretary to notify the registrant within 30 days of the receipt of the application if the application is complete or incomplete and, if incomplete, the notification must include the reasons why it is incomplete. The bill provides that if the application period expires, then no further registrations pertaining to the same location will be accepted by KDHE for a period of no less than 180 days.

Kansas Storage Tank Act; HB 2305

HB 2305 amends the Kansas Storage Tank Act to require new or replacement installations of underground storage tank (UST) systems be built with secondary containment, which must be monitored for leaks. The requirement applies to systems installed after July 1, 2013; existing systems are not required to be upgraded unless the storage tank or more than 50 percent of the piping connected to the tank is replaced.

Secondary containment systems are required to do the following:

- Be designed, constructed, and installed to contain regulated substances released from the tank system until the substances are detected and removed;
- Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and
- Be checked for evidence of a released substance using interstitial monitoring.

In addition, installation or replacement of secondarily contained piping must include installation of containment of a submersible pump. However, the requirement for secondary containment does not apply to safe suction piping or to repairs meant to restore an UST, piping, or dispenser to operating condition.

The bill also requires any new motor fuel dispenser system installed after June 30, 2013, to include under-dispenser spill containment. The containment is required to meet the following requirements:

- Liquid tight on its sides and bottom and at any penetrations;
- Compatible with the substance conveyed by the piping; and
- Designed to allow for visual inspection and access to the components in the containment or to be monitored for a release of regulated substances from the dispenser and piping.

In addition, the bill defines “installation of a new motor fuel dispense system,” “replaced,” “secondary containment or secondarily contained,” “safe suction piping,” and “under-dispenser containment” as new terms in the Act, and adds new language to the existing definition of “repair.” The bill also updates the statutory reference to the federal Pipeline Safety Act.

**Limited Transfer Permits; Aggregate Mining Operations; Dams and Water Obstructions;
Stream Cleaning by County Commissions; Review of Water Development Projects;
Local Enhancement Management Areas; HB 2363**

HB 2363 addresses a number of water-related issues, including establishing limited transfer permits granting land-based sand and gravel pits and aggregate mining operations utilizing washwater ponds term permits, amending various provisions of existing law dealing with dams and water obstructions providing for general permits, granting additional authority to boards of county commissions to clean and maintain banks and channels of streams, amending statutory language involving agency reviews of water development projects, repealing several obsolete statutes, and making orders of the Chief Engineer regarding Local Enhancement Management Areas subject to the Kansas Administrative Procedure Act.

Limited Transfer Permits

The bill allows the Chief Engineer of the Division of Water Resources (DWR) to grant limited transfer permits authorizing the use of up to 4,000,000 gallons from an existing water right. The permit is limited to a single calendar year and requires an application fee of \$200. If the base water right is groundwater, the bill allows its use to be transferred to another well from the same source of supply within two miles. If the base water right is for surface water, the use can be transferred to another surface water use within the same surface water system. The Chief Engineer is authorized to adopt rules and regulations to administer these provisions and to ensure there is no increase in consumptive use. These provisions are supplemental to the Kansas Water Appropriations Act.

Land-Based Sand and Gravel Pits and Aggregate Mining Operations Utilizing Washwater Ponds; Term Permits

The bill requires the rules and regulations adopted by the Secretary of Health and Environment pertaining to the prevention of surface water, subsurface water, and soil pollution to not apply to land-based sand and gravel pits or aggregate mining operations utilizing washwater ponds. This provision applies if the only water or wastewater directed to the dredge pit or washwater pond consists of dredge return flows; flows generated from aggregate classification; or flows from washing aggregate, if water used in the flows is returned to the dredge pit or washwater pond.

The bill also provides that locations in the state where the average potential net evaporation is less than 18 inches per year, as determined by the Chief Engineer, will be issued a single-term permit for the life of a sand or gravel pit project, not to exceed 80 years, for secondary uses of water. Continuing law states secondary beneficial uses includes hydraulic dredging and sand washing.

Dams

With respect to dams, the bill modifies the statutory definition of what constitutes a “dam” to those that have a height of 25 feet or more (continuing law), or has a height of six feet or greater (continuing law) and a storage volume at the top of the emergency spillway elevation of 50 or more acre feet (modification). The height of a dam will be measured from the lowest

elevation of the streambed, downstream toe, or outside limit of the dam to the elevation of the top of the dam.

In addition, the bill exempts hazard Class A dams proposed for construction or modification from the requirement to acquire a permit or written consent unless the Chief Engineer determines it is necessary for the protection of life or property. Those hazard Class A dams generally not required to have a permit or written consent include:

- Those that have a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet; **and**
- The dam location and dimensions have been registered; **or**
- The dam is a wastewater storage structure for a confined feeding facility approved by the Secretary of Health and Environment.

The bill establishes the application fee for a permit to construct, modify, or add to a dam at \$200. The bill repeals law establishing fees based on their point in construction. Also, the bill repeals statutory language in instances where dam inspection fees were assessed by the size of the dam.

When a dam has been determined to be unsafe, the bill requires the safety inspection to be conducted by the Chief Engineer or authorized representative and the cost of the inspection be based upon the size of the dam. Inspection fees for class sizes 1 and 2 are repealed and inspection fees for dam sizes Class 3 and 4 are retained.

Language requiring the Chief Engineer to maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit is repealed.

Water Obstructions

With respect to a permit or consent of the Chief Engineer for a water obstruction, the bill no longer requires a permit or consent for a water obstruction or change in the cross section of a designated stream if the cross section area is obstructed for less than 5.0 percent and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length. In addition, no permit or consent is required if the water obstruction is not a dam (continuing law); is not located within an incorporated area (continuing law); every part is located more than 300 feet from any property boundary (continuing law), which includes any water impounded by the obstruction (new law); and if the watershed area above the water obstruction is 5 square miles or less (new law) (prior law was 640 acres).

The bill defines a “designated stream” to mean a natural or man-made channel that conveys drainage or runoff from a watershed having an area of one or more square miles in zone one, two or more square miles or more in zone two, or three or more square miles or more in zone three. Zone one includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick, or Sumner counties. Zone two includes all geographic points located west of zone one, and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt, or Barber counties. Zone three includes all geographic points location west of zone two.

The bill establishes a new methodology for the application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current, or cross section of a stream based on the watershed area. For a permit with a watershed area above the project of less than five square miles, the permit application fee is \$100; for those areas above the project between five and fifty square miles, the fee is \$200; and for those areas above the project with greater than fifty square miles, the fee is \$500. The prior fee methodology is repealed.

General Permits

The bill authorizes the Chief Engineer to issue general permits for projects that require limited supervision and review. The fee for a general permit is \$100.

Authority of County Commissions and Review of Water Development Projects

The bill amends the law to allow boards of county commissioners, upon enactment of resolution or after having received a petition from 50 taxpayers of any county who own land in the floodplain in question, to clean and maintain the banks and channels of streams and watercourses. Upon petition or resolution, the boards could remove debris, but could not change or diminish the course, current, or cross sections of any stream. The boards can act if they have obtained written permission of the landowner to enter private property. If damage is done, the bill requires a landowner to make a claim within 60 days, rather than the current 10 days, of the alleged material damage.

The bill also subjects only those water development projects requiring a permit by the Chief Engineer to be reviewed by the “environmental review agencies” outlined in KSA 82a-326. The law defines a “water development project” to mean any project or plan that may be allowed or permitted.

Repeal of Statutes, Deletion of the Term “Jettie,” and Local Enhancement Management Areas

The bill repeals provisions of law relating to certain dams built under the federal agricultural conservation program, obstructing the flow of surface water, construction of drainage on private land by owners, authority of the former position titled “irrigation commissioner,” and water rights held by the former Sunflower Ammunition Plant.

In addition, the term “jettie” is removed from the law, since it is no longer a commonly used term.

Further, Local Enhancement Management Area orders are added to the list of orders made by the Chief Engineer that are subject to review in accordance with the Kansas Administrative Procedure Act.

ALCOHOL AND DRUGS

Drug Screening for Cash Assistance Programs; SB 149

SB 149 authorizes the screening of applicants or recipients of cash assistance programs or employment security benefits, commonly referred to as Unemployment Insurance (UI) benefits, for unlawful use of controlled substances or unlawful controlled substance analogs, as defined by KSA 21-5701 and 21 U.S.C. § 802.

Screening for Cash Assistance

The Secretary of the Department for Children and Families (DCF) must establish a drug screening program by January 1, 2014, for applicants or recipients of cash assistance. The Secretary may adopt rules and regulations. Persons would be screened whenever there is a reasonable suspicion the person is using a controlled substance.

Should an individual's screening test be positive, the person may request an additional test at a different drug testing facility. The person must pay for that test and will be reimbursed if the second test results are negative.

If the results of a screening test are positive, the person must complete a substance abuse treatment program and a job skills program. A person who fails or refuses to complete either program is ineligible for benefits. If a person tests positive a second time, cash assistance from DCF terminates for 12 months or until both the substance abuse treatment program and the job skills program are completed a second time, whichever occurs later.

If a person who becomes ineligible due to a screening test is a parent or guardian of a minor child, the Secretary for Children and Families may approve a protective payee, recommended by the parent or guardian, to receive payments for the child's benefit. If the Secretary determines there is a reasonable suspicion the designated protective payee is using an unlawful controlled substance, that person must submit to a screening test. If the proposed payee's test is positive, the Secretary will select another payee.

Starting on July 1, 2013, a first-time offender convicted of a controlled substance-related felony, as classified by federal or state law, will be ineligible for cash assistance for five years. Persons convicted of subsequent controlled substance felonies are ineligible for cash assistance for life.

Drug screening results are confidential, except for DCF hearings.

Screening for Unemployment Insurance (UI) Benefits

The bill repeals the disqualification for receiving UI benefits if the person fails a pre-employment drug screening. In its place, UI applicants or recipients must submit to controlled substance screening tests. If test results are positive, the person must complete both a substance abuse treatment program and a job skills program. Subject to applicable federal law, a person who fails or refuses to complete either program is ineligible for UI benefits. After a second positive test, a person loses UI benefits for 12 months or until another substance abuse treatment program and a job skills program are completed, whichever occurs later. After a third positive test, and subject to applicable federal law, a person is no longer eligible for UI benefits. The Secretary of Labor may promulgate rules and regulations to implement the requirements of the bill.

Employers must report to the Secretary of Labor the name and address of each applicant who was refused employment by reason of misconduct and other information required by the Secretary.

Other Provisions

The bill adds members of the Senate and House of Representatives to the list of state employees who are eligible for drug screening if a reasonable suspicion is present, as determined by the Division of Personnel within the Department of Administration.

Revisions to Alcoholic Liquor Laws; Senate Sub. for HB 2199

Senate Sub. for HB 2199 enacts changes to alcoholic liquor law, including amendments to the Club and Drinking Establishment Act and the Kansas Liquor Control Act. Specifically, the bill:

- Requires any written administrative notice or order imposing a fine or other penalty for an alleged violation of the Kansas Liquor Control Act or the Kansas Club and Drinking Establishment Act to be issued within 90 days after the date the citation was issued;
- Allows the serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or agent at an event sponsored by a nonprofit organization promoting the arts if approved by ordinance or resolution of the governing body of the city, county, or township where the event will take place. The Director of the Alcoholic Beverage Control Division (Director) will require a minimum ten days of advance notice;
- Directs all rules and regulations adopted on and after July 1, 2012, and before July 1, 2013, to implement provisions of certain alcoholic liquor laws to remain effective until revised, revoked, or nullified by law;
- Authorizes the preparing or mixing of samples at a licensed retail premises for the purpose of conducting wine, beer, or distilled spirit tastings;
- Makes it unlawful for licensees to knowingly employ, or continue to employ, any person dispensing or serving alcoholic liquor, or mixing drinks containing alcoholic liquor, who within the immediately preceding five years:
 - Has been adjudicated guilty of two or more violations of KSA 21-5607 (furnishing alcoholic beverages to minors) or similar laws from other states regarding the furnishing of liquor to minors; or
 - Has been adjudicated guilty of three or more violations of any other Kansas, or any other state's, intoxicating liquor law, but not involving the furnishing of alcoholic liquor to minors;
- Allows the sale or serving of certain mixed alcoholic beverages and any others approved by the Director in pitchers containing not more than 64 fluid ounces each;

- Allows a hotel, if the entire premises is licensed as a drinking establishment, to distribute coupons to its guests, redeemable on the hotel premises for drinks containing alcoholic liquor;
- Requires those licensed hotels to remit liquor drink tax on each drink served based on a price, which is not less than the acquisition cost of the drink;
- Allows other hotels for which the premises are not licensed as drinking establishments to distribute coupons to their guests redeemable at clubs and drinking establishments, in accordance with rules and regulations adopted by the Department of Revenue;
- Requires each club or drinking establishment redeeming hotel coupons to remit liquor tax on each drink served based on a price not less than the acquisition cost of the alcohol in the drink; and
- Deletes a requirement that clubs and drinking establishments provide price lists.

Free Samples

Regarding free samples, the bill:

- Defines “sample” to mean a serving of alcoholic liquor that contains not more than one-half ounce of distilled spirits, one ounce of wine, or two ounces of beer or cereal malt beverage. A sample of mixed alcoholic beverage could not contain more than one-half ounce of distilled spirits;
- Allows various licensees, including licensed Class A and Class B clubs, licensed drinking establishments, and licensed public venue clubs, to serve free samples of alcoholic liquor on the licensed premises;
- Allows Class A and B clubs to serve the samples free of charge only to their members and their members’ families and guests;
- Prohibits licensees from serving more than five samples to any individual per visit and no samples could be removed from the premises;
- Prohibits licensees from collecting either a cover charge or an entry fee at any time during the business day that free samples are provided for anyone; and
- Requires samples to come from the licensee’s inventory and requires the licensee to pay all associated excise and drink taxes for any alcoholic liquor served in free samples.

Synthetic Cannabinoids; HB 2353

HB 2353 adds a synthetic cannabinoid, commonly known as UR-144, to the list of schedule I controlled substances.

BUSINESS, COMMERCE, AND LABOR

Plastic Bulk Merchandise Containers; SB 75

SB 75 prohibits a recycler from purchasing “plastic bulk merchandise containers” without first obtaining information about:

- The seller’s proof of ownership;
- The seller’s name, address, telephone number, and government identification number;
- A description of the containers, including the number to be sold; and
- The date of the transaction.

The bill provides two exemptions to this prohibition:

- The number of sold containers is less than five; or
- The containers, regardless of quantity, are deposited voluntarily by a resident or commercial entity for a recycling or refuse hauler to collect without receipt of payment to the customer.

Recyclers could not pay for plastic bulk merchandise containers with cash, and they are required to make a record of the payment method used.

Violation of the bill results in a civil penalty, not exceeding \$10,000 for each instance. Civil penalties obtained by the Attorney General are deposited into the State General Fund, and penalties obtained by county or district attorneys are deposited into the county’s general fund.

The bill defines “plastic bulk merchandise container” to mean a plastic crate, pallet, or shell used by a product producer, distributor, or retailer for the bulk transportation or storage of retail containers of milk, eggs, bakery items, or bottled beverage products.

Workers Compensation and Employment Security Boards Nominating Committee; Qualifications for Injury Compensation Claims; ALJ Recusal; Evaluation of Physical Impairment; State Workers Compensation Self-insurance Program; SB 187

SB 187 replaces the Workers Compensation Administrative Law Judge (ALJ) Nominating and Review Committee and the Workers Compensation Board Nominating Committee with a new entity named the Workers Compensation and Employment Security Boards Nominating Committee. The new Committee makes nominations pertaining to positions in the Workers Compensation Division, the Workers Compensation Review Board, and the Employment Security (Unemployment Insurance or UI) Board of Review. The bill also revises provisions of the Workers Compensation Act regarding qualifications for injury compensation claims, the appeals process pertaining to the recusal of an ALJ, the evaluation of physical

impairment, and administrative responsibility for the State Workers Compensation Self-insurance Program.

Workers Compensation and Employment Security Boards Nominating Committee

The new Nominating Committee has seven members. The following state official and groups will nominate members for the Governor to consider:

- Secretary of Labor (Secretary);
- Kansas Chamber of Commerce;
- National Federation of Independent Businesses;
- Kansas AFL-CIO;
- Kansas State Council of the Society for Human Resource Management;
- Kansas Self-Insurers Association; and
- The Secretary nominates one member from either an employee organization, (as defined by KSA 75-4322) or a professional employees' organization (as defined by KSA 72-5413).

From the persons first nominated, the Governor appoints three members to two-year terms and four members to four-year terms. The Governor appoints subsequent members to four-year terms. No member serves longer than two consecutive terms. If the Governor chose not to appoint a person, the same nominating source would replace the selection by the same process. If a vacancy were to occur on the new Nominating Committee, the respective nominating source has 30 days to nominate another person.

The new Nominating Committee meets as needed. A two-thirds majority of the new Nominating Committee is required to approve an action.

Workers Compensation Administrative Law Judges

The bill increases the annual salary for unclassified ALJ positions, from 75 percent to 85 percent of the annual salary paid to a district judge.

If there is a vacant ALJ position, the new Nominating Committee nominates a person from a list of qualified applicants provided by the Director of the Workers Compensation Division. The Secretary has the discretion to appoint or reject a nomination. In the latter case, the new Nominating Committee nominates another person for the vacancy.

The reappointment process for an ALJ who has served a four-year term is revised. An incumbent ALJ submits an application to the Director of Workers Compensation. The application is forwarded to the Secretary unless the new Nominating Committee decides, by a two-thirds majority vote, to not forward the application. Under previous law, an incumbent ALJ who

requested to be reappointed was considered directly by the ALJ Nominating and Review Committee.

The previous ALJ Nominating and Review Committee was composed of two members. The Secretary was required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce. Using a list of qualified applicants provided by the Director of Workers Compensation, the Nominating and Review Committee made a unanimous nomination to the Secretary. The Secretary had the discretion to accept or reject the applicant.

Workers Compensation Appeals Board

Under continuing law, the Workers Compensation Board reviews the decisions, findings, orders, and awards made by the ALJs. The five members of the Workers Compensation Board are required by statute to have a minimum of seven years' experience practicing law in Kansas. The bill requires Board members to have a minimum of five years of that experience with Workers Compensation law. The bill renames the Board, calling it the Worker Compensation Appeals Board.

The previous Nominating Committee for the Workers Compensation Board was composed of two members. The Secretary of Labor was required to appoint one person nominated by the Kansas AFL-CIO and the other nominated by the Kansas Chamber of Commerce.

UI Board of Review

With regard to a vacancy on the UI Board of Review, the new Nominating Committee submits nominees for the Governor's consideration. The Governor may choose not to appoint any of the nominees; in that case, the new Nominating Committee nominates another person for the vacancy. Appointees will continue to require confirmation by the Senate. Board members are limited to serving two consecutive terms.

Under previous law, the UI Board of Review was composed of three members appointed to four-year terms. The Kansas AFL-CIO and the Kansas Chamber of Commerce each nominated three persons to the Governor. The Governor then appointed one from each list. After Senate confirmation, the two Board members agreed upon the selection of the third member, who represented the general public.

Qualifications for Workers Compensation

Under the bill, a qualified, injured worker may seek payment from the Workers Compensation Fund if the employer was self-insured with an insufficient letter of credit.

In order to be eligible for workers compensation, the bill shortens certain time periods for employees to give notice to the employer of the accident or injury:

- From 30 days to 20 days, starting from the date of the accident or injury due to repetitive trauma; and
- From 20 days to 10 days, starting after the employee's last day of work for the employer.

Appeals Process for ALJ Recusal

In instances where an ALJ declines a request to recuse the ALJ from hearing a workers compensation case, a party to the hearing may appeal to the Workers Compensation Board. Previously, appeals of this sort were made to county district court. If a majority of the Workers Compensation Board finds sufficient grounds, the Board directs the Director of the Workers Compensation Division to assign another ALJ. If there is no pending claim for compensation, the Board's decision may be appealed to the Kansas Court of Appeals.

Evaluation of Physical Impairment

Starting on January 1, 2015, physicians are required to use the *American Medical Association (AMA) Guides for Evaluation of Permanent Impairment, Sixth Edition*, when evaluating the extent of an injured employee's impairment, rather than the AMA's fourth edition.

State Workers Compensation Self-insurance Program

The bill transfers responsibility for the State Workers Compensation Self-insurance Program from the Secretary of the Department of Administration to the Secretary of the Kansas Department of Health and Environment (KDHE). The Division of Industrial Health and Safety within the Department of Labor assists KDHE in administering the State Workplace Health and Safety Program for state agencies.

Revisions to Unemployment Insurance (UI) Contributions, Benefits, and Administration of the UI Trust Fund; Sub. for HB 2105

Sub. for HB 2105 revises provisions of employment security laws, commonly referred to as Unemployment Insurance (UI), pertaining to contributions paid by employers, eligibility for UI benefits, and the administration of the UI System by the Department of Labor (Department). The bill also adds a statement regarding neutral interpretation of employment security law.

Contributions Paid by Employers

The bill increases the taxable wage base, starting in calendar year 2015, from the current \$8,000 to \$12,000, and in calendar year 2016, from \$12,000 to \$14,000.

The contribution rate for new non-construction employers, employers with less than 24 months of payroll experience, decreases from 4.0 percent of wages paid to 2.7 percent, provided the employer files all reports and pays all contributions by January 31. The reduced rate does not become effective until the Unemployment Insurance Trust Fund's average high

cost multiple falls below 1.0, as of the computation date. The contribution rate for new construction employers remains at 6.0 percent of wages paid.

Non-negative balance employers are eligible to receive a rate discount of 25.0 percent if all reports are filed and all contributions are made by January 31. This discount does not apply if other discounts provided by current law are in effect or if the average high cost multiple for the Unemployment Insurance Trust Fund is less than 1.0.

The bill revises the surcharge rates for the 20 negative balance employer groups. The surcharge rate for the first group is 0.1 percent, and the surcharge for each subsequent group increases by 0.1 percent. The surcharge for the twentieth group is 2.0 percent. The surcharge ceases to apply after calendar year 2014.

If an employer exhibits a “pattern of failure,” which the bill defines to mean the number of failures to respond to fewer than two times or less than 2.0 percent of prior requests made by the Department for information, whichever is greater, the Department may not relieve an employer’s account of charges relating to a payment made erroneously.

The deadline for the Secretary of Department of Labor to notify employers of their UI contribution rates for the subsequent rate year is November 30. Previously, no deadline was specified in statute.

Eligibility for Unemployment Insurance Benefits

The bill repeals the alternative means for calculating an individual’s wage base period, due to the expiration of federal funding under the American Recovery and Reinvestment Act (ARRA) of 2009. The bill also revises the definition of “part-time employment” by deleting reference to “two or more employers.”

When calculating the weekly benefit payable, the bill re-classifies holiday pay as wages attributable to a week the individual claimed benefits, deleting reference to vacation pay attributable to a week while work was temporarily interrupted. If an individual received severance pay, the person’s weekly UI benefit is reduced by the amount of severance paid, adjusted to a weekly amount, until the total severance amount is exhausted.

Under law previously enacted, an individual who voluntarily leaves employment without good cause is disqualified for benefits. The bill defines “good cause” to mean a cause of such gravity that a reasonable, non-supersensitive person, exercising ordinary common sense, would leave employment. Good cause also requires a showing of good faith of the individual leaving work. Twelve exceptions in the law prevent a person from being disqualified for benefits, however. The seventh exception, pertaining to harassment, specifies the harassment would impel the average worker to give up employment. The tenth exception, pertaining to violation of the work agreement by the employer, requires the violation to be substantial, and demotion based on performance does not constitute a violation of a work agreement.

The definition of “misconduct” is revised to include violation of a company rule if the employee knew or had reason to know the rule, the rule was lawful and reasonably related to the job, and the rule was fairly and consistently enforced. Misconduct also includes tardiness and leaving work early without prior permission. The definition of “gross misconduct” is revised to include theft, fraud, intentional damage to property, intentional infliction of personal injury, or conduct that results in a felony. Misconduct, under the law governing disqualification for benefits (KSA 44-706 (b)), disqualifies an individual from UI benefits until the person is reemployed and

has earnings equal to three times the weekly UI benefit amount. Gross misconduct disqualifies the individual until the person is reemployed and has earnings equal to eight times the weekly UI benefit amount.

Under existing law, an employee's discharge for misconduct is grounds for disqualification of UI benefits. The bill also includes an employee's suspension for misconduct as grounds for disqualification for the duration of the separation from employment.

The bill reorganizes the existing provisions pertaining to alcohol and drug use on the job and includes four substantive changes:

- The reason for testing changes from probable cause on the part of the employer to reasonable suspicion;
- Alcohol or drug use is reclassified from misconduct to gross misconduct;
- An individual tampering with a chemical test is conclusive evidence of gross misconduct; and
- An alternative definition for "positive breath test" includes reference to test levels listed in 49 C.F.R. 40, if applicable.

If a person makes a false statement or misrepresentation, the bill lengthens the disqualification period from one year to five years.

Starting in benefit year 2014, a person ineligible for a maximum of 16 weeks of benefits if the unemployment rate for Kansas is less than 4.5 percent. If the unemployment rate is equal to or greater than 4.5 percent but less than 6.0 percent, a person is eligible for a maximum of 20 weeks of benefits. If the unemployment rate is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. For purposes of this provision, the bill calculates the unemployment rate at the beginning of a benefit year, using a three-month, seasonally adjusted average. Under previous law, persons were eligible for a maximum of 26 weeks of benefits regardless of the unemployment rate.

Administration of the Unemployment Insurance System

The bill adds an exception to the time limit for appeal, allowing the referee or the Board of Review to waive or extend the time limit of 16 days if an appeal was impossible because of excusable neglect. The Department may collect for overpayments by passing federal offset costs on to claimants who have an overpayment gained through fraud. A penalty equal to 25 percent of any benefits unlawfully received shall be charged.

The State Employment Security Advisory Council (Council) is abolished. The Council was appointed by the Secretary to provide advice on the administration of the UI System. The Secretary reports annually to the Legislative Coordinating Council on the condition of the State's account in the Federal Employment Security Trust Fund. Previously, the Secretary made the report to the Governor and the Council.

The Secretary may hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

CHILDREN AND YOUTH

Abolishment of Juvenile Justice Authority; Transfer of Duties to the Department of Corrections; ERO 42

ERO 42 abolishes the Juvenile Justice Authority (JJA) and transfers the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to the Department of Corrections (KDOC) and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO will be transferred to the KDOC, unless they are not performing necessary services. KDOC will succeed to the property and records of the JJA. The balance of all JJA funds will be transferred to the KDOC and used only for the purpose for which the appropriation was originally made. KDOC will assume all jurisdiction, powers, functions, and duties relating to juvenile correctional facilities and institutions, and will be responsible for rules and regulations; educational services; passes, furlough, or leave; institutional security plans; and a rigid grooming code and uniforms for such institutions. Finally, the ERO specifies the KDOC will be responsible for JJA-related duties in various other areas, including juvenile intake; the Revised Kansas Juvenile Justice Code; regional youth care and rehabilitation facilities; supplemental youth care facilities; residential care facilities; community planning teams, juvenile justice programs, the Juvenile Justice Community Planning Fund, and the Juvenile Justice Community Initiative Fund; grants; community graduated sanctions and prevention programs and the community advisory committee; and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention.

Hearings and Notice in Adoption Proceedings; HB 2205

HB 2205 amends the law concerning hearings on an adoption petition to allow a hearing to be fixed any time within 60 days from the date the petition is filed and to remove language preventing the hearing from being scheduled within 30 days from the date the petition is filed. The bill also provides an exception to notice requirements in independent and stepparent adoptions when the party entitled to notice waives the right.

CONCEALED CARRY

Concealed Carrying and Licensing Requirements, Firearm Law Compliance for Certain Individuals; SB 21

SB 21 enacts the following changes to firearms-related statutes:

- Clarifies that the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt, or possession of firearms by a person previously convicted of a felony;
- Authorizes official recognition of any valid concealed carry permit from another state for individuals traveling through or visiting Kansas;
- Requires issuance of a 180-day receipt from the Attorney General for a new Kansas resident who possesses a permit from another state and who is required to obtain a Kansas license. This receipt is required to be carried along with the license from the original jurisdiction. The license from the original jurisdiction has to meet or exceed the Kansas requirements for concealed carry. Prior to the expiration of the 180-day receipt, the applicant needs to provide proof of training to the Attorney General's Office. Following a successful background check and receipt of documentation and fees, the application is approved for a Kansas concealed permit; and
- Makes other technical changes to existing law.

Concealed Carry of Handguns and Other Firearms Amendments; Senate Sub. for HB 2052

Senate Sub. for HB 2052 enacts new law and amends existing law concerning firearms, criminal law, and the Personal and Family Protection Act (concealed carry of handguns).

Specifically, the bill:

- Prohibits the unlawful discharge of a firearm within or into the corporate limits of any city. The bill provides exemptions for when a firearm may be discharged within or into a city and also classifies the unlawful discharge of a firearm as a class B, nonperson misdemeanor;
- Modifies the Personal and Family Protection Act to allow the possession of firearms on certain governmental property, including in state and municipal buildings;
- Defines, for the purposes of the bill, the terms "adequate security measures," "municipality," "restricted access entrance," "state and municipal building," and "weapon";
- Excludes school districts from the definition of "municipality";

- Excludes the State Capitol from the definition of “state and municipal building”;
- Requires adequate security measures at public entrances of state and municipal buildings in order to prohibit the carrying of any weapon into a building;
- Prevents a state agency or municipality from prohibiting a licensed employee from carrying a concealed handgun at the employee’s workplace, unless the building has adequate security measures and adopted personnel policies prohibit such concealed carry by employees who are licensed;
- Provides that it will not be a violation of the provisions in the bill for a licensed person to carry a concealed handgun through a restricted access entrance into a state or municipal building with adequate security measures;
- Establishes that it is not be a crime for a person to carry a concealed handgun into a public building if properly posted and allows for the denial to a building or removal of such person from a building where concealed carry is prohibited;
- Provides liability protections for entities allowing concealed carry in state or municipal buildings;
- Allows corrections facilities, jail facilities, or law enforcement agencies to prohibit the carrying of handguns or firearms, concealed or unconcealed, into the secured areas of such buildings, except any other area of such building, outside a secured area and readily accessible to the public, shall be subject to provisions in the bill;
- Permits the chief judge of each judicial district to prohibit the carrying of a concealed handgun into courtrooms or ancillary courtrooms within the district provided other means of security are employed;
- Allows the governing body or chief administrative officer of any state or municipal building to exempt the building for four years, subject to developing a plan for security measures and filing notification of the exemption;
- Provides a specific four-year exemption for any state or municipal building if the governing body or chief administrative officer follows specified procedures for exempting certain entities identified in the bill: public medical care facilities, public adult care homes, community mental health centers, indigent health care clinics, and post-secondary educational institutions;
- Permits school districts, post-secondary educational institutions, public medical care facilities, public adult care homes, community mental health centers, and indigent health care clinics to allow a licensed employee to concealed carry a handgun if the employee meets the entity’s general policy requirements and if the entity does not have a personnel policy prohibiting employees from concealed carry of a handgun;
- Excludes the buildings of the Kansas School for the Blind and School for the Deaf from application for a designated institutional exemption;

- Removes a specific listing of buildings in current law where concealed carrying is prohibited and inserts the new phrase “any building”;
- Strikes language prohibiting the possession of a firearm on the grounds of certain government buildings, including the State Capitol, and retains existing law prohibiting “open carry” in state and municipal buildings;
- Exempts the State Capitol from provisions of the bill on and after July 1, 2014, and allows a licensee to carry a concealed handgun in the State Capitol, unless the Legislative Coordinating Council determines the Statehouse does have adequate security measures;
- Updates a statute by striking an outdated reference to the Ombudsman of Corrections which no longer exists;
- Unless otherwise required by law, prohibits the release of records that would disclose the name, home address, zip code, e-mail address, phone number or cell number, or other contact information of any person licensed to carry concealed handguns. The provision also applies to applicants for a license;
- Deletes a reduced fee for a concealed carry license obtained by retired law enforcement officers;
- Allows corrections officers, parole officers, and corrections officers employed by the Federal Bureau of Prisons to apply professional firearms certification toward training requirements for a concealed carry license;
- Adds law enforcement officers from other states and qualified retired law enforcement officers to a list of individuals exempted from the law prohibiting the criminal carrying of a weapon;
- Allows law enforcement officers from other states and qualified retired law enforcement officers to possess handguns within buildings where concealed carry may be prohibited;
- Provides liability protections regarding concealed carry for private businesses either allowing or prohibiting concealed carry in private buildings;
- Changes all references in the bill for either premise or premises and facility or facilities to either building or buildings; and
- Makes most provisions in the bill effective on July 1, 2013, and the provisions pertaining to the State Capitol effective on July 1, 2014 (unless the Legislative Coordinating Council determines the Statehouse does not have adequate security measures as defined in the bill).

CONSUMER AFFAIRS

Roofer Registration Act; Sub. for HB 2024

Sub. for HB 2024 enacts the Kansas Roofing Contractor Registration Act which is made part of the Kansas Consumer Protection Act. The Attorney General administers the provisions of the bill.

In order to obtain a registration certificate, an applicant needs to be at least 18 years old and provide the Attorney General with the following information:

- A statement of experience and qualification;
- The name, address, and phone number of the applicant, the applicant's business (if applicable), and other persons who will be authorized to act as agents for the business;
- Workers Compensation coverage, self-insurance, or an affidavit of exemption from Workers Compensation;
- The nature of a felony conviction in any state. Conviction of an offense would not disqualify a person for registration;
- Any other information required by the Attorney General; and
- Agreement to the following:
 - Comply with the bill and all relevant federal and state laws and local ordinances;
 - Provide information pertaining to similar registration in other states, including any disciplinary action; and
 - Appoint the Secretary of State to accept service of process, if the roofing contractor is a nonresident.

The Attorney General refuses to register an applicant if:

- The application contains false, misleading, or incomplete information;
- The applicant fails or refuses to provide requested information;
- The applicant fails or refuses to pay required fees;
- The applicant is ineligible to register due to a suspended or revoked registration in Kansas or another state; or

- The applicant has failed to provide a current tax clearance or letter from the Department of Revenue.

The Attorney General has 60 days from the application date to either issue or deny a registration certificate. During that time, the Attorney General may conduct a criminal history or background check on an applicant. If an application is denied, the applicant must be given notice of the denial and have ten days to cure any application defect. An adverse decision must be appealed pursuant to the Kansas Administrative Procedure Act, or the applicant could reapply after 90 days. Application fees are not refundable.

The Attorney General may classify a registered roofing contractor as being not in good standing, if the person fails to:

- Maintain liability insurance;
- Maintain Workers Compensation coverage, self-insurance, or an affidavit of exemption from Workers Compensation;
- Maintain an active corporation or registration status with the Secretary of State;
- Maintain registration required by this bill or by another state, if a nonresident;
- Notify the Attorney General of any violation or omission committed under the bill;
- Pay taxes due in the state; or
- File an annual renewal application by the June 30 deadline.

A roofing contractor receiving notice of not being in good standing has 30 days to correct the defect. During that period, the roofing contractor may complete roofing projects that were started, but the contractor cannot accept new work. If the person did not correct the defect, the registration is revoked. The Attorney General's decisions must be appealed pursuant to the Kansas Administrative Procedure Act.

In the ordinary course of business, a registered roofing contractor must:

- Maintain registration in good standing;
- Submit the registration certificate number to the applicable governmental entity when applying for any needed permit;
- Retain the certificate and not share it with any other person or business. However, a business firm could use a single registration for its employees so long as the firm's application contained sufficient information about each agent for the business;
- Display the registration certificate number on commercial vehicles; advertisements, stationary, and contracts;

- Notify the Attorney General of any change to the names or addresses of business entities or adjudications pertaining to violations of the bill;
- Comply with all state laws and local ordinances;
- Pay all taxes in the state; and
- Refrain from the following actions:
 - Abandon a roofing contract without legal ground after a deposit of money or other consideration had been made;
 - Divert any entrusted funds or property;
 - Engage in fraudulent or deceptive acts;
 - Make false or misleading statements;
 - Violate a court order or judgment;
 - Engage in any work without a valid registration or proper construction permit;
 - Fail to comply with the state's tax laws;
 - Damage or injure any person or property while working; or
 - Fail to comply with the bill and rules and regulations promulgated pursuant to it.

The Attorney General may promulgate rules and regulations to implement the provisions of the bill. In order for consumers and government officials to verify registration, the Attorney General maintains a publicly accessible database on roofing contractors. The database may include information about criminal convictions. Disclosures of information through the database is not an endorsement of any roofing contractor.

The Attorney General sets an annual application fee not to exceed \$500, and the fee may be prorated. Registration is valid on a fiscal year basis. The Attorney General may charge a late fee not exceeding \$300 if a person fails to renew by July 31 of each year. A registration not renewed must be revoked. In order to renew a revoked license, a roofing contractor pays the cost of the annual fee plus \$500. To renew a suspended license, a roofing contractor pays twice the cost of the annual fee. Revenue from the fee is deposited in the newly created, interest-bearing Roofing Contractor Registration Fund.

An aggrieved person could file a complaint against a roofing contractor with the Attorney General who may investigate and enforce the provisions of the bill. A violation of the bill would be covered by the Kansas Consumer Protection Act.

The bill does not apply to:

- Owners of commercial, residential, or farm property, or the owners' employees, who performed their own roofing services;

- Government employees or their representatives;
- Material suppliers;
- Home inspectors registered pursuant to KSA 58-4501 *et seq.*;
- Employees and persons in the manufactured home and modular home industries, while in the performance of their work; or
- Any person who provides roofing services for projects that do not cost more than \$2,000.

CORRECTIONS AND JUVENILE JUSTICE

Kansas Racketeer Influenced and Corrupt Organization Act; Criminal Street Gangs; SB 16

SB 16 creates the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act). The bill also amends the criminal street gangs definitions statute.

Kansas RICO Act

The Kansas RICO Act makes it a crime for any covered person:

- Who has with criminal intent received any proceeds from a pattern of racketeering activity or through the collection of an unlawful debt, to use or invest such proceeds in acquiring any title, right, interest, or equity in real property, or in the establishment or operation of any enterprise;
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain any interest in or control of any enterprise or real property; or
- Who is employed by, or associated with, any enterprise to conduct or participate in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

“Covered person” is defined as any person who is a criminal street gang member or associate, has engaged or is engaged in human trafficking or aggravated human trafficking, or has engaged in or is engaged in the unlawful manufacturing, cultivation, or distribution of controlled substances.

“Enterprise” is defined as any individual, sole proprietorship, partnership, corporation, business trust, Kansas union, legal entity, unchartered union, association, group of individuals associated in fact although not a legal entity, governmental entity, or criminal street gang.

“Pattern of racketeering activity” is defined as engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission, or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents. At least one of such incidents would have to occur after the effective date of the Act, and the last such incident would have to occur within five years, excluding any period of imprisonment, of a prior incident of racketeering activity.

“Racketeering activity” is defined as committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit certain felony and misdemeanor crimes enumerated in the Act, or any conduct defined as “racketeering activity” in the federal RICO Act.

“Unlawful debt” is defined as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Kansas because it was incurred or contracted in violation of various federal or Kansas racing, gambling, gaming, or usurious lending laws.

The Act also defines the terms “trustee,” “real property,” “documentary material,” and “beneficial interest.”

The crime created by this act or conspiracy to commit this crime is a severity level 2, person felony. The court also may impose a fine of up to three times the gross value gained or three times the gross loss caused, whichever is greater, if the defendant gained pecuniary value or caused personal injury, property damage, or other loss. Bail for persons charged with this crime is a minimum of \$50,000, unless certain conditions are met. Own recognizance (O.R.) bonds are not permitted.

The Act grants the district court the power to enjoin violations of the Act by divesting a defendant of any interest in any enterprise; imposing reasonable restrictions on activities or investments of the defendant; dissolving or reorganizing any enterprise; suspending or revoking a license, permit, or prior approval granted by a state agency; or ordering the forfeiture of a corporate charter or certificate, upon certain findings. All property used in the course of, intended for use in the course of, derived from, or realized through conduct violating the Act is subject to civil forfeiture.

Prosecuting attorneys are authorized to administer oaths or affirmations, subpoena witnesses or material, and collect evidence relating to activity violating the Act. They also are allowed to apply *ex parte* to a district court for an order requiring a subpoenaed person or entity to not disclose the subpoena to anyone except the subpoenaed person’s attorney for a period of 90 days. Such order may be granted only if the prosecutor shows factual grounds reasonably indicating a violation of the Act, that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence, and facts showing that disclosure of the subpoena would hamper or impede the investigation or cause a flight from prosecution. If a person or enterprise fails to obey a subpoena, the prosecuting attorney may apply to the district court for an order compelling compliance, and a person failing to obey any court order under the Act is subject to being adjudged in contempt of court and punishment by fine and imprisonment.

Criminal Street Gangs

The bill amends the criminal street gangs definitions statute by adjusting the criteria required to identify a person as a “criminal street gang member.” To meet this definition, a person must meet three or more criteria from a list set forth in the statute. The bill separates what had been three separate parts of a single criteria into three separate criteria: that the person frequents a particular criminal street gang’s area; adopts such gang’s style of dress, color, use of hand signs or tattoos; or associates with known criminal street gang members.

Requests for Final Disposition of Pending Proceedings; HB 2169

HB 2169 amends the law concerning the right of imprisoned persons to request final disposition of pending proceedings to include motions to revoke probation. If the court fails to hold a hearing on the motion to revoke probation within 180 days of receipt of the request, the motion is no longer of any further force or effect and the court must dismiss the motion with prejudice. Escape from custody of any prisoner subsequent to requesting final disposition of a motion to revoke probation voids the request.

Sentencing, Postrelease Supervision, and Probation; HB 2170

HB 2170 makes numerous changes to sentencing, postrelease supervision, and probation statutes.

The bill allows a low-risk defendant who has paid all restitution and for 12 months has been compliant with the terms of probation, assignment to community corrections, suspension of sentence, or nonprison sanction to be eligible for discharge from such period of supervision by the court. In that instance, the court is required to grant the discharge absent substantial and compelling reasons for denying discharge. A person serving a period of incarceration for a supervision violation is not eligible for modification until the person is released and returned to postrelease supervision. The Prisoner Review Board also has the discretion to provide for early discharge from postrelease supervision if the defendant has petitioned for early discharge and has paid any restitution ordered.

Further, the bill provides program credits earned and subtracted from an inmate's prison sentence are not added to the inmate's postrelease supervision term, with the exception of a term for a person sentenced to prison for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations. Similarly, the bill provides that good time earned and subtracted from the prison sentence or any other consecutive or concurrent sentence of a person sentenced to prison for a sexually violent crime, a sexually motivated crime requiring the offender to register, electronic solicitation, or unlawful sexual relations is added to the inmate's postrelease supervision term.

Concerning participation in drug abuse treatment programs, the bill allows for sanctions, in addition to revocation of probation (which already was allowed), when a defendant fails to participate in or has a pattern of intentional conduct that demonstrates the defendant's refusal to comply with or participate in a drug abuse treatment program.

In the area of violations of the conditions of release, assignment, or nonprison sanction, the bill allows a defendant arrested for such a violation to waive the right to a hearing on the violation, after the defendant has been apprised of the right by the supervising court services or community correctional services officer. If the original crime of conviction was a misdemeanor and the violation is established, the bill allows the court to continue or revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

If the defendant waives the right to a hearing and, in the sentencing order, the court has not specifically withheld the authority of court services or community corrections to impose sanctions, the defendant's supervising court services officer, with the concurrence of the chief court services officer, or the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in jail for up to six days each month in any three separate months during the period of release of supervision. The 6 days per month can be imposed only as 2-day or 3-day consecutive periods, not to exceed 18 total days of confinement.

If the original crime of conviction was a felony and the violation is established, the bill allows the court to impose the following series of increasing violation sanctions:

- Continue or modify the conditions of release;

- Impose the intermediate sanction of confinement in jail outlined above;
- If the violator already had at least one intermediate sanction of confinement in jail, remand the defendant to the custody of the Kansas Department of Corrections (KDOC) for a period of 120 days, which the Secretary could reduce by up to 60 days (this penalty could not be imposed more than once during the term of supervision);
- If the violator already had been remanded to KDOC custody for a period of 120 days, remand the defendant to KDOC custody for a period of 180 days, which the Secretary could reduce by up to 80 days (this penalty could not be imposed more than once during the term of supervision); or
- If the violator already had been remanded to KDOC custody for a period of 180 days, revoke probation, assignment to community corrections, suspension of sentence, or nonprison sanction; require the defendant to serve the sentence imposed or any lesser sentence; and, if imposition of sentence was suspended, impose any sentence that originally might have been imposed.

The bill provides, however, that the period of time spent in jail or in the custody of KDOC cannot exceed the time remaining on the person's underlying prison sentence. Upon completion of time spent in the custody of KDOC, the offender returns to community corrections supervision, and the bill specifies sheriffs are not responsible for the return of the offender to the county where the community correctional services supervision is assigned.

The court may revoke the probation, assignment to community corrections, suspension of sentence, or nonprison sanction without first imposing the preceding violation sanctions:

- If the court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender otherwise will not be served; or
- If the offender commits a new felony or misdemeanor or absconds from supervision.

For crimes committed on and after July 1, 2013, an offender whose nonprison sanction is revoked or whose underlying prison term expires after being remanded to the custody of KDOC is required to serve a period of postrelease supervision upon completion of the prison portion of the underlying sentence. Persons convicted of crimes committed on or after July 1, 2003, but before July 1, 2013, are not subject to a period of postrelease supervision. For offenders sentenced prior to July 1, 2013, who are eligible for modification of their postrelease supervision obligation, KDOC is required to modify the period of postrelease supervision pursuant to the schedule outlined in the bill.

Finally, the bill gives the Kansas Sentencing Commission (KSC) the authority to make statewide supervision and placement cutoff decisions based upon the risk levels and needs of the offender. Additionally, the KSC must periodically review data and make recommended changes and must determine the impact and effectiveness of supervision and sanctions for felony offenders regarding recidivism and prison and community-based supervision populations.

CRIMES AND CRIMINAL MATTERS

Methamphetamine Manufacturing—Special Sentencing Rule; SB 58

SB 58 restructures: (a) the penalties for unlawful manufacturing of a controlled substance (KSA 2012 Supp. 21-5703), and (b) a special sentencing rule for a second or subsequent conviction of the same crime (KSA 2012 Supp. 21-6805(e)), to clarify the application of the penalties and the rule depending on whether methamphetamine was the controlled substance at issue in the current conviction, the prior conviction, both, or neither.

If both the current and prior convictions do not involve methamphetamine, the crime is a drug severity level 1 felony and the special sentencing rule does not apply. If the prior conviction involved methamphetamine but the current conviction does not, the crime is a drug severity level 2 felony and the special sentencing rule applies, imposing a sentence of double the maximum duration of the presumptive term of imprisonment. If the prior conviction did not involve methamphetamine but the current conviction does, the crime is a drug severity level 1 felony and the special sentencing rule does not apply. If both the current and prior convictions involve methamphetamine, the crime is a drug severity level 1 felony and the special sentencing rule applies, imposing a sentence of double the maximum duration of the presumptive term of imprisonment.

Unauthorized Voting Disclosure; SB 122

SB 122 modifies the definition of the crime of unauthorized voting disclosure while being charged with any election duty. The bill makes it illegal to intentionally disclose or expose the name of any voter who has cast a ballot, whether provisional or regular, except as ordered by a court in an election contest. The bill also modifies previously existing conditions in the statute as follows:

- Disclosing or exposing the contents of a ballot – the bill modifies this condition to specify the ballot could be a regular or provisional ballot and eliminates from the condition disclosure of the manner in which the ballot has been voted; and
- Endeavoring to induce a voter to show how he or she voted – the bill revises this condition to read “induce or attempt to induce.”

The bill prohibits disclosing the name of any voter who has cast a ballot from the time the ballot is cast until the final canvass of the election; the bill also states nothing in the section will prohibit the disclosure of the names of advance voters. Finally, the bill states nothing in the section prohibits authorized poll agents from observing elections as allowed under continuing law.

Crimes and Criminal Procedure—Appeals of Municipal Court and District Magistrate Judgments; Search Warrants; Reporting of Pornographic Materials Seized or Documented as Evidence; Sub. for HB 2017

Sub. for HB 2017 amends provisions of the Kansas Code of Criminal Procedure concerning appeals of municipal court and district magistrate judgments, search warrants, and reporting of pornographic materials seized or documented as evidence.

Municipal Court and District Magistrate Judgments

The bill amends the law concerning appeals to the district court of municipal court judgments and judgments of a district magistrate judge to provide that these appeals can be filed only after the sentence has been imposed. Further, the bill provides no appeal can be taken more than 14 days after the sentence is imposed.

Search Warrants

Previously, all search warrants were required to be supported by facts sufficient to show probable cause that a crime has been or is being committed. The bill allows for a warrant to be issued based on probable cause that a crime is about to be committed and makes other technical amendments applicable to all search warrants. Further, the bill adds language specific to search warrants for tracking devices, allowing a magistrate to issue a search warrant for the installation, maintenance, and use of a tracking device. The warrant authorizes use of the device to track and collect tracking data relating to a person or property for a specified time period, but no more than 30 days from installation. The bill defines “tracking device” and “tracking data.”

For good cause shown, the warrant can authorize retrieval of tracking data recorded during the specified time period within a reasonable time after the warrant expires, and the magistrate can authorize one or more extensions of the warrant of no more than 30 days each. The bill provides warrants for tracking devices are valid during the specified time period, regardless of whether the subject person or property leaves the issuing jurisdiction and, if issued by a district judge, may be executed anywhere in the state.

The bill requires the law enforcement officer executing a warrant for a tracking device to complete installation within 15 days from the date the device is issued and to record on the warrant the exact date and time the device was installed and the entire period during which it was used. The bill also requires the deactivation and removal of the device as soon as practicable after the warrant expires. If removal is not possible, the bill requires deactivation and an explanation on the search warrant return of why removal was not completed. Reactivation is prohibited without an additional warrant or extension of the original warrant, and a deactivated tracking device can be accessed after the expiration of the warrant only for the purpose of collecting or retrieving tracking data obtained during the specified time period.

The bill provides affidavits or sworn testimony in support of a search warrant for a tracking device are not available for examination without a written court order unless requested by the defendant or the defendant’s counsel. Additionally, the warrants are sealed by the court and no copy left or served except as discovery in a criminal prosecution.

Reporting of Pornographic Materials Seized or Documented as Evidence

The bill creates a new section of law requiring the Kansas Bureau of Investigation (KBI) to work with the Attorney General and state and local law enforcement to develop a data reporting process enabling at least an annual report of the number of sexually violent crimes reported and the number of such crimes where pornographic materials are seized or documented as evidence. The report is used solely for statistical purposes. The bill requires this process to be in place within one year of the implementation of a capable central repository.

Upon the implementation of a capable central repository, the KBI must make the necessary changes to the Kansas Standard Offense Report and the Kansas Incident Based Reporting System (KIBRS) Handbook and promulgate rules and regulations concerning training of law enforcement to implement these provisions. The bill provides that it cannot be construed to expand the scope of an officer's search. The bill also defines "nudity," "pornographic materials," "sexually explicit conduct," and "sexually violent crime."

Human Trafficking—Advisory Board; Victim Assistance Fund; Related Crimes; Staff Secure Facilities; Civil Forfeiture; Senate Sub. for HB 2034

Senate Sub. for HB 2034 creates or amends several statutes related to the issue of human trafficking.

First, the bill authorizes the Attorney General, in conjunction with other appropriate state agencies, to coordinate training regarding human trafficking for law enforcement agencies throughout the state and would designate the Attorney General's Human Trafficking Advisory Board as the official human trafficking advisory board of Kansas. The bill also establishes the Human Trafficking Victim Assistance Fund, which will be funded by the collection of fines imposed as described in the following paragraphs. The funds will be used to pay for training provided and support care, treatment, and other services for victims of human trafficking and commercial sexual exploitation of a child.

The crime of "commercial sexual exploitation of a child" is created and defined as knowingly:

- Giving, receiving, offering or agreeing to give, or offering or agreeing to receive, anything of value to perform any of the following acts:
 - Procuring, recruiting, inducing, soliciting, hiring, or otherwise obtaining any person younger than 18 years of age to engage in sexual intercourse, sodomy, or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another; or
 - Procuring, recruiting, inducing, soliciting, hiring, or otherwise obtaining any person where there is an exchange of value, for any person younger than 18 years of age to engage in sexual intercourse, sodomy, or manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the patron, the offender, or another;
- Establishing, owning, maintaining, or managing any property, whether real or personal, where sexual relations are being sold or offered for sale by a person younger than 18 years of age, or participating in the establishment, ownership, maintenance, or management thereof;
- Permitting any property, whether real or personal, partially or wholly owned or controlled by the defendant, to be used as a place where sexual relations are being sold or offered for sale by a person who is younger than 18 years of age; or

- Procuring transportation for, paying for the transportation of, or transporting any person younger than 18 years of age within this state with the intent of causing, assisting, or promoting that person's engaging in selling sexual relations.

Commercial sexual exploitation of a child is a severity level 5, person felony and carries a fine of not less than \$2,500 nor more than \$5,000, unless the person, prior to the commission of the crime, has been convicted of a violation of this section, in which case it is a severity level 2, person felony and carries a fine of not less than \$5,000.

Further, the crime or attempt, conspiracy, or criminal solicitation to commit the crime is an off-grid person felony when the offender is 18 years of age or older and the victim is less than 14 years of age. A fine of not less than \$5,000 also will be imposed.

Additionally, the court may order any person convicted of this crime to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation of a child.

Throughout, the bill changes "prostitution" to "selling sexual relations," "house of prostitution" to "place where sexual relations are being sold or offered for sale by a person who is 18 years of age or older," and "prostitute" to "person selling sexual relations who is 18 years of age or older."

The bill provides it is an affirmative defense to the crime of "selling sexual relations" that the defendant committed the crime because the defendant was subjected to human trafficking, aggravated human trafficking, or commercial exploitation of a child. Additionally, the bill allows persons convicted of prostitution or selling sexual relations who entered into a diversion agreement and who can prove they were acting under coercion caused by the act of another to petition the convicting court for the expungement of the conviction or diversion agreement and related arrest records after one or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release, or a suspended sentence.

The bill requires a notice offering help to victims of human trafficking to be posted on the official websites of the Attorney General, Department for Children and Families (DCF), and the Department of Labor, providing information to help and support victims of human trafficking, including information about the National Human Trafficking Resource Center Hotline. The Secretary of Labor is required to consult with the Attorney General and create an education plan to raise awareness among Kansas employers about human trafficking, the hotline, and other resources. The Secretary is required to report progress to the House and Senate Judiciary Committees on or before February 1, 2014.

"Promoting prostitution" becomes "promoting the sale of sexual relations," which is a severity level 9, person felony, rather than a class A person misdemeanor, and requires a fine of not less than \$2,500 nor more than \$5,000. An exception will exist if the person, prior to the commission of the crime, has been convicted of a violation of KSA 2012 Supp. 21-6420 (promoting the sale of sexual relations), in which case it is a severity level 7 person felony and carries a fine of not less than \$5,000.

The bill also renames the crime of “patronizing a prostitute” to “buying sexual relations” and expands the definition to include hiring a person selling sexual relations who is 18 years of age or older or entering a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

The crime becomes a class A person misdemeanor, rather than a class C misdemeanor, and carries a fine of \$2,500, except if the person, prior to the commission of the crime, has been convicted of a violation of this section, in which case it is a severity level 9 person felony and carries a fine of not less than \$5,000. Additionally, the court may order any person convicted to enter into and complete a suitable educational and treatment program regarding commercial sexual exploitation of a child.

Aggravated human trafficking committed in whole or in part for the sexual gratification of the defendant or another and commercial sexual exploitation of a child are classified as “sexually violent crimes” for the purposes of sentencing, postrelease supervision, and offender registration. A person convicted of commercial sexual exploitation of a child is required to register for life.

The bill adds commercial sexual exploitation of a child, if the victim is less than 14 years of age, to the list of crimes in the statute imposing a minimum 25-year sentence. Similarly, the bill adds aggravated human trafficking committed if the victim is less than 14 years of age and commercial sexual exploitation of a child, if the victim is less than 14 years of age, as a crime listed as a “crime of extreme sexual violence,” which is an aggravating factor considered in determining whether substantial and compelling reasons exist to impose a departure sentence.

Further, human trafficking, aggravated human trafficking, sexual exploitation of a child, commercial sexual exploitation of a child, and buying or selling sexual relations are added to the list of suspected crimes that justify a wiretap.

Statutes related to municipal courts are amended to impose the fines provided for the offenses described above and to direct the fines collected to the Human Trafficking Victim Assistance Fund.

The bill also creates a new section in and makes amendments to the Revised Code for the Care of Children, which will take effect January 1, 2014. Specifically, when any child is in custody who has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or who has committed an act which, if committed by an adult, would constitute the crime of selling sexual relations, the court is required to refer the child to the Secretary of DCF. The Secretary is required to use a research-based assessment tool to assess the safety, placement, and treatment needs of the child, and make appropriate recommendations to the court.

The bill allows a law enforcement officer to take a child into custody if the officer reasonably believes the child is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child. The officer is required to place the child in protective custody and is allowed to deliver the child to a staff secure facility. The officer is required to contact DCF to begin an assessment of the child *via* a rapid response team to determine appropriate and timely placement.

The requirements for a “staff secure facility” are added to statutes and include: no construction features designed to physically restrict the movements and activities of residents; written policies and procedures that include the use of supervision, inspection, and accountability to promote safe and orderly operations; locked entrances and delayed-exit mechanisms to secure the facility; 24-hour-a-day staff observation of all entrances and exits by a retired or off-duty law enforcement officer; screening and searching of residents and visitors; policies and procedures for knowing resident whereabouts, handling runaways and unauthorized absences; and restricting or controlling resident movement or activity for treatment purposes. Such a facility will provide case management, life skills training, health care, mental health counseling, substance abuse screening and treatment, and other appropriate services to children placed there. Service providers in the facility will be trained to counsel and assist victims of human trafficking and sexual exploitation.

The bill also allows the court to issue an *ex parte* order placing a child in a staff secure facility when the court determines the necessity for an order of temporary custody and there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. If the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

The bill allows the court to enter an order of temporary custody following a hearing if the court determines there is probable cause to believe the child has been subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child, or if the child committed an act, which, if committed by an adult, would constitute selling sexual relations. Under such circumstances, the court is authorized to place the child in a staff secure facility. Similarly, if the court places the child with DCF, the agency has the discretionary authority to place the child in a staff secure facility if the above circumstances exist.

If a child has been removed from the custody of a parent, the court may award custody to a staff secure facility if the circumstances described above exist.

Further, the bill amends the Revised Kansas Juvenile Justice Code to allow for expungement of a juvenile’s records and files if the court finds one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile, which, if committed by an adult, would constitute selling sexual relations.

Finally, the bill adds commercial sexual exploitation of a child to the list of offenses giving rise to civil forfeiture.

Distribution of a Controlled Substance Causing Great Bodily Harm or Death; HB 2044

HB 2044 creates two new crimes. The first crime, distribution of a controlled substance causing great bodily harm, a severity level 5, person felony, is defined as unlawfully distributing a controlled substance when great bodily harm results from the use of such controlled substance. The second crime, distribution of a controlled substance causing death, a severity level 1, person felony, is defined as unlawfully distributing a controlled substance when death results from the use of such controlled substance. The fact that a user contributed to the user’s own great bodily harm or death by using the controlled substance or consenting to its administration by another is not a defense to either crime. The bill also defines key terms.

Female Genital Mutilation; HB 2217

HB 2217 creates the crime of female genital mutilation, a severity level 3, person felony, defined as:

- Knowingly circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora, or clitoris of a female under 18 years of age;
- Removing a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating the whole or any part of the labia majora, labia minora, or clitoris of such female; or
- Causing or permitting another to perform such conduct when the person causing or permitting such conduct is the parent, legal guardian, or caretaker of the victim.

An exception exists if the procedure is medically necessary pursuant to the order of a physician when the procedure is performed by a physician. It is not a defense, however, that the conduct is required as a matter of custom, ritual, or religious practice or that the victim or the victim's parent, legal guardian, or caretaker consented to the procedure.

The bill defines "caretaker" and "physician."

Driving Under the Influence of Alcohol or Drugs; HB 2218

HB 2218 amends statutes concerning the crime of driving under the influence of alcohol or drugs (DUI). First, the bill amends the law governing when a law enforcement officer must request a person submit to alcohol or drug testing. Specifically, the bill adds to language concerning an officer's reasonable grounds to believe the person was DUI to require that the officer have such a belief "at the time of the request." Further, the bill requires an officer to request alcohol or drug testing when the officer has such a belief and the person has been arrested or otherwise taken into custody for any violation of any state statute, county resolution, or city ordinance. Testing already was required if the person was arrested or taken into custody for a DUI offense.

The bill specifies that the sentence for felony violation of criminal refusal and commercial DUI is that provided for in the specific mandatory sentencing requirements of those statutes.

The bill also amends the definition of the crime of aggravated battery to include DUI:

- When great bodily harm to another person or disfigurement of another person results from such act, which is a severity level 5, person felony; and
- When bodily harm to another person results from such act under circumstances whereby great bodily harm, disfigurement, or death can result from such act, which is a severity level 8, person felony.

For the purpose of determining whether a new DUI conviction is a first, second, third, or subsequent conviction, which impacts the penalty imposed, aggravated battery while DUI is

considered a prior DUI conviction. The bill also adds clarifying language concerning DUI offenses committed by persons under the age of 21 and replaces “drive” with “operate.”

Finally, the bill amends the boating under the influence statutes to make them more consistent with DUI statutes. The changes include:

- Adding a provision prohibiting the operation or attempt to operate any vessel while the alcohol concentration in the person’s blood or breath as shown by any competent evidence, including other competent evidence (as defined in statute), is 0.08 or more;
- Changing the time period within which a person is prohibited from operating or attempting to operate a vessel if that person’s alcohol concentration is 0.08 or more from two hours to three hours;
- Revising the prohibition on operating a vessel while under the influence of alcohol to include the phrase “to a degree that renders the person incapable of safely operating a vessel”;
- Removing a provision prohibiting the operation of a vessel by a habitual user of any narcotic, hypnotic, somnifacient, or stimulating drug; and
- Revising the definition of “other competent evidence” to extend the time for sampling from two hours to three hours.

The boating under the influence provisions of the bill will be effective from and after January 1, 2014, and their publication in the statute book.

Statute of Limitations for Rape and Sexually Violent Crimes; HB 2252

HB 2252 allows a prosecution for rape or aggravated criminal sodomy to be commenced at any time. Additionally, the bill allows for prosecution of a sexually violent crime to commence within ten years when the victim is 18 years old or older. When the victim is under 18 years, the bill allows for prosecution of a sexually violent crime to commence within one year of the date the identity of the suspect is conclusively established by DNA testing, or within ten years (increased from the former period of five years) of the date the victim turns 18 years of age, whichever is later.

Crimes Involving Firearms; HB 2278

HB 2278 makes theft of a firearm valued at less than \$25,000 a severity level 9, nonperson felony. Previously, there was no penalty specific to theft of firearms; however, theft of property valued between \$1,000 and \$25,000 was a severity level 9, nonperson felony, and theft of property valued below \$1,000 was a class A nonperson misdemeanor. For theft of property from three separate mercantile establishments within 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct, a severity level 9, nonperson felony, the bill adds a maximum value of \$1,000 for the property.

Additionally, pursuant to the bill, criminal deprivation of a firearm becomes a severity level 9, nonperson felony. The former law had no penalty specific to criminal deprivation of a firearm; however, criminal deprivation of property other than a motor vehicle was a class A nonperson misdemeanor, and a second or subsequent conviction carried a sentence of at least 30 days imprisonment and a fine of at least \$100.

Finally, burglary with intent to commit the theft of a firearm becomes a severity level 5, nonperson felony. Formerly, burglary was either a severity level 7 or severity level 9, nonperson felony.

DISABILITY RIGHTS

Kansas Employment First Oversight Commission; Senate Sub. for HB 2150

Senate Sub. for HB 2150 revises the size and responsibilities for the Kansas Employment First Oversight Commission. The Commission increases from five members to seven members. The Governor appoints the two additional members, with one having disability employment experience and the other having business employment experience. The bill repeals the requirement that the one member appointed by the Governor not be a state employee.

The bill repeals the responsibilities of the Commission to establish measurable goals and objectives for the State of Kansas and track the progress of state agencies implementing the Employment First Initiative. The Commission must work with state agencies and nongovernmental organizations to assist individuals with disabilities to obtain employment. The Commission may educate state agencies and stakeholders about the Initiative.

The Commission may make annual recommendations to the Governor, Legislature, and state agencies on strategies to increase the rate of competitive integrated employment for Kansans with disabilities.

Accessibility Standards; HB 2193

HB 2193 updates a federal reference in existing state law concerning disability accessibility standards for public facilities. The change makes state law consistent with the current Americans with Disabilities Act (ADA).

EDUCATION

School Finance; Mill Levy Reauthorization; Financial Reporting Requirements; Military Student Count; Ancillary School Facilities Tax; SB 23

SB 23 makes a number of changes related to school finance and reporting. The bill reauthorizes the school district property tax mill levy for the 2013-2014 and 2014-2015 school years and extends the deadline for repeal of the related \$20,000 residential property tax exemption to the end of tax year 2014; modifies reporting requirements in the Kansas Uniform Financial Accounting and Reporting Act; authorizes a second count of military students through the 2017-2018 school year to determine the number of students enrolled in a school district; and continues to allow a local school board that has levied an *ad valorem* tax for ancillary school facilities for two years to levy the tax for up to six years.

Continuation of the 20-Mill Levy

The bill authorizes the school district property tax mill levy for the 2013-2014 and 2014-2015 school years, and extends the deadline for repeal of the \$20,000 residential property tax exemption to the end of tax year 2014.

Capital Outlay; New Uses Prerequisite

The bill authorizes a school district to use capital outlay funds for school district property maintenance, various equipment for academic uses, computer software, and performance uniforms; however, prior to such authorization, the bill requires the Director of the Budget and the Director of Legislative Research to jointly certify to the Secretary of State that capital outlay state aid is fully funded at 100.0 percent of the amount a district is entitled to receive.

Changes to the Kansas Uniform Financial Accounting and Reporting Act

The bill requires each school district and the Kansas Department of Education to report on their respective websites the budget summary for the current school year, as well as actual expenditures for the immediately preceding two school years showing total net transfers and amounts spent per pupil by specific function, disaggregated to show the per-pupil revenue amounts from local, state, and federal sources.

Continuation of Military Student Second Count

The bill authorizes a second count of military students on February 20 to determine the number of students enrolled in a school district to continue through the 2017-2018 school year. The authorization had been set to expire at the end of the 2012-2013 school year.

Continuation of Ancillary School Facilities Tax

The bill allows a local school board that has levied an *ad valorem* tax for ancillary school facilities for two years to continue to levy the tax for up to six years. The amount of the levy is reduced to 90.0 percent in the first year of the six-year period, 75.0 percent in the second year,

60.0 percent in the third year, 45.0 percent in the fourth year, 30.0 percent in the fifth year, and 15.0 percent in the sixth year.

Prior law allowed local school boards that had levied an *ad valorem* tax for ancillary school facilities for two years to continue to levy the tax for up to an additional three years.

Military Service Scholarship Program; SB 27

SB 27 amends the definition of “qualified student” for the Military Service Scholarship Program, removing specifically named military engagements and specific countries, and including any service in international waters or on foreign soil in support of military operations. The definition also includes someone who received an “under honorable conditions (general) discharge” in addition to someone who received an honorable discharge or is still in military service.

Career and Technical Education; SB 128

SB 128 postpones the termination date of the Postsecondary Technical Education Authority and its statutory functions. The prior termination date was June 30, 2014; the bill extends this date by three years, to June 30, 2017. The bill also amends the statute creating the Career Technical Education (CTE) Incentive Program. The bill specifies that a student’s accomplishment of obtaining an industry-recognized credential in one of certain specific occupations (a criterion for a school district or community or technical college to receive an incentive award) must be completed prior to graduation from high school or by December 31 immediately following graduation.

Public Building Commission Relating to Municipal Universities; SB 216

SB 216 amends existing law to state a municipal university, as well as any state university, would have the ability to use a public building commission to acquire land and facilities near or adjacent to the university or could acquire by lease, land and facilities constituting a part of the campus of the institution. The bill also allows the public building commission to acquire the fee simple title to real property, or a leasehold interest in real property, located on the campus of any municipal university.

Children’s Internet Protection Act; HB 2109

HB 2109 creates the Children’s Internet Protection Act, requiring technology protection measures be implemented and enforced at both the school district and public library levels. The bill defines “technology protection measure” as any computer technology or other process that blocks or filters online access to visual depictions. The term “visual depictions” is tied to the definition of the same term contained in the Kansas statute dealing with the crime of sexual exploitation of a child.

School District Requirements

The bill requires any school district that provides public access to a computer to implement technology protection measures to ensure no minor has access to visual depictions that are child pornography, harmful to minors, or obscene. School district boards of education are required to adopt policies to enforce this provision.

Public Library Requirements

Likewise, the bill requires any public library that provides public access to a computer to ensure that no person, whether minor or adult, has access to visual depictions that are child pornography or obscene and, in addition, to ensure that no minor has access to visual depictions that are harmful to minors. The bill permits a public library employee to disable any such technology protection measure if requested to do so by an adult and if the computer, when the measure is disabled, would be used only to enable access for legitimate research or other lawful purpose.

The bill requires the State Librarian to establish standards and promulgate rules and regulations to enforce the Act's provisions for public libraries. Each public library governing body also is required to adopt relevant policy, which must be reviewed at least once every three years and meet specified criteria that include information to patrons on the policy and on procedures available for the submission of related complaints.

Liability

The bill states any school district or public library that is in compliance with the Act will not be liable for any damages arising out of or related to a minor gaining access to the visual depictions the Act seeks to regulate.

Education Waiver for Former Military Service Members; HB 2181

HB 2181 authorizes a licensing body to waive educational requirements towards certification or licensure for any former military service member who completes a distance education course through an accredited educational institution.

The courses are required to be substantially equivalent to the standards required for certification or licensure. Additionally, each licensing body is permitted to adopt rules and regulations necessary for implementation of the waiver. The waiver does not apply to the practice of law or the regulation of attorneys.

Equal Access Act for Professional Employee Organizations; HB 2221

HB 2221 establishes the Equal Access Act for professional employees' organizations and modifies the Professional Negotiations Act.

The bill requires all local boards of education to:

- Give equal access for all professional employees' associations to the employees' physical or electronic mailboxes; and
- Allow equal access for all professional employees' associations to attend new teacher or employee school orientations and other meetings.

Local boards of education are not allowed to designate any day or breaks in a school year by naming or referring to the name of any professional employees' association.

The bill amends the Professional Negotiations Act by making the Equal Access Act supplemental to and part of that law. Changes in the Professional Negotiations Act include expanding the definition of "professional employees' organizations" to include those existing for the purpose of professional development or liability protection.

Finally, the bill deletes certain language from the Professional Negotiations Act in conflict with a provision created in the bill for the definition of "terms and conditions of professional service."

Celebrate Freedom Week; Extension of Fund Flexibility; Bullying Policies; HB 2261

HB 2261 creates "Celebrate Freedom Week" in public schools for kindergarten and grades one through eight, extends fund flexibility for public school districts, and amends existing law related to school districts' bullying policies.

Celebrate Freedom Week

The bill designates the week containing September 17 (or any other full school week as determined by the local school board) as "Celebrate Freedom Week," during which public schools are required to teach to grades kindergarten through eight the history of the country's founding, with particular emphasis on the *Declaration of Independence* and the *U.S. Constitution*. The bill prohibits censorship of religious references in the writings of the founding fathers when presented as part of the instruction.

On or before December 31, 2013, the State Board of Education is responsible for adopting rules and regulations to require history and government curriculum for grades kindergarten through eight that includes instruction on the meaning and context of the *Declaration of Independence* and the *U.S. Constitution*, including their relationship to the nation's diversity by way of immigration, major wars, and social movements in American history. The State Board of Education, along with other volunteers, are required to promote "Celebrate Freedom Week".

Fund Flexibility

The bill allows a school district to continue to transfer unencumbered cash balances for the 2013-2014 school year and each school year thereafter for general operating expenses of the district from each of the following funds: at-risk education, bilingual education, contingency reserve, professional development, summer program, one-third of textbook and student materials, one-third of special education, virtual school, vocational education, parent education,

and driver training. The maximum amount allowed to be transferred from the unencumbered funds could not exceed \$250 multiplied by the adjusted enrollment of the district.

The bill states the public policy goal of the State of Kansas is at least 65 percent of the aggregate of all unencumbered balances authorized for expenditure by the bill must be expended in the classroom or for instruction (as defined in KSA 72-64c01).

The bill removes any cap on the amount of moneys that could be maintained in the contingency reserve fund. (Prior law allowed a district to keep up to 10 percent of the district's general fund budget in a contingency reserve fund.)

The bill requires the superintendent of a school district to report the unencumbered balances in each of the funds named in the bill to the local board of education at the board's July meeting, and to the State Board of Education by July 15 of each year.

Policies Regarding Bullying

The bill amends the law related to school district policies on bullying. Prior law defined "bullying" as an intentional gesture or threat creating an intimidating environment for a student or staff member. The bill clarifies the definition of "bullying" to mean any threat by a student, staff member, or parent toward a student or by any student, staff member, or parent toward a staff member. The bill defines "parent" to include a guardian, custodian, or other person with authority to act on behalf of a child. The bill defines "staff member" to mean any person employed by the school district. Finally, the bill requires these changes be reflected in the school districts' policies and plans to address bullying.

Coalition of Innovative Districts Act; HB 2319

HB 2319 creates the Coalition of Innovative Districts Act, the purpose of which is to allow up to ten percent of the state's school districts, at any one time, to opt out of most state laws and rules and regulations in order to improve student achievement.

Establishment of Public Innovative Districts

The bill authorizes a process whereby a school district board of education may apply for authority to operate as a "public innovative district." The bill limits the number of public innovative districts to no more than ten percent of the state's school districts at any time. The application and approval requirements differ based on the application queue, as follows:

- For the first two school districts, a request for approval (containing the same information as the application) must go first to the Governor and the chairpersons of the Senate and House education committees. If a majority of these individuals approves the request, the district may submit an application to the State Board of Education (State Board), which is required to review and approve the application within 90 days, if it included the required contents (see below). Requirements regarding notification of both approval and denial are contained in the bill. If an application is denied, the district has an opportunity to submit an amended application.

- For the remaining districts, the request for approval goes first to the Coalition Board, which is created by the bill (see below). The Coalition Board has sole discretion to approve or deny the request and may recommend the requesting school district modify the request. Modifications may then be considered by the Coalition Board prior to making a final decision. If the request is approved, the district may submit the application to the State Board. The same review and notification requirements apply.

The application must contain a description of the educational programs of the public innovative district, a description of parental and community interest and support, the specific goals and measurable pupil outcomes to be obtained, and an explanation of how pupil performance in achieving the specified outcomes will be measured, evaluated, and reported.

Requirements and Exemptions for Public Innovative Districts

In addition to complying with its own stated goals, a public innovative district must:

- Participate in all applicable Kansas math and reading assessments or an alternative assessment determined by the local board of education;
- Abide by all financial and auditing requirements applicable to school districts, except a public innovative district would be permitted to use generally accepted accounting principles;
- Comply with all applicable health, safety and access laws; and
- Be subject to the Special Education for Exceptional Children Act, the Virtual School Act, the School District Finance and Quality Performance Act, capital outlay requirements (KSA 72-8801 *et seq.*), all laws governing the issuance of general obligation bonds by districts, laws governing public employee retirement (KSA 74-4901 *et seq.*), laws governing school board elections, the Kansas Open Records Act, and the Kansas Open Meetings Act.

A public innovative district may not charge tuition for any pupils residing in the district's boundaries.

Unless otherwise required by the Act or decided by the board of education of the public innovative district, public innovative districts are exempt from all laws and rules and regulations applicable to school districts.

Coalition of Innovative Districts; Coalition Board

The bill establishes the Coalition of Innovative Districts, the duties and functions of which are carried out by a Coalition Board. The Coalition Board consists of one representative of each public innovative district as designated by the board of education of the public innovative district.

The bill requires the chairperson of the Coalition Board be appointed in a unanimous decision by the Governor and the chairpersons of the House and Senate education committees.

The Coalition Board chairperson serves a five-year term, and a vacancy must be filled in the same method as a regular appointment.

The Coalition Board is required to carry out the duties and functions of the coalition, including the following:

- The Coalition Board must conduct the initial review of all but the first two prospective public innovative districts, and will have the sole discretion to approve or deny a district's request to become a public innovative district. (If the Coalition Board approves the request, the district's petition to become a public innovative district may proceed to the State Board.) As part of the initial review, the Coalition Board is permitted to make recommendations to modify the request and may subsequently consider the modifications prior to making a final decision.
- If a public innovative district fails to meet any of the specified renewal criteria (see "Performance-Related Provisions," below), the Coalition Board may petition the State Board to request the public innovative district's authority be revoked.
- The Coalition Board must report annually to the Legislature regarding pupil performance in the public innovative districts, the laws and rules and regulations deemed problematic by the Coalition Board, and any other information regarding success or problems experienced by the public innovative districts during the previous year.

The Coalition Board has latitude to meet as often as, and wherever, deemed appropriate. The Coalition Board is allowed to form subcommittees.

Operational Time Limit; Performance-Related Provisions; Petition for Revocation of Authority

Under the bill, a public innovative district has authority to operate as such for a period of five school years. At least 90 days prior to expiration of this period, a public innovative district may submit an application to renew its authority to the State Board and, if the application is complete, the State Board must approve the application within 60 days of submission, with related notification deadlines. The renewal application must contain:

- Evidence that the public innovative district has met the standards on the designated math and reading state or alternative assessments during the five-year period;
- Evidence that the public innovative district has shown improvement in its completion percentage during the same period;
- Demonstrated progress that the public innovative district is achieving the goals and outcomes described in its application; and
- A description of compliance with the requirements of the Act.

However, if a public innovative district fails to meet any of the renewal criteria for two or more consecutive years, either the public innovative district itself may petition the State Board for a release from its public innovative district status, or the Coalition Board may submit a petition to the State Board requesting the public innovative district's authority to operate as such be revoked. The State Board must honor any such petition request originating from the public innovative district itself, and release from the authority to operate under the Act would then be effective for the school year immediately following the grant of the petition. In the case of a Coalition Board-initiated petition, the public innovative district must be provided the opportunity to have a hearing on the matter. A time frame for the hearing request and subsequent decision are provided in the bill. If the petition is granted, the authority to operate as a public innovative district will be revoked beginning with the school year immediately following the grant of the petition.

The bill requires the superintendents of the public innovative districts to meet at least monthly to discuss the success or failure of educational programs.

Additional Duties of the State Board

The bill requires the State Board to provide technical advice and assistance in preparing an application for authority to operate as a public innovative district, upon the request of a prospective school district. Additionally, the State Board must adopt rules and regulations as deemed necessary to implement the Act.

Efficiency Audits of School Districts; HB 2349

HB 2349 requires the Legislative Division of Post Audit to conduct three school district efficiency audits each fiscal year.

The school districts will be selected for audit by the Legislative Post Audit Committee, on a voluntary basis, at first. One small, one medium, and one large school district will be audited each fiscal year. The audited school districts will publish a summary of their audit reports with recommendations on their websites as well as making the audit report available, free of charge, at each school district's office.

EMPLOYERS AND EMPLOYEES

Payroll Deductions; Senate Sub. for HB 2022

Senate Sub. for HB 2022 revises the purposes for certain payroll deductions from the paychecks of private or public employees.

Wage Payment Act

An employer may withhold, contingent upon a signed written agreement between the employer and the employee, a portion of an employee's wages for the following purposes:

- Repayment of a loan or an advance the employer made to the employee during the course and scope of employment;
- Recovery of overpayment; and
- Replacement cost or the unpaid balance of the employer's merchandise or uniforms purchased by the employee.

When a person leaves employment, the bill gives the employer the discretion, contingent upon written notice and explanation to the employee, to deduct any portion of the employee's final wages for the following purposes:

- Recovery of the employer's property provided to the employee in the course of the employer's business until the property is returned to the employer. Upon return of the employer's property, the withheld wages are to be paid to the employee;
- Repayment of a loan or advance the employer made to the employee during the course of and within the scope of employment;
- Recovery of payroll overpayment; or
- Replacement cost of the employer's merchandise, uniforms, or equipment purchased by the employee.

The employer cannot withhold amounts that cause the wages paid to the employee to be less than the federal or state minimum wage, whichever is applicable.

Under law previously enacted, an employee may authorize wage deductions for charitable donations, dues paid to labor organizations, or for service fees. An employer may withhold or deduct any portion of an employee's wages provided:

- It is allowed by law;
- The deduction is for healthcare;

- The employer has signed authorization by the employee for a lawful purpose accruing to the employee's benefit; or
- The deduction is to be deposited into a retirement plan.

The bill also revises the Professional Negotiations Act and the Public Employer-Employee Relations Act (PEERA) by defining and restricting the partisan or political purposes of professional employees' organizations (PEOs) and public employee organizations. For both types of organizations, the bill defines "partisan or political purposes" to mean an act done with the intent to influence, directly or indirectly, a person to vote for or against any candidate for public office at any caucus, political convention, primary, or election.

The bill does not preclude either type of organization from using memberships dues to:

- Communicate with its members about political candidates or issues; or
- Establish a political fund or solicit political contributions from its members.

Professional Negotiations Act

The bill prohibits PEOs, which are defined by KSA 72-5413 to mean groups of certified employees that negotiate with boards of education regarding the terms and conditions of professional services, from using money deducted from members' paychecks for partisan or political activities. PEOs shall not require political contributions as a condition of membership.

The bill requires PEOs wanting to spend money for partisan or political purposes to ensure members' contributions are voluntary. Political funds shall be separate from the money received as union dues and established as a political action committee. Violation of this prohibition must be enforced pursuant to KSA 72-5430a, requiring the Secretary of the Department of Labor to investigate and grant relief, if necessary.

Public Employer-Employee Relations Act

Under law previously enacted, public employee organizations are prohibited from endorsing candidates or spending any income, directly or indirectly, for partisan or political purposes involving the election of candidates for any public office. Under the bill, violation of this prohibition must be enforced pursuant to KSA 75-4334 (requiring the Public Employee Relations Board to investigate and make findings).

Public Employer-Employee Relations; HB 2083

HB 2083 revises the Public Employer-Employee Relations Act by shifting the costs associated with public employee elections and fact-finding or mediation from the Department of Labor to the parties involved.

In instances when the Public Employee Relations Board (Board) administers a secret ballot for a unit of public employees to determine if they wish to be represented by an employee organization, the bill requires the Board to charge the costs of conducting the ballot to the party

seeking the election. The bill defines “costs” to mean the amounts spent on printing ballots and postage.

In instances when the Board determines a negotiation impasse exists between a public employer and a recognized employee organization, the costs for fact-finding or mediation services shall be borne equally by the parties involved in the dispute.

Drug Screening, Criminal History Record Check and Fingerprinting; HB 2302

HB 2302 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to require fingerprinting and state and national criminal history record checks for any person offered employment in and any employee of the Office of Laboratory Services who will have access to a secured biological laboratory, as a condition of initial and continued employment. The bill also amends the existing definition of “safety sensitive positions” to include all employees who have access to a secured biological laboratory in the Office of Laboratory Services to allow for drug screening, but specifically exempts employees of the Office of Laboratory Services from provisions in law prohibiting termination solely due to positive results of a drug screening test.

Applicants for safety sensitive positions in state government who are given a conditional offer of employment are subject to drug screening and, once employed, are subject to drug screening based on a reasonable suspicion of illegal drug use (the law applies to a drug screening program implemented by the Division of Personnel Services, Department of Administration, for certain state officials and employees).

The bill establishes the notice requirements, procedures, and purpose for the use of the information obtained from fingerprinting and criminal history record checks. Specifically, the bill requires written notice to persons offered employment and employees that fingerprinting and state and national criminal history record checks (as prescribed by the Secretary of Administration) are required as a condition of initial and continued employment.

The fingerprints will be used to verify the identity of the person offered a position of employment or an employee and determine whether a person has a record of criminal history in this state or other jurisdiction. Local and state law enforcement officers and agencies will assist KDHE in the taking and processing of fingerprints. Fingerprints will be submitted by KDHE to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) for a state and national criminal history record check. The information obtained from fingerprinting and criminal history will be used by KDHE in determining the eligibility to perform tasks within the Office of Laboratory Services by persons offered a position of employment or current employees.

Further, the bill requires when criminal history record information or results of drug screenings are used to disqualify persons offered a position of employment or to terminate employees, such persons must be informed in writing of the purpose of the disqualification or termination.

ENERGY AND UTILITIES

Telecommunications Deregulation and Study Committee; Fees for KAN-ED Services; HB 2201

HB 2201 creates the Telecommunications Study Committee, further deregulates telecommunications in Kansas, makes changes to distributions from the Kansas Universal Service Fund (KUSF), and allows the Board of Regents (Board) to charge fees for services provided by the KAN-ED program.

Telecommunications Study Committee

The bill creates the Telecommunications Study Committee to study telecommunications issues, the KUSF, the federal Universal Service Fund (FUSF), the state's public policy on telecommunications, the possibility of establishing a Kansas Broadband Fund, and other issues determined by the Legislative Coordinating Council.

The Telecommunications Study Committee is composed of 20 members, appointed on or before August 1, 2013, for a term ending June 30, 2015. The members include the chairpersons, vice-chairpersons, and ranking minority members of the Senate Committee on Utilities (Senate Committee) and House Committee on Utilities and Telecommunications (House Committee), six members from the Senate Committee, and eight members from the House Committee, with proportionate partisan representation.

The bill requires the Telecommunications Study Committee to provide an annual report to the Senate and House Committees, and to provide a report and policy recommendations for telecommunications to the Senate and House Committees, the Senate Committee on Ways and Means, and the House Committee on Appropriations, prior to December 31, 2014. Further, the bill requires the Department of Revenue to administer an audit of the KUSF, which is required to be submitted to the Telecommunications Study Committee by November 1, 2014.

The Telecommunications Study Committee sunsets on June 30, 2015.

Report on Internet Protocol

The bill requires the Kansas Corporation Commission (KCC) to report to the Senate and House Committees by January 15, 2014, regarding the status of the Federal Communications Commission's (FCC) Further Notice of Proposed Rulemaking regarding Internet Protocol to Internet Protocol (IP-to-IP) interconnection in WC Docket Nos. 10-90 *et al.*

Regulatory Authority of the Kansas Corporation Commission Regarding Telecommunications

The bill removes KCC regulation of telecommunications carriers and electing carriers except in specific instances.

Specifically, electing carriers are no longer required to do the following:

- Serve as carrier of last resort;

- Offer single residential local exchange access lines in the electing carrier's exchanges;
- Set rates for single residential or business local exchange access lines in its rural exchanges that are no higher than the average of such rates for single residential or business local exchange access lines respectively in its urban exchanges;
- Be subject to price cap regulation for lifeline services; and
- Comply with requirements concerning intrastate access charges.

In addition, electing carriers and telecommunications carriers are no longer subject to the KCC regulations concerning:

- Minimum quality of service standards; and
- Statewide long distance price regulation.

Electing carriers and telecommunications carriers also are no longer required to participate in the Kansas Lifeline Service Program (KLSP) and are allowed to withdraw participation in the KLSP with 90 days' notice to the KCC.

Telecommunications carriers are no longer regulated in the following areas:

- Pass through of access charge reductions to consumers; and
- Geographical averaging of basic toll prices statewide.

The KCC retains regulatory authority over telecommunications carriers and electing carriers in the following areas:

- Entitlement of telecommunications carriers to interconnect with a local exchange carrier or an electing carrier to transmit and route voice traffic between both the telecommunications carrier and the local exchange carrier or electing carrier regardless of the technology used to originate or terminate the voice traffic to a consumer; and
- Authorization of applications, suspension or cancellation of certificates of public convenience.

The KCC retains authority to do the following:

- Determine wholesale rates;
- Approve resale restrictions;

- Approve reasonable limitation on resale to the extent permitted by the federal act;
- Carry out obligations established in the Underground Utilities Damage Prevention Act and the Overhead Power Line Accident Prevention Act (47 U.S.C. 251 and 252);
- Implement rules delegated to the state by the FCC or federal law;
- Regulate intrastate switched access rates, terms and conditions;
- Require the reasonable resale of retail telecommunications services, as well as unbundling and interconnection obligations;
- Administer the KLSP;
- Administer contributions to the KUSF;
- Assessment of costs and expenses to fund KCC operating expenses;
- Authorization to request information for discovery purposes; and
- Administer consumer complaints against telecommunications carriers and electing carriers to investigate fraud, undue discrimination, and other practices harmful to consumers.

The bill clarifies that an electing carrier still is required to offer to allow reasonable resale of its retail telecommunications services and to sell unbundled local loop, switch and trunk facilities to telecommunications carriers as required by the Federal Telecommunications Act of 1996.

Kansas Lifeline Service Program

The bill clarifies that a local exchange carrier, electing carrier, or telecommunications carrier can enroll its eligible customers in the KLSP, but telecommunications carriers and electing carriers are able to withdraw participation in the KLSP at any time by providing the KCC with 90 days' notice. Telecommunications carriers and electing carriers participating in the KLSP are eligible to receive KUSF support for the services without additional regulations and the support will not be factored in any reductions of KUSF funding.

Kansas Universal Service Fund

The bill makes a number of changes to distributions from the KUSF. The changes are grouped below by the type of carrier that is impacted.

Local Exchange Carriers Subject to Price Cap Regulation

Beginning January 1, 2014, annual distributions from the KUSF will be capped at the lesser of 90 percent of the support the carrier received in the 12-month period ending February 28, 2013, or \$11.4 million. KLSP support will not be subject to this cap.

Carriers will not be allowed to receive KUSF support for residential or business lines within an exchange that the KCC has granted price deregulation, except for areas within a census block in such exchange in which there is no wireline carrier providing local exchange access lines that does not receive KUSF support. The amount of KUSF support will be limited to the same per line, per month amount established on April 13, 2000. The amount will further be reduced by funding received through the federal Connect America Fund II.

The bill allows the KCC to periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers, and wireless telecommunications service providers to provide local service justify modification of the KUSF and, if so, the KCC is required to modify the KUSF accordingly. The KCC is required to report its findings to the Senate and House Committees. In addition, the KCC is required to review the capped amount of the KUSF support based on forward-looking costs of providing basic voice service, using inputs that reflect the actual geography being served and that reflect the scale and scope of the carrier providing basic local voice service within each exchange.

Local Exchange Carriers Electing Traditional Rate of Return Regulation

The KCC is directed to make modifications to carriers' KUSF support only as a direct result of changes in embedded costs, revenue requirements, investments and expenses, until at least March 1, 2017. The total KUSF distributions made to all local exchange carriers operating under traditional rate of return regulations can not exceed an annual \$30 million cap. A waiver of the cap will be granted based on a demonstration by a carrier that the carrier would experience significant hardship due to *force majeure* or natural disaster as determined by the KCC.

In addition, no KUSF support received by a local exchange carrier electing to operate under traditional rate of return regulation can be used to offset any loss of FUSF support for the carrier, except that such limitation on KUSF support shall not preclude recovery of reductions in intrastate access revenue in accordance with KSA 66-2005(c). The KCC also is required to complete audits of rural telephone companies' KUSF support within 240 days.

Competitive Eligible Telecommunications Carriers

The use of the "identical support" rule is discontinued and carriers' KUSF high cost support is capped as of March 1, 2013. The support will be reduced to zero beginning March 1, 2018.

KAN-ED

The bill authorizes the Board to fix, charge, and collect user fees for services provided by the KAN-ED program in accordance with a plan developed by the Board, as required by law.

Internet Related Services Exempt from Certain Regulations and Oversight; HB 2326

HB 2326 exempts Voice over Internet Protocol (VoIP), Internet Protocol enabled service (IP-enabled service), or both from the jurisdiction, regulation, or supervision of the state or any political subdivision. VoIP shall be subject to the requirements of the Kansas Universal Service Fund and the requirements of the Kansas 911 Act.

The bill does not modify:

- The requirements of the Video Competition Act;
- The authority of the Kansas Corporation Commission provided under 47 U.S.C. §§ 251 and 252, in effect on the effective date of the bill;
- The authority of the state or a political subdivision pertaining to public rights of way; and
- The rights and obligation of subsection (y) of KSA 66-2005, pertaining to interconnection between carriers.

FEDERAL AND STATE AFFAIRS

Second Amendment Protection Act; SB 102

SB 102 establishes the Second Amendment Protection Act.

First, the bill excludes from federal regulation any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas. The bill provides that for as long as any such personal firearm, firearm accessory, or ammunition remains within the borders of Kansas, it is not subject to any federal law, regulation, or authority.

Second, the bill prevents any federal agent or contracted employee, any state employee, or any local authority from enforcing any federal regulation or law governing any personal firearm, firearm accessory, or ammunition manufactured commercially or privately and owned in Kansas, provided it remains within the borders of Kansas. In the process of a criminal prosecution, the bill precludes any arrest or detention prior to a trial for a violation of the Act.

Finally, the bill allows a county or district attorney or the Attorney General to seek injunctive relief in court to enjoin certain federal officials from enforcing federal law regarding a firearm, a firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains within the borders of Kansas.

Uniform State Law for Knives; HB 2033

HB 2033 prohibits municipalities from regulating the transportation, possession, carrying, sales, transfers, purchases, gifting, licensing, registration, or uses of a knife or knife-making components. In addition, the bill prohibits a municipality from passing any ordinance, resolution, or rule that would be more restrictive regarding knife manufacturing than the manufacture of any other commercial product.

The bill amends provisions related to the criminal use of weapons and criminal carrying of a weapon by removing certain types of knives, as well as by eliminating certain exceptions for carrying specific types of pocket knives and switchblade knives.

The bill also excludes from the definition of “municipality,” school districts, jails, and juvenile correctional facilities.

Fireworks; Explosives Regulatory and Training Fund; and Bottle Rockets; Senate Sub. for HB 2167

Senate Sub. for HB 2167 adds administrative procedures to the Kansas Fireworks Act. The bill recodifies two sections of law regarding bottle rockets by adding these provisions to the Kansas Fireworks Act, and modifies provisions regarding the sale of bottle rockets.

First, the bill enacts several changes to the Kansas Fireworks Act by adding administrative procedures to:

- Authorize the State Fire Marshal or local law enforcement to seize fireworks stored, possessed, or transported in violation of either the Kansas Fireworks Act or any State Fire Marshal regulation;

Fireworks; Explosives Regulatory and Training Fund; and Bottle Rockets; Senate Sub. for HB 2167

- Direct the process for making an inventory of the seized fireworks and for the destruction of the seized fireworks;
- Direct the process for a hearing pursuant to the Kansas Administrative Procedure Act (KAPA);
- Allow the State Fire Marshal or the Fire Marshal's authorized representative to apply to the applicable court for an emergency order authorizing the State Fire Marshal or authorized representative to destroy or dispose of fireworks that are an immediate danger to the public safety, health, or welfare;
- Establish a civil penalty not to exceed \$1,000 for the failure to obtain a license. (Each day the violation continues will be deemed a separate violation.);
- Establish a civil penalty not to exceed \$1,000 for all other violations. (Each day the violation continues following written notice will be deemed a separate violation.);
- Require fees collected from civil penalties to be deposited into the State General Fund;
- Establish the Explosives Regulatory and Training Fund;
- Require non-civil penalty proceedings under the Kansas Fireworks Act to be conducted in accordance with KAPA; and
- Provide that fees collected under the Act will be credited to the Explosives Regulatory and Training Fund.

Second, the bill relocates bottle rocket provisions that have been elsewhere in statute to the Kansas Fireworks Act.

Third, the bill allows the possession, transportation, and sale of bottle rockets within Kansas by persons or manufacturers licensed by the State Fire Marshal. Sales are permitted to other Kansas registered persons and manufacturers, and to non-registered persons for resale out-of-state. The registered seller or manufacturer is required to notify the State Fire Marshal of all certifications for resale of bottle rockets out-of-state that must be submitted by all non-registered persons. The bill clarifies that Kansas registration is not required of any persons who purchase and transport bottle rockets for out-of-state resale, and that such persons are required to certify such intent to the seller.

FINANCIAL INSTITUTIONS

Maximum Annual Interest Rate; SB 52

SB 52 increases the maximum annual interest rate established in law for first real estate mortgage loans and contracts for deeds.

Under the bill, this maximum annual interest rate will increase from a rate no more than 1.5 percentage points to no more than 3.5 percentage points above a specified monthly floating cap by the Federal Home Loan Mortgage Corporation (Freddie Mac).

The specified monthly floating index rate in law is the yield of 30-year fixed-rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the Federal Home Loan Mortgage Corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month.

Credit Unions—Loan Approval Process and Annual Reporting; SB 113

SB 113 amends statutes governing the loan approval process and certain reporting requirements for credit unions.

The bill raises the threshold from \$20,000 to \$50,000 for loans, in aggregate, credit unions are authorized to make to directors, credit committee members, and supervisory committee members. Under existing law, loans exceeding this threshold must be approved by the credit committee or duly authorized loan officer and the Board of Directors. The bill also changes a requirement that loans made to these credit union representatives be reported to the Administrator semiannually, to require reporting on an annual basis.

Additionally, the bill adds credit managers to the list of credit union representatives authorized to approve loans. The bill also eliminates a lending and repayment provision for certain farm loans.

Mortgage Interest Rate Cap; SB 129

SB 129 removes a provision in the mortgage interest rate law that established a floating cap on the interest rate charged for first real estate mortgage loans and contracts for deeds and required computation and publication of the rate on a monthly basis. With the elimination of the specified interest rate cap, parties will be subject to provisions in continuing law which provide a rate that could not exceed 15.0 percent per annum, unless otherwise specifically authorized by law.

Under the prior law, this maximum annual interest rate was an established rate of no more than 1.5 percentage points above a specified monthly floating cap by the Federal Home Loan Mortgage Corporation (Freddie Mac). The specified monthly floating index rate in that law was the yield of 30-year fixed-rate conventional home mortgages committed for delivery within 61 to 90 days accepted under the Federal Home Loan Mortgage Corporation's daily offerings for sale on the last day on which commitments for such mortgages were received in the preceding month. The interest rate was required to be computed for each calendar month, and

the Secretary of State was required to publish notice of this maximum interest rate no later than the second issue of the *Kansas Register* each month.

(SB 129 modifies SB 52, as signed into law on April 4, 2013.)

Kansas Money Transmitter Act—Amendments, Licensing System; SB 139

SB 139 amends the Kansas Money Transmitter Act to allow money transmitters to submit applications for licensure and allow the Bank Commissioner (Commissioner) to request and receive licensure information and report violations of the law and other relevant information through a nationwide multi-state licensing system and registry. The bill also revises and adds definitions in the Act; clarifies licensee activities, specifies when licensees are allowed to share agents; and authorizes the Commissioner to adopt rules and regulations necessary to implement the Kansas Money Transmitter Act. The bill also makes technical amendments to the Act.

Definitions

The bill revises existing definitions in the Act, including the terms “agent,” “electronic instrument,” “money transmission,” “permissible investments,” and deletes the term “stored value.” The amendment to the term “electronic instrument” replaces reference to a stored value card or device with prepaid access card or device.

The bill also adds definitions for “licensee,” “nationwide multi-state licensing system and registry,” “resident,” and “tangible net worth.” The term “nationwide multi-state licensing system and registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors (CSBS), or its successors and assigns, for the licensing and reporting of those persons engaging in the money transmission.

The term “tangible net worth” means the physical worth of a licensee, calculated by taking a licensee’s assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill. Under the bill, the tangible net worth for applicants must be at least \$250,000, as shown by an audited financial statement and certified in the form and manner prescribed by the Commissioner. The Commissioner could accept a consolidated financial statement from an applicant’s holding company.

Licensure Requirements—Money Transmission

The bill deletes a requirement in the law requiring license fees to be due annually on July 1 and, instead, provides licenses expire on December 31, annually. The bill provides for the renewal and reinstatement of licenses. License and renewal applications will be required to be accompanied by nonrefundable fees established by the Commissioner for the license and each agent location.

Nationwide Multi-State Licensing System and Registry

The bill allows the Commissioner to use a nationwide multi-state licensing system and registry for processing applications, renewals, amendments, surrenders, and any other activity

the Commissioner deems appropriate. The Commissioner also is permitted to use the system and registry for:

- Requesting and distributing information regarding money transmitter licensing to and from any source;
- Establishing relationships or contracts with the system and registry or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, as may be reasonably necessary to participate in this licensing system and registry;
- Reporting violations of the law, as well as enforcement action and other relevant information;
- Requiring any applicant or licensee to file reports in the form prescribed by the Commissioner; and
- Requesting information from and distributing information to the U.S. Department of Justice or any governmental agency (under current law, the Commissioner is allowed to require fingerprinting to conduct a state and national criminal history record check).

The bill would require any person using the multi-state licensing system to pay all associated costs.

Contractual Relationship of the Licensee and Agent

The bill exempts agents of licensees subject to the Act from compliance with the licensing provisions of the Act and specifies that only a licensee is authorized to designate an agent (persons acting as agents for exempt entities would not be exempt from the Act). Agents would be prohibited from appointing subagents. The bill further specifies that persons accepting a consumer's funds for transmission through an exempt entity are money transmitters and subject to the provisions of the Act. Applicants, in conjunction with filing a renewal application, will be required to provide a complete list of its proposed or existing agents to the Commissioner. Further, licensees will be required to provide any additions or deletions in the licensee's agents at the end of each calendar quarter to the Commissioner.

The bill also requires written contact between a licensee and agent to be maintained for inspection by the Commissioner upon request. An agent would be permitted to conduct only activities authorized by the licensee in the written agreement, unless the agent also is a licensee. The contract is required to contain certain provisions, including:

- The agent must operate in full compliance with this Act and the rules and regulations adopted thereunder;
- The agent is prohibited from using subagents or conducting money transmission business from locations that have not been approved by the licensee; and

- A description of the specific money services the licensee has permitted the agent to perform on behalf of the licensee.

Under the bill, a licensee is permitted to contract with another licensee to use that other licensee's existing authorized agents only for the purpose of loading funds onto existing prepaid access cards.

Oversight; Confidentiality and Disclosure

The bill provides that the Commissioner is to rely on the Deputy Commissioner of the Banking Division and the Deputy's staff to administer, interpret, and enforce the Act.

Under the bill, requirements under federal and state law regarding the confidentiality of information or material provided to the nationwide multi-state licensing system, and any privilege arising under federal or state law would continue to apply to any such information or material disclosed to the system. This information and material, however, may be shared with state and federal financial services' regulatory officials without the loss of confidentiality protections provided by federal and state laws. The provisions relating to confidentiality and disclosure will expire on July 1, 2018, unless the Legislature acts to reenact such provisions (provisions are subject to review prior to the stated date).

Finally, the bill authorizes the Commissioner to adopt rules and regulations necessary to administer and implement the Kansas Money Transmitter Act.

Investment by Local Governing Bodies in Demand Deposit Accounts; HB 2096

HB 2096 allows governmental entities to invest public moneys in demand deposit accounts in banks, savings and loan associations, and savings banks, that have main or branch offices in the place where the governmental entity resides or in the county or counties where all or part of the investing governmental entity is located.

Prior to this bill, the law allowed governmental entities, including counties, cities, townships, school districts, community colleges, and the like, to invest public moneys in numerous types of accounts, treasury bills, investments, and bonds, but did not include demand deposits.

HEALTH

Midwest Stem Cell Therapy Center; Utilization of Unused Medications Act; SB 199

SB 199 enacts new law requiring the University of Kansas Medical Center (KUMC) to establish the Midwest Stem Cell Therapy Center (Center), provides for the administration and oversight of the Center, and establishes a new fund; and amends the Utilization of Unused Medications Act to expand certain definitions, modify the role of the State Board of Pharmacy in establishing standards and procedures, and delete language related to the Cancer Drug Repository Program.

Midwest Stem Cell Therapy Center

Activities and Duties

Among the activities and duties that will be assigned to the Center are:

- Focusing on activities that would advance adult, cord blood and related stem cell and non-embryonic stem cell research and therapies for patient treatment;
- Serving as a core facility to produce clinical grade stem cells from adult tissues, cord blood, and related materials for use in clinical trials and therapies;
- Partnering and collaborating with the Blood and Marrow Transplant Center of Kansas to foster a regional network of physicians trained in adult, cord blood and related stem cell therapy applications;
- Creating and maintaining a database resource for physicians and patients that provides a comprehensive global list of available stem cell clinical trials and therapies;
- Initiating clinical trials with adult, cord blood, and related stem cells; and
- Informing the public on available adult, cord blood, and related stem cell therapeutic options.

Administration; Annual Report

The Executive Vice Chancellor of KUMC will be authorized to appoint the director of the Midwest Stem Cell Therapy Center. The director will report to the Executive Vice Chancellor. Among the requirements for and duties of the director are:

- Having experience in adult or cord blood stem cell research and experience in clinical applications of adult or cord blood stem cell therapies;
- Being responsible for the coordination of patient treatment and research with adult, cord blood and related stem cells and non-embryonic stem cells;

- Soliciting and receiving grants, gifts, contributions, or bequests made for the purpose of furthering the goals and missions of the Center (authorized by the bill). The director is required to remit all moneys to the State Treasurer; the Treasurer then will deposit the entire amount to the credit of the Midwest Stem Cell Therapy Center Fund; and
- Providing an annual report to the Senate Ways and Means Committee, Senate Public Health and Welfare Committee, House Appropriations Committee, and the House Health and Human Services Committee. The report is required to be submitted at the start of each legislative session, beginning in 2014, and address the fees received; the expenditure of moneys appropriated; the activities of the Center, including the activities of its affiliated organizations; and the activities of the Advisory Board.

The bill also requires fees received for core charges for cell processing and manufacturing, clinical trials, and similar service charges be paid to KUMC Research Institute, Inc., or the University of Kansas Endowment, as determined by the director. The University of Kansas Endowment Association is permitted to accept gifts directly designated for the benefit of the Midwest Stem Cell Therapy Center consistent with its corporate purpose as a nonprofit charitable corporation whose mission seeks the advancement of the University of Kansas.

Midwest Stem Cell Therapy Center Fund

The bill establishes the Midwest Stem Cell Therapy Center Fund (Fund) in the state treasury. Expenditures from the Fund could be made for the purposes of furthering the goals and mission of the Center and for other purposes as may be specified with regard to any grant, gift, contribution, or bequest. The expenditures are required to be authorized by the director and made upon warrants of the Department of Administration's Director of Accounts and Reports issued pursuant to vouchers approved by the director of the Center. The bill requires the director of Accounts and Reports, on or before the tenth of each month, to transfer from the State General Fund to the Fund, the interest earnings based on the average daily balance of moneys in the Fund for the preceding month and the new earnings rate for the Pooled Money Investment Portfolio for the preceding month.

Advisory Board

The bill establishes the Advisory Board, which will serve in an advisory role to the Center's director. Board members' duties could include fund raising, public speaking, and other public relations activities to advance public awareness of successful adult, cord blood and related stem cell therapeutic options. The Board is required to meet at least four times each year and will be authorized to meet upon the call of the chairperson. The Board will be composed of the following 14 members (staggered terms of service requirements noted):

- A representative of the patient community appointed by the Governor (original member serves two years);
- A representative of the physician community appointed by the Governor (original member serves three years);

- A representative of the University of Kansas appointed by the Board of Regents (original member serves one year);
- A representative of Kansas State University appointed by the Board of Regents (original member serves one year);
- A representative of KUMC appointed by the Executive Vice Chancellor (original member serves three years);
- A representative of the Institute for Advancing Medical Innovation appointed by the Institute's director (original member serves one year);
- A representative of the University of Kansas Cancer Center appointed by the Cancer Center's director (original member serves two years);
- A representative of the University of Kansas Hospital Authority appointed by the Authority's board of directors (original member serves one year);
- A member of the House of Representatives appointed by the Speaker of the House (original member serves two years);
- A member of the Senate appointed by the Senate President (original member serves for three years);
- A person with a nationally respected reputation representing the physician community appointed by the Speaker of the House (original member serves for three years);
- A person with a nationally respected reputation representing the scientific community appointed by the Senate President (original member serves one year);
- A member of the executive branch of the state agencies appointed by the Governor (original member serves for two years); and
- A member representing the Blood and Marrow Transplant Center of Kansas appointed by the Chief Executive Officer of Via Christi Health (original member serves three years).

The Center's director will serve as an *ex officio* member of the Board. Advisory Board members may serve for only three consecutive terms and its members will serve without compensation. The bill provides for Board vacancies and appointments of successor members. The Governor will appoint the Board chairperson.

The bill states all funds and facilities of the Center must be dedicated to treatments and research with adult, cord blood and related stem cells and non-embryonic stem cells. The bill specifically prohibits the use of funds or facilities involving embryonic or fetal tissue cells.

The bill also establishes definitions associated with the creation of the Midwest Stem Cell Therapy Center, including the terms “adult, cord blood and related stem cells,” “embryonic stem cells,” “facilities,” “fetal tissue cells,” and “non-embryonic stem cells.”

Utilization of Unused Medications Act—Amendments

The bill amends the Utilization of Unused Medications Act to expand the definition of “donating entities” to include institutional drug rooms, add definitions for “institutional drug room” and “samples of medications or injectables,” and allow for the donation of samples of medications or injectables and only those controlled substances designated by the State Board of Pharmacy as accepted medications in the adoption of rules and regulations. Further, the bill also deletes language related to the Cancer Drug Repository Program.

The bill defines the following terms:

- “Samples of medications or injectables” means a unit of drug not intended to be sold and intended to promote the sale of the drug; and
- “Institutional drug room” as defined in the Pharmacy Act (KSA 65-1626(bb)), which means any location where prescription-only drugs are stored and from which prescription-only drugs are administered or dispensed that is maintained or operated for the purpose of providing the drug needs of:
 - Inmates of a jail or correctional institution or facility;
 - Residents of a juvenile detention facility, as defined by the revised Kansas Code for Care of Children and the revised Juvenile Justice Code;
 - Students of a public or private university or college, a community college or any other institution of higher learning which is located in Kansas;
 - Employees of a business or other employer; or
 - Persons receiving inpatient hospice services.

The term “institutional drug room” excludes any registered pharmacy, any office of a practitioner, or a location where no prescription-only drugs are dispensed and no prescription-only drugs other than individual prescriptions are stored or administered.

Further, the bill requires the Board to adopt rules and regulations to establish:

- Procedures for acceptance of unused medications from donating entities;
- Standards and procedures for designating certain controlled substances as accepted donated medications; and
- Standards and procedures for a qualifying center or clinic to prepare any donated medications for dispensing or administering.

Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight; HB 2025

HB 2025 amends existing law to rename and expand the scope of the Joint Committee on Home and Community Based Services and updates statutory references to be consistent with Executive Reorganization Order (ERO) No. 41. Among the amendments to the scope and organization of the Committee, the bill:

- Includes oversight of KanCare;
- Renames the Committee as the Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (Committee);
- Makes membership changes;
- Increases the number and adjusts timing of meeting days;
- Expands the information required to be provided to the Committee for consideration and inclusion in the Committee report and the standing committees to which the Committee report is provided;
- Allows for professional services requested by the Committee; and
- Allows the Committee to make recommendations and introduce legislation as deemed necessary in performing its functions.

To reflect changes made by ERO No. 41 (2012 Session), the bill also removes references to the Secretary of Social and Rehabilitation Services and changes references to the Department on Aging and the Secretary of Aging to the Kansas Department for Aging and Disability Services and the Secretary for Aging and Disability Services, respectively. In line with these changes, the bill repeals the statute establishing the Home and Community Based Services Savings Fund administered by the Secretary of Social Rehabilitation Services.

The statute creating the Joint Committee on Health Policy Oversight (which was to sunset on July 1, 2013) is repealed by the bill. Technical amendments also are made.

Expanded Scope

Specifically, the bill provides for the following:

- In addition to existing statutory oversight, the Committee is required to monitor and study the implementation and operations of:
 - Home and Community Based Service (HCBS) programs;
 - Children's Health Insurance Program (CHIP);
 - Program for All-Inclusive Care of the Elderly (PACE); and

- State Medicaid programs, including, but not limited to, access to and quality of services provided and any financial information and budgetary issues.

Further, state agencies are required to provide the Committee with data and information on KanCare programs, including, but not limited to, pay for performance measures, quality measures and enrollment and disenrollment in specific plans, KanCare provider network data, and appeals and grievances made to the KanCare Ombudsman.

Committee Membership

Committee membership increases from nine to eleven members of the Legislature, appointed as follows:

- Two members of the House Committee on Health and Human Services appointed by the Speaker of the House of Representatives;
- One member of the House Committee on Health and Human Services appointed by the House Minority Leader;
- Two members of the Senate Committee on Public Health and Welfare appointed by the President of the Senate;
- One member of the Senate Committee on Public Health and Welfare appointed by the Senate Minority Leader;
- One member of the House Committee on Appropriations appointed by the Chairperson of that committee;
- One member of the Senate Committee on Ways and Means appointed by the Chairperson of that committee;
- One member of the House Committee on Appropriations appointed by the ranking minority member of that committee;
- One member of the Senate Committee on Ways and Means appointed by the ranking minority member of that committee; and
- One member of the House of Representatives appointed by the House Majority Leader.

Committee Meeting Days

On the call of the Committee chairperson, the Committee is required to meet at least once in January and once in April and at least once during each of the third and fourth calendar quarters, but not to exceed six meetings a year. However, additional meetings are allowed on

the call of the chairperson if urgent circumstances require such meetings. Prior to the bill, the law required at least four meeting dates each year, at the call of the Committee chairperson. Six members constitute a quorum, instead of the five members previously required.

The Legislative Coordinating Council is allowed to provide for professional services requested by the Committee.

Committee Report

In addition to submission of the Committee report to the President of the Senate and the Speaker of the House of Representatives, as required prior to the bill, the Committee report also is to be submitted to the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. Beyond the statutorily required information to be included in the Committee report prior to the bill, the bill requires the report to include, but not be limited to, the following information on the KanCare Program:

- Quality of care and health outcomes of individuals receiving state Medicaid services under KanCare, as compared to outcomes from the provision of state Medicaid services prior to January 1, 2013;
- Integration and coordination of health care procedures for individuals receiving state Medicaid Services under KanCare;
- Availability of information to the public about the provision of state Medicaid services under KanCare including, but not limited to, accessibility to health services, expenditures for health services, extent of consumer satisfaction with health services provided, and grievance procedures, including quantitative case data and summaries of case resolution by the KanCare Ombudsman;
- Provisions for community outreach and efforts to promote public understanding of KanCare;
- Comparison of caseload information for individuals receiving state Medicaid services prior to January 1, 2013, to the caseload information for individuals receiving state Medicaid services under KanCare after January 1, 2013;
- Comparison of the actual Medicaid costs expended in providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under the provision of state Medicaid services prior to January 1, 2013, including the manner in which such cost expenditures are calculated;
- Comparison of the estimated costs expended in a managed care system of providing state Medicaid services under KanCare after January 1, 2013, to the actual costs expended under KanCare after January 1, 2013; and
- All written testimony provided to the Committee regarding the impact of the provision of state Medicaid services under KanCare upon residents of adult care homes.

In developing the Committee report, the Committee also is required to consider the external quality review reports and quality assessment and performance improvement program plans of each managed care organization providing state Medicaid services under KanCare. The Committee report is required to be published on the official website of the Kansas Legislative Research Department.

The bill further states that Committee members are to have access to any medical assistance report (MAR) and caseload data generated by the Kansas Department of Health and Environment's Division of Health Care Finance (HCF) and to any report submitted by HCF to the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

The Committee is allowed to make recommendations and introduce legislation as it deems necessary in performing its functions.

Physical Therapists; HB 2066

HB 2066 amends the Physical Therapy Practice Act to allow physical therapists to initiate a physical therapy treatment without referral from a licensed health care practitioner. In prior law, physical therapists were allowed only to evaluate patients without physician referrals and to initiate treatment after approval by certain health care providers.

This bill requires physical therapists, in instances where treatment of a patient occurs without a referral, to obtain a referral from an appropriate licensed health care practitioner to continue treatment if, after ten patient visits or a period of 15 business days from the initial treatment visit (follows the initial evaluation), the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement, or any combination of these criteria.

The bill provides that when a patient self-refers to a physical therapist, the physical therapist is required, prior to commencing treatment, to provide written notice to the patient that a physical therapy diagnosis is not a medical diagnosis by a physician. The bill also provides that new provisions of law created by the bill are not to be construed to prevent a hospital or ambulatory surgical center from requiring a physician order or referral for physical therapy services for a patient currently being treated in such facility.

Under the bill, physical therapists are authorized to perform wound debridement services only after approval by a person licensed to practice medicine and surgery or other licensed health care practitioner in appropriately related cases.

The bill deletes requirements that limited physical therapists to evaluation of patients without a physician referral and the conditions and time frame specified for permitted evaluation and treatment without referral. Prior to this bill, physical therapists were permitted to initiate treatment only after approval by a licensed physician, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse working pursuant to the order or direction of a licensed physician, a licensed chiropractor, a licensed dentist or licensed optometrist in appropriately related cases. The bill also deletes provisions authorizing physical therapists to initiate treatment under the approval of a healing arts practitioner licensed by another state.

The bill defines the term “licensed health care practitioner” to mean “a person licensed to practice medicine and surgery, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse working pursuant to the order or direction of a person licensed to practice medicine and surgery, a licensed chiropractor, a licensed dentist, or licensed optometrist in appropriately related cases.”

Quality Care Assessment; HB 2160

HB 2160 amends the statute that created a provider assessment on licensed beds in skilled nursing care facilities in 2010 to eliminate a sunset provision in the law and extend the assessment program for an additional two years. The bill also makes technical changes to update agency references to the Kansas Department for Aging and Disability Services (KDADS).

The bill eliminates the provision directing that after the first three years the assessment amount was to be adjusted to no more than 60.0 percent of the assessment collected in previous years. In addition, the bill extends the expiration of the assessment program for two additional years, or until July 1, 2016.

Existing law authorizes the Secretary of the Kansas Department of Health and Environment to impose a quality care assessment on each licensed bed at a maximum annual rate of \$1,950. The assessment is uniform on skilled nursing facilities, which includes nursing facilities, nursing facilities for mental health and hospital long-term care units, except certain facilities for less than the full rate. The Kansas Soldiers’ Home and Kansas Veterans’ Home are excluded from the assessment.

The payment of the quality care assessment is an allowable cost for Medicaid reimbursement purposes and can be matched with federal Medicaid funds to be used to increase nursing facility reimbursement rates. (The program was intended to minimize negative fiscal impact on certain classes of nursing facilities.) The Secretary of KDADS is designated as the agent who manages the program.

Designation and Control of Infectious and Contagious Diseases; Office of Laboratory Services Operating Fund; Kansas Health Information Technology Act; Medical Assistance Recovery Program; Sub. for HB 2183

Sub. for HB 2183 enacts and amends several provisions in Kansas law related to the Department of Health and Environment (KDHE). Generally, the bill:

- Addresses the designation and control of infectious and contagious diseases;
- Creates the Office of Laboratory Services Operating Fund, which is a fee fund for the Kansas Department of Health and Environmental Laboratories Bureau (KHEL) of KDHE;
- Amends provisions of and renames the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act; and
- Amends the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance.

Designation and Control of Infectious and Contagious Diseases

The bill amends the law to expand the scope of the rules and regulations authority of the Secretary of the Department of Health and Environment (Secretary) relating to the protection of public health and for the control of infectious or contagious diseases and designates those changes made to KSA 65-116a and KSA 65-128 as “Chy J. Miller’s Law.”

The bill allows the Secretary to issue orders and adopt rules and regulations to provide for the testing of such diseases as deemed medically necessary and reasonable for the protection of public health and control of infectious or contagious diseases. The bill also requires rules and regulations be developed and adopted by January 1, 2014, to protect both individuals who provide services that may result in occupational exposure to blood or other potentially infectious materials and those who receive the services. Further, the bill provides definitions for applicable terms and repeals KSA 2012 Supp. 65-129a containing definitions addressed by the bill. Technical amendments also are made.

Prior to the bill, the law only authorized the Secretary to designate diseases that are infectious or contagious and to adopt rules and regulations for the isolation and quarantine of such diseases and persons with or exposed to such diseases as needed to prevent the spread and dissemination of diseases dangerous to the public.

The following definitions are amended or newly defined by the bill:

- The definition of “tuberculosis” is updated;
- “Infectious and contagious diseases” mean those designated by the Secretary as needing control for the protection of the public health; and
- “Blood,” “occupational exposure,” and “other potentially infectious materials” are defined.

Office of Laboratory Services Operating Fund

The bill creates the Office of Laboratory Services Operating Fund, which is a fee fund for the Kansas Health and Environmental Laboratories Bureau of the KDHE. Expenditures from the fee fund are to be used by KDHE only for the purpose of operating the Office of Laboratory Services (Office). The bill sets out the fees and penalties to be deposited to the fee fund, some of which previously were deposited to the credit of the State General Fund (SGF) per prior law. The Secretary has authority to adopt rules and regulations and set fees for biological or chemical analysis services provided by the Office, and to allow for the deposit of those fees in the fee fund. Further, the bill repeals KSA 75-5607 (established administration of the Office) and moves language in that statute creating the Office of Laboratory Services to KSA 75-5608.

Specifically, the bill allows the Secretary to remit to the State Treasurer, for deposit in the State Treasury to the credit of the fee fund, the fees collected for the analysis of all waters and fees and penalties received for certification of environmental laboratories at private and public facilities under the Environmental Laboratory Improvement Program (ELIP). Prior law required the deposit of these fees and penalties in the State General Fund (SGF).

Further, the Secretary has authority to adopt rules and regulations for the collection and biological or chemical analysis of samples received by the Office, to set fees for any biological or chemical analysis services provided, and to allow for the waiver of any such fees in the interest of protecting the public health and safety. The Secretary is required to waive fees for such services provided to public health departments and the State Hospitals. The fees charged and collected cannot exceed the actual cost of analysis and testing provided by the Office. Fees received for biological and chemical analysis services also are to be deposited to the credit of the newly created fee fund.

Kansas Health Information Technology Act

The bill amends provisions of and renames the Kansas Health Information Technology and Exchange Act as the Kansas Health Information Technology Act (the Act), transfers the oversight of and the authorization to create and establish standards for the approval and operation of statewide and regional health information organizations from the Kansas Health Information Exchange, Inc. (KHIE) to the Department of Health and Environment (the Department), and establishes the Advisory Council on Health Information Technology. The bill also generally replaces references to “health information exchange” with “the sharing of health information electronically.” The bill also makes several technical amendments to the Act.

Purpose of the Act

The bill updates the stated purpose of the Act, by indicating the Act is “to harmonize state law with the HIPAA privacy rule with respect to individual access to protected health information, proper safeguarding of protected health information, and the use and disclosure of protected health information for purposes of facilitating the development and use of health information technology and the sharing of health information electronically.” (The U.S. Department of Health and Human Services issued the Privacy Rule to implement national standards for the protection of health information pursuant to the Health Insurance Portability and Accountability Act of 1996 [HIPAA].)

Definitions

The bill revises definitions of the terms “approved health information organization,” “covered entity,” “health care provider,” “health information organization,” and “participation agreement.” Additionally, the term “health information technology” is amended to specify that the term includes an electronic health record, a personal health record, the sharing of health information electronically, electronic order entry, and electronic decision support.

The bill deletes the following terms from the Act: “corporation” (this term refers to the Kansas Health Information Exchange, created by Executive Order 10-06), “designated record set,” “DPOA-HC,” “electronic protected health information,” “health care clearinghouse,” “health plan,” “hybrid entity,” “interoperability,” “public health authority,” and “standard authorization form.”

The bill adds definitions of “authorization” and “department” to the Act. “Authorization” means a document that permits a covered entity to use or disclose protected health information for purposes other than to carry out treatment, payment or health care operations, and that complies with the requirements of 45 CFR § 160.508.

Oversight by the Department of Health and Environment

The bill transfers duties to establish and revise standards for the approval and operation of the statewide and regional health information organizations operating in the state from the Kansas Health Information Exchange (“corporation”) to the Department of Health and Environment. The Department is required to ensure that approved health information organizations operate within the state in a manner consistent with the protection of the security and privacy of health information of the citizens of Kansas.

Standards

Among the standards in the Act and those amended or created by the bill are these:

- Adherence to nationally recognized standards for interoperability, that is, the capacity of two or more information systems to share information or data in an accurate, effective, secure, and consistent manner;
- Adoption and adherence to rules promulgated by the Department regarding access to and use and disclosure of protected health information maintained by or on an approved health information organization; and
- Development of procedures for entering into and enforcing the terms of participation agreements with covered entities which satisfy the requirements established by the Department pursuant to participation agreement provisions of this act.

The bill further prohibits State General Fund expenditures for the purpose of administration, operation, or oversight of the health information organizations, with the following exception: the Secretary is permitted to make operational expenditures for the purpose of adopting and administering the rules and regulations necessary to implement the Act.

Certificate of Authority and Re-approval, Health Information Organizations

The bill directs the Department to establish requirements to be used by approved health information organizations in participation agreements with covered entities. Among the requirements, the Department is required to provide:

- Specifications of procedures by which an individual’s protected health information will be disclosed by covered entities, will be collected by approved health information organizations, and will be shared with other participating covered entities and with the Department as required by law for public health purposes;
- Specification of procedures by which an individual may elect that protected health information be restricted from disclosure by approved health information organizations to covered entities; and
- Specifications of purposes for, and procedures by which a covered entity can access an individual’s protected health information from the approved health

information organization, including access to restricted information by a covered entity in an emergency situation when necessary to properly treat the individual.

The bill also provides procedural requirements for the written notice provided by covered entities to individuals and their personal representatives.

Health Information Organizations and Protected Health Information

The bill states that protected health information in the possession of an approved health information organization cannot be subject to discovery, subpoena, or other means of legal compulsion for the release of such information to any person or entity. Further, an approved health information organization cannot be compelled by a request for production, subpoena, court order, or otherwise, to disclose protected health information relating to an individual.

Advisory Council on Health Information Technology

The bill creates the Advisory Council on Health Information Technology (Council), a group that serves in an advisory role to the Secretary of Health and Environment. The Council is within the Division of Health, Department of Health and Environment. The Council includes 23 voting members serving, with the exception of the Governor and Secretary or their designees, in staggered terms at the commencement of the Council (term length, varying from one to four years for initial appointments, are determined by lot):

- Secretary of Health and Environment, or designee;
- Governor, or designee;
- Four legislators, selected as follows:
 - Chairperson and ranking minority member, or their designees, of the House Health and Human Services Committee; and
 - Chairperson and ranking minority member, or their designees, of the Senate Public Health and Welfare Committee;
- Two members representing consumers (appointed by the Secretary);
- One member representing employers (appointed by the Secretary);
- One member representing payers (appointed by the Secretary);
- One member representing local health departments (appointed by the Secretary, from a list of three names submitted by the Kansas Association of Local Health Departments);
- Three members representing hospitals (appointed by the Secretary, from a list of three names for each position submitted by the Kansas Hospital Association):
 - One of the members must be involved in the administration of a critical access hospital;

- Three members appointed by the Secretary from a list of three names for each position submitted by the Kansas Medical Society:
 - At least two of the members must be practicing physicians; and
 - One of physicians must be a physician in a primary care specialty;
- Two members representing pharmacists (appointed by the Secretary from a list of three names submitted by the Kansas Pharmacists Association):
 - At least one of the members must be a practicing pharmacist;
- One member representing the University of Kansas Center for Health Information (appointed by the Secretary from a list of three names submitted by the University of Kansas Center for Health Information);
- One member representing the Kansas Foundation for Medical Care (appointed by the Secretary from a list of three names submitted by the Kansas Foundation for Medical Care);
- One member representing the Kansas Optometric Association (appointed by the Secretary from a list of three names submitted by the Kansas Optometric Association); and
- One member representing the Association of Community Mental Health Centers of Kansas (appointed by the Secretary from a list of three names submitted by the Association of Community Mental Health Centers of Kansas).

Following their initial terms of service on the Council, members are eligible for reappointment and, if reappointed, those members serve for four years. The bill makes other provisions for filling vacancies on and removal of members on the Council. The Council is required to meet at least four times per year and at times as the Council deems appropriate or as called by the Secretary.

Members of the Council are entitled to compensation and expenses as provided in existing law. Members attending Council meetings or subcommittee meetings authorized by the Council are paid mileage and all other applicable expenses, provided those expenses are consistent with policies established from time-to-time by the Council.

Medical Assistance Recovery Program

The bill amends the law concerning the ability of KDHE to recover from the estates of recipients of medical assistance. Existing law allows KDHE to file and enforce a lien against the real property of a recipient during the recipient's lifetime and, pursuant to the bill, KDHE also could file and enforce such a lien after a recipient's death. Any such lien needs to be filed in the office of the Register of Deeds of the county where the real property is located within one year from the date of death of the recipient. The bill clarifies these liens do not have priority over transfers for value to a *bona fide* purchaser of record. Pursuant to the bill, KDHE also could claim an interest in the unclaimed property of a deceased recipient of medical assistance held by the State Treasurer, not to exceed the amount of assistance received. Further, the bill

requires the Kansas Department for Children and Families to notify KDHE, within seven days of receiving notice of the recipient's death, that a recipient has died.

The bill also makes technical amendments.

Division of Public Health; HB 2322

HB 2322 amends references in statute to the Division of Health of the Kansas Department of Health and Environment to reflect a name change to the Division of Public Health. The bill clarifies that references or designations in statute, contract or other document to the Division of Health, or similar language, are deemed to apply to the Division of Public Health. Technical amendments also were made.

Governor's Behavioral Health Services Planning Council; HB 2368

HB 2368 amends statutes relating to the Governor's Mental Health Services Planning Council by replacing certain references to reflect a name change to the Governor's Behavioral Health Services Planning Council (Council) and to replace the term "mental health" with "behavioral health"; expands and adjusts the membership and prescribes the requirements for appointment; addresses the expiration of terms of current Council members whose terms expire after June 30, 2013, and the staggering of terms for the nine member positions created by the bill; and requires payment to members for attendance at Council meetings and subcommittee meetings be made from the administration account of the State General Fund appropriated for the Kansas Department for Aging and Disability Services (KDADS). The bill also clarifies that references to the "Governor's Mental Health Services Planning Council" in statute, contract, or other documents refer to the Governor's Behavioral Health Services Planning Council. Technical amendments also were made.

The bill makes the following changes in membership and member terms.

Membership; Compensation

The bill expands Council membership from 25 to 33 members. The bill adds 9 new membership positions, and one existing membership position is eliminated from the 16 positions previously appointed by the Governor.

Of the 33 members, 9 members continue to represent state agencies, with the following changes:

- The Secretary of KDADS or the Secretary's designee replaces the Commissioner of Mental Health and Developmental Disabilities;
- The reference to the Secretary of Social and Rehabilitation Services (SRS) changes to the Secretary for Children and Families, who appoints one member each in the areas of vocational rehabilitation and children and family services, instead of the four members under prior law. (The changes correspond to agency renaming and reorganization under Executive Reorganization Order [ERO] No. 41, 2012 Session.);

- The Commissioner of Juvenile Justice is allowed to appoint a designee to serve in the Commissioner's place on the Council; and
- The Secretary of KDADS appoints one member each in the areas of substance use disorder and medical services. (These positions previously were appointed by the Secretary of the Department of Social and Rehabilitation Services but, with changes made by ERO No. 41, these areas are under KDADS.)

Governor appointees to the Council change as follows:

- Four members are added:
 - One representative of a behavioral health advocacy group;
 - One substance use disorder prevention professional;
 - One executive director of a substance use disorder treatment center; and
 - One judge of the district court or a district magistrate judge.
- Of the 17 members appointed by the Governor who by statute cannot be state employees or providers of behavioral health services, 5 new positions are added and the number of positions for members who are immediate family members of adult consumers with serious and persistent mental illnesses is reduced from 3 to 2 members. The five new membership positions are:
 - One youth with severe emotional disturbance, who is at least 16 years of age, but not more than 18 years of age, at the time of appointment;
 - Two adults in recovery from substance use disorders;
 - One family member of an adult with a substance use disorder; and
 - One mentor to an adult with a substance use disorder.

The bill requires compensation provided to members for attendance at Council meetings and subcommittee meetings be paid from the administration account of the State General Fund appropriated for KDADS.

Member Terms

Members of the Governor's Mental Health Services Planning Council prior to the effective date of this bill whose terms expire after June 30, 2013, continue to serve until the expiration of their appointed terms. Each member appointed by the Governor on or after July 1, 2013, is appointed to a term of four years, except those newly appointed to staggered terms, serving until the appointment of a successor, appointed to fill a vacancy on the Council, or otherwise provided for in statute.

A provision in prior law creating staggered initial terms for appointees of the Governor (half serving two-year terms and the other half serving four-year terms) is deleted, and a new provision provides for staggered initial terms for the nine member positions created by the bill. Of the nine new members authorized by the bill, four are appointed for an initial term of two years and five are appointed for an initial term of four years, as specified by the Governor.

INSURANCE

Risk-Based Capital (RBC) Instructions; Trend Test, Life and Health Insurers; SB 24

SB 24 amends certain risk-based capital (RBC) provisions in the Insurance Code to update the specified effective date of RBC instructions and increase an RBC factor associated with a trend test calculation for life and health insurance companies.

The bill updates the effective date specified in law for the RBC instructions promulgated by the National Association of Insurance Commissioners from December 31, 2011, to December 31, 2012.

The bill also increases, from 2.5 to 3.0, one of the RBC calculation factors specified in determining a company action level event for a life and health insurance company.

Risk-Based Capital (RBC) Requirements, Health Organizations; SB 25

SB 25 amends certain risk-based capital (RBC) provisions in the Insurance Code to add a calculation provision associated with the determination of a company action level event for health organizations.

Specifically, the bill amends the definition of “company action level event” to include a trend test calculation and establish a trigger for the calculation: a total adjusted capital which is greater than or equal to the organization’s company action level RBC but less than the product of its authorized control level RBC and 3.0. The determination of the trend test calculation is outlined in existing law (KSA 40-2d01).

MEWA Exemption; SB 51

SB 51 amends a provision in the Insurance Code to add a trade organization of banks to the list of associations providing health insurance coverage exempted from the jurisdiction of the Kansas Insurance Commissioner. Enactment of the bill will allow this designated banking organization the ability to self-insure, offering health coverage through a self-funded group plan.

The 1991 Legislature exempted five multiple welfare arrangement (MEWA) association groups from the jurisdiction of the Insurance Commissioner. Those five associations exempted in the statute amended by the bill are: a professional association of architects (American Institute of Architects—Kansas), a professional association of dentists (Kansas Dental Association), a trade association of banks (Community Bankers Association of Kansas), a trade association of truckers (National Association of Independent Truckers), and an association of physicians practicing in the Kansas City metropolitan area that provides certain health benefits to the members of the association.

Kansas Automobile Injury Reparations Act and Vehicle Registration Laws—Proof of Insurance, Electronic Means; SB 85

SB 85 amends vehicle registration laws and the Kansas Automobile Injury Reparations Act to add to the list of methods by which acceptable forms for proof of insurance, self-

insurance or other financial security may be provided and permit drivers to present proof of financial security *via* a cellular phone or other type of portable electronic device.

Under prior law, a person applying to register a vehicle must provide proof of insurance, self-insurance, or other financial security at the time of vehicle registration or renewal. The bill allows persons to provide proof *via* an image displayed on a cellular phone or any other type of portable electronic device, in addition to photocopy and facsimile.

The bill also amends provisions relating to a driver's responsibilities when involved in an accident or when requested by law enforcement for providing proof of insurance. Under the bill, a driver will be allowed to produce evidence of financial security by displaying policy information on a cellular phone or other type of portable electronic device.

Persons who review the displayed image of proof of insurance are prohibited from viewing any other content or information stored on such cellular phone or other portable electronic device.

Insurers Supervision, Rehabilitation and Liquidation Act—Netting Agreements and Qualified Contracts; SB 166

SB 166 enacts new law supplemental to the Insurers Supervision, Rehabilitation and Liquidation Act and amends provisions in the Act (which relates to impaired or insolvent insurers) to state no person could be stayed, enjoined, or prohibited from exercising any contractual right to terminate, liquidate, accelerate, or close out of obligations in connection with any netting agreement or qualified financial contract due to certain conditions specified in the bill.

Under the bill, a person could not be prohibited from exercising:

- A contractual right to resolve obligations relating to a netting agreement or qualified financial contract with an insurer because of:
 - The insolvency, financial condition, or default of the insurer at any time; or
 - The commencement of a formal delinquency proceeding.
- Any right under a pledge, security, collateral, reimbursement, or guarantee agreement or arrangement, or any other similar security agreement relating to one or more netting agreements or qualified financial contracts; or
- Any right to set off or net out any termination value, payment amount, or other transfer obligation related to one or more qualified financial contracts.

The bill also provides that when a counterparty (another party to a master netting agreement or a qualified financial contract that is subject to a formal delinquency proceeding) terminates, liquidates, closes out, or accelerates the agreement or contract, damages must be measured at the time of the termination, liquidation, close out, or acceleration. The amount of damages would be the actual direct compensatory damages. Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a non-defaulting party to an insurer will be required to be transferred, even if the insurer is the defaulting party (notwithstanding a "walkaway clause" in the netting agreement or qualified financial contract).

The bill creates duties of the receiver in the circumstances of making a transfer of a netting agreement or qualified insurer subject to a formal delinquency proceeding. In making this transfer, the receiver will be required to either:

- Transfer to one party all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty; or
- Transfer none of the netting agreements, qualified financial contracts, rights, obligations or property.

If the receiver for an insurer transfers one or more netting agreements or qualified contracts, then the receiver will be required to attempt to notify any person who is a party to the netting agreements or qualified financial contracts of the transfer by 12 noon of the business day following the transfer.

The bill provides further that a receiver could not avoid a transfer of money or other property in connection with a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding. A transfer, however, could be avoided if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors. In exercising the rights of disaffirmance or repudiation of a receiver with respect to a netting agreement or qualified financial contract, the receiver for the insurer will be required to either:

- Disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is subject to the proceeding; or
- Disaffirm or repudiate none of those netting agreements and qualified financial contracts.

Under the bill, any claim of a counterparty against the estate arising from the disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in a proceeding must be allowed or disallowed as if the claim had arisen before the filing date of the petition for liquidation, conservation, or rehabilitation. The amount of damages (the claim) will be the actual direct compensatory damages at the time of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

Insurers Supervision, Rehabilitation, and Liquidation Act—Definitions

The bill inserts definitions for the terms “commodity contract,” “formal delinquency proceeding,” “forward contract,” “netting agreement,” “qualified financial contract,” “repurchase agreement,” “securities contract,” and “swap agreement” into existing law applying to impaired or insolvent insurers.

A “qualified financial contract” means any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement the Insurance Commissioner determines by regulation, rule, or order to be a qualified financial contract.

A “netting agreement” means:

- A contract or agreement involving one or more transactions between the parties to the agreement related to one or more qualified financial contracts that provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment or delivery entitlements among the parties to the netting agreement;
- Any master settlement or bridge agreement for one or more master agreements;
or
- Any security agreement or arrangement or other credit enhancement or guarantee or reimbursement obligation related to any contract or agreement.

Insurance Holding Company Act; HB 2007

HB 2007 establishes the Insurance Holding Company Act and amends the Insurance Code to modify existing provisions governing insurance holding companies.

Supervisory College

The bill enacts new law and amends existing provisions in the Insurance Code governing insurance holding companies to establish the Insurance Holding Company Act. Under the new Act, the Insurance Commissioner (Commissioner) is granted the power to participate in a supervisory college for any domestic insurance company (insurer) that is part of an insurance holding company system with international operations.

The powers assigned to the Commissioner include, but are not limited to:

- Initiating the establishment of a supervisory college;
- Clarifying the membership and participation of other supervisors in the supervisory college;
- Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
- Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing;
- Establishing a crisis management plan; and
- Establishing a regular assessment to the insurer company for the payment of expenses incurred pursuant to requirements of the bill (expenses, including travel, incurred by the Commissioner).

The supervisory college could be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the

insurer or its affiliates. The Commissioner is authorized to participate in the supervisory college with other regulators, including other state, federal, and international regulatory agencies, and to enter into agreements pursuant to document disclosure provisions in existing law.

Definitions

The bill adds the following definition for the term “enterprise risk”:

Any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole. This could include anything that would cause the insurer’s risk-based capital (RBC) to fall into company action level RBC (as defined by law) or would cause the insurer to be in hazardous condition (as defined by law).

Statement Filed with Insurance Commissioner; Public Hearings

The bill adds the following to the list of items that are required to be included with a statement filed with the Commissioner (transactions affecting control of the insurer, including mergers and acquisitions):

- An agreement that the annual report (as defined by law) will be provided for so long as control exists; and
- An acknowledgment that any information the Commissioner deems necessary to evaluate enterprise risk to the insurer will be provided.

The bill also allows consolidation of a public hearing, upon request of the person filing the statement. The person is required to file the statement with the National Association of Insurance Commissioners (NAIC) within five days of making the request for a public hearing.

The bill also allows an insurance commissioner to opt out of a consolidated hearing and allow the hearing to be public and held in the state where the insurers are domiciled. Insurance commissioners are permitted to attend the hearing either in person or by telecommunication. Notification requirements also are specified for instances when an insurance commissioner determines the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by law and regulation.

Registration Statements

The bill allows the Commissioner to request financial statements of an insurance holding company system, including its affiliates, as part of the insurer’s registration statement. The financial statements could include annual audited financial statements filed with the U.S. Securities and Exchange Commission (SEC). An insurer required to file financial statements is allowed to satisfy the request by providing the Commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC.

Insurers also are requested to provide statements ensuring the insurer's board of directors and principal officers oversee corporate governance and internal control, and that the insurer's principal officers have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. Finally, the registration statement can include any other information required by the Commissioner, as determined through rules and regulations.

The bill requires the ultimate controlling person of every insurer subject to registration to file an annual enterprise risk report. Ultimate controlling persons of insurers with total direct and assumed annual premiums of less than \$300 million are exempt from submitting an enterprise risk report.

The enterprise risk report identifies the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report is filed with the lead commissioner of insurance of the insurance holding company system, as determined by the procedures within the financial analysis handbook adopted by the NAIC. The first enterprise risk report is required to be filed no later than May 1, 2015, and annually thereafter. The failure to file a registration statement, any summary of the statement, or enterprise risk filing within the specified time is considered a violation.

Material Transactions with Affiliates

The bill adds a standard to the regulation of material transactions by registered insurers with their affiliates, including agreements for cost-sharing services and other provisions required by rules and regulations adopted by the Commissioner.

The bill also adds certain agreements that are subject to prior approval by the Commissioner, including all reinsurance pooling agreements and agreements in which the projected reinsurance premium or a projected change in the insurer's liabilities in any of the next three consecutive years equals or exceeds 5.0 percent of the insurer's surplus, and tax allocation agreements.

The bill inserts language clarifying the determination of extraordinary dividend or distribution for an insurer (other than a life insurer).

Examination, Information Request; Subpoena Power

The bill clarifies that the Commissioner has the authority to examine a registered insurer and its affiliates to determine the financial condition of the insurer. The Commissioner also is permitted to order any registered insurer to produce records, books, or other information in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with the Act.

Further, the bill allows the Commissioner to order any registered insurer to produce information not in possession of the insurer, if the insurer can obtain access to the information through its contractual relationships, statutory obligations, or another method. If the insurer cannot obtain the information, the bill requires the insurer to provide the Commissioner a detailed explanation of the reason the information cannot be obtained and the identity of the information holder. If the Commissioner finds the explanation to be without merit, the

Commissioner may require, after notice and hearing, the insurer to pay a penalty of not more than \$1,000 for each day's delay, or to suspend or revoke the license of the insurer.

The bill also grants the Commissioner the power to issue subpoenas, administer oaths, and examine under oath, any person for the purposes of determining compliance with the examination and information request provisions required under the bill for registered insurers. Upon the failure or refusal of a person to obey a subpoena, the Commissioner is permitted to petition a court for an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. The bill also provides for compensation of fees, mileage, and actual expenses incurred in securing the attendance and testimony of witnesses.

Confidential Information, Disclosure Provisions

The bill specifies that documents, materials, or other information obtained by or disclosed to the Commissioner or any other person in the court of examination or investigation is:

- Confidential and privileged;
- Not subject to disclosure under the Kansas Open Records Act;
- Not subject to subpoena; and
- Not subject to discovery or admissible in evidence in any private civil action.

Additionally, the Commissioner is prohibited from making the documents, materials, or other information public without the prior written consent of the insurer. These documents may be made public if the Commissioner determines, after giving the insurer and its affiliates notice and opportunity to be heard in accordance with the Kansas Administrative Procedure Act, that the interests of policyholders, shareholders, or the public would be served by the publication. The Commissioner is required to consider any potential adverse consequences of this disclosure. The Commissioner or any other person who received the documents, materials, or other information is not permitted or required to testify in any private civil action.

The bill also authorizes the Commissioner to:

- Share documents, materials, or other information, including those privileged and confidential documents, with other state, federal, and international regulatory agencies; with the NAIC and its affiliates and subsidiaries; and with state, federal, and international law enforcement authorities, including members of the supervisory college (a written confidentiality agreement is required);
- Share confidential and privileged documents with states having substantially similar statutes or regulations (a written confidentiality agreement is required);
- Receive documents, materials, and other information, including confidential and privileged documents and information from NAIC and its affiliates and subsidiaries, and from certain regulatory and law enforcement officials and

jurisdictions. The Commissioner is required to maintain this information as confidential and privileged under the laws of the jurisdiction that is the source of this information; and

- Enter into written agreements with the NAIC regarding sharing and use of information provided pursuant to the Act, including the procedures and protocols for sharing by NAIC with other state, federal, or international regulators.

The bill further provides that the sharing of information by the Commissioner does not constitute a delegation of authority or regulatory rulemaking. In addition, the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of the Act. The bill also requires that no waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information will occur as a result of this disclosure. Documents, materials, or other information in the possession or the control of the NAIC are considered confidential and privileged. This information is not subject to the Kansas Open Records Act or discovery, or admissible in evidence in any private civil action.

Insurance on Portable Electronics; HB 2106

HB 2106 removes the prohibition that an insurer may not change the terms and conditions of a portable electronics insurance policy more than once in any six-month period. The bill also deletes references within the statute that refer to the removed language.

Various Insurance Topics, Including Notifications; the State High Risk Pool; and Mandate Lite Benefit Plans; HB 2107

HB 2107 creates the Electronic Notice and Document Act; amends a provision in the Insurance Code requiring notification to policyholders of adverse underwriting decisions and refunds, increases the maximum lifetime benefit for individuals in the State High Risk Pool, amends existing law regarding dividends for mutual insurance companies organized to provide health care provider liability insurance, updates various statutory references, and enacts the Mandate Lite Health Benefit Plan Act.

Electronic Notice and Document Act

The bill establishes the Electronic Notice and Document Act (Act), which allows the use of electronic notices and documents for sending insurance notices and documents. In order to send electronic notices and documents to another party, the bill requires the insurer to obtain the consent of the other party.

Definitions

The bill defines “delivered by electronic means” to include:

- Delivery to an electronic mail address at which a party has consented to receive notices or documents; or

- Posting on an electronic network or site accessible to the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with a separate notice of the posting, which is required to be provided by e-mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

In addition, the bill defines “party” as any recipient of any notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

Electronic Delivery

A notice or document may be delivered by electronic means by an insurer to a party if:

- The party has affirmatively consented to the method of delivery and has not withdrawn consent;
- The party, before giving consent, is provided with a clear and conspicuous statement informing the party of:
 - Any right or option to have the notice or document provided in paper or other non-electronic form;
 - The right to withdraw consent to have a notice or document delivered by electronic means and any fees, conditions, or consequences imposed if consent is withdrawn;
 - Whether the party’s consent applies only to a particular transaction or to identified categories of notices or documents;
 - How a paper copy of a notice or document delivered electronically may be obtained and the fee, if any, for the paper copy; and
 - The procedure to withdraw consent and to update information needed to contact the party electronically;
- The party, before giving consent, is provided with the hardware and software requirements to access and retain the notice or document and to provide electronic consent that shows the party can access the information electronically; and
- After consent is given, the insurer provides a statement to the party if the hardware and software requirements for access and retaining notice or documents have changed, and the right of the party to withdraw consent without fees, conditions, or consequences.

Any notice or other document in an insurance transaction or that serves as evidence of insurance coverage is allowed to be delivered, stored, and presented by electronic means.

Delivery of a notice or other document is considered equivalent to any delivery method required under applicable law, including delivery by first class mail; first class mail, postage prepaid; certified mail; certificate of mail; or certificate of mailing.

Posting Online and Delivery

The bill allows insurance policies and endorsements that do not contain personally identifiable information to be mailed, delivered, or posted on the insurer's website. If the insurer elects to post policies and endorsements on its website instead of mailing or delivering to the insured, the insurer is required to comply with all of the following conditions:

- The policy and endorsements must be easily accessible and remain that way for as long as the policy is in force;
- After expiration of the policy, the insurer must archive its expired policies and endorsements for five years, making them available upon request;
- Policies and endorsements must be posted in a way that enables the insured to print and save the documents using programs or applications that are widely available and free to use;
- The insurer must provide notice of the method by which the insured may obtain a paper or electronic copy of the insured's policy or endorsements upon request and free of charge;
- The insurer must clearly identify the exact policy and endorsements forms purchased by the insured on each declarations page issued; and
- The insurer must provide notice of any changes to the forms or endorsements and of the insured's right to obtain a paper or electronic copy upon request and without charge.

Consent and Applicability

The bill does not affect requirements related to content or timing of any notice or document required under applicable law. In addition, the bill allows electronic delivery of a notice or document requiring verification or acknowledgment only if the delivery method used provides for verification or acknowledgment of receipt.

The bill does not allow denial of legal effectiveness, validity, or enforceability of any contract or policy of insurance solely due to the failure to obtain electronic consent or confirmation of consent by a party. A withdrawal of consent by a party is effective within a reasonable period of time after receipt of the withdrawal by the insurer. Failure by the insurer to comply with providing revised hardware and software requirements and allowing withdrawal of consent without a fee, conditions, or consequences constitutes, at the election of the party, a withdrawal of consent.

In addition, the bill does not apply to a notice or document delivered electronically by an insurer before the effective date of the Act to a party who has consented to receive the notice or document electronically. However, after the effective date of the Act, the insurer is required to notify the party of the notices or documents that may be delivered electronically under the Act that were not previously delivered electronically. The party has the right to withdraw consent.

The bill also allows an oral communication or recording that could be reliably stored and reproduced by the insurer to qualify as a notice or document delivered electronically. The bill allows electronic signatures that are attached to or logically associated with the signature, notice, or document to satisfy a requirement for a notice or document to be notarized, acknowledged, verified, or made under oath.

The bill does not affect any obligation of the insurer to provide notice to any person other than the insured of any notice provided to the insured. The bill also will not apply to any mutual insurance company organized pursuant to Kansas law, and the bill will not be construed to modify, limit, or supersede the provisions of the Federal Electronic Signature in Global and National Commerce Act (PL 106-229) or the Uniform Electronic Transactions Act (KSA 16-1601 *et seq.*).

Notification Requirements, Adverse Underwriting Decisions

The bill amends the law relating to notice to policyholders of adverse underwriting decisions and refunds. That law had provided that refunds to the applicant or individual proposed for coverage of the difference between the payment and earned premium, if any, in the event of a declination of insurance coverage, termination, or any other adverse underwriting decision, must accompany the notice of the decision.

The bill allows for applicants, policyholders, or individuals proposed for coverage, both with coverage in effect or not in effect, to receive refunds along with the notice of the adverse underwriting decision, or allow the refund and notice to be provided separately, so long as the refund is provided within ten days from the date of the notice.

The requirement does not apply to life insurance that is in effect, if the company or health maintenance organization includes with the notice of the adverse underwriting decision an offer of coverage to an applicant for life insurance under a different policy or at an increased premium.

State High Risk Pool, Lifetime Limit

The bill amends law regarding the Kansas Uninsurable Health Insurance Plan Act by increasing the maximum lifetime benefit per covered individual in the high risk health insurance pool from \$3.0 million to \$4.0 million.

Health Care Provider Liability Insurance, Certain Mutual Insurance Companies, Dividends

The bill amends the Insurance Code to allow dividends to be credited to a member's account and distributed in accordance with a plan adopted by the board of directors of a mutual insurance company that is organized to provide health care provider liability insurance.

Statutory Updates—Obsolete Penalty Provisions in the Insurance Code, ERO 41 Updates

The bill updates Chapters 39 and 40 of the *Kansas Statutes Annotated* by correcting invalid and obsolete statutory references regarding penalty provisions and state agency names corresponding to changes in agency duties made per 2012 Executive Reorganization Order No. 41 (ERO No. 41).

Mandate Lite Health Benefit Plan Act

The bill enacts the Mandate Lite Health Benefit Plan Act, excludes agent commissions from the calculation of administrative costs associated with medical loss ratio (MLR), and defines specially designed policies and excludes such policies from the definition of group sickness and accident insurance.

The bill defines a “mandate lite health benefit plan” as an individual or group sickness and accident insurance plan that does not contain one or more of the Kansas-mandated benefits other than coverages for optometrist, dentist, or podiatrist services (KSA 40-2,100) and for reconstructive breast surgery (KSA 40-2,166). The plan may be issued on either a group or individual basis. The bill specifies a plan could offer drug coverages.

The bill requires such plans to:

- Contain the definitions of group or individual sickness and accident insurance with respect to major medical benefits and standard provisions or rights of coverage; and
- Provide insureds with written notice that one or more of the state-mandated benefits are not included in the plan.

The bill provides that the definition of preexisting conditions may not be more restrictive than the definition of preexisting conditions normally used for the corresponding regular or group insurance contracts. Additionally, a mandate lite health benefit plan is allowed to charge additional premiums for each optional benefit offered.

Medical Loss Ratio

Under the bill, portions of health insurance premiums paid by consumers that are passed through as (agent) commissions are not considered part of administrative expenses and will be excluded from all determination of the MLR calculations when totaling the ratio of premiums paid by a consumer used for claims versus administrative expenses for a policy. (To be excluded from MLR calculations, any portion of premiums identified as commissions must be paid to a nonemployee.) Instead, portions of premiums retained by an insurance company or its employees are required to be considered as part of the MLR calculation as administrative related income.

Specially Designed Policies

The bill defines and allows specially designed policies to provide specific coverage of benefits or services that are not required to be included the mandate lite health benefit plans authorized by the bill. These stand-alone policies and coverages may include:

- Chiropractic plans;
- Acupuncture coverage plans;
- Holistic medical treatment plans;
- Podiatrist plans;
- Pharmacy plans;
- Psychiatric plans;
- Allergy plans; and
- Other plans or combinations of plans of accepted traditional and nontraditional medical practice.

The bill defines “specially designed policy” to mean an insurance policy that by design may not meet all or part of the definitions of group or individual sickness and accident insurance policy, and includes temporary sickness and accident insurance on a short-term basis. The bill excludes specially designed policies from:

- Inclusion under the definition of group sickness and accident insurance, including as short-term policies;
- Continuation coverage provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
- MLR calculations associated with individual sickness and accident insurance unless the calculation excludes any monthly administrative fee associated with the sale of such short-term policies.

Life Insurance and Health Insurance Products; Continuation of Health Coverage; Limited Lines of Insurance; HB 2339

HB 2339 amends provisions in the Insurance Code to permit the combination sale of life insurance coverage with certain health insurance products, update the law applying to continuation coverage for firefighters’ surviving spouses and dependent children, add definitions to an existing list of limited lines insurance and clarify continuing education requirements for insurance agents who sell certain limited lines of insurance; and the bill enacts new law to require state agencies and municipalities to pay premiums for continuation of coverage under COBRA (Consolidated Omnibus Budget Reconciliation Act, health benefit provisions) for the surviving spouse and eligible dependent children of a law enforcement officer who dies in the line of duty.

Combination Sale of Life Insurance Coverage with Certain Health Riders

The bill amends a provision in the Insurance Code governing life insurance policies to permit the combination sale of life insurance coverage with certain health insurance products. Specified disease or critical illness riders, or both, would be allowed to be incorporated into life insurance policies, provided the policies show the premiums charged for the life insurance and health insurance riders. In addition, the insured could discontinue the riders and continue the life insurance policy, at the option of the insured.

Continuation of Health Coverage, Law Enforcement Officers

The bill enacts new law to require state agencies and municipalities to pay premiums for continuation of coverage under COBRA for the surviving spouse and eligible dependent children of a law enforcement officer who dies in the line of duty. The law applying to continuation coverage for firefighters' surviving spouses and dependent children is updated by the bill.

Premiums for COBRA continuation coverage will be paid for 18 months and will be required only if the deceased law enforcement officer was enrolled in a health benefit plan for which a state agency or municipality was paying premiums. A state agency or municipality will not be required to pay the premiums for a surviving spouse:

- On or after the end of the 18th calendar month after the date of the deceased law enforcement officer's death;
- Upon the remarriage of the deceased law enforcement officer's surviving spouse; or
- Upon the deceased law enforcement officer's surviving spouse reaching the age of 65.

The bill also amends the law relating to continuation of coverage for dependent children of firefighters who die in the line of duty. The bill deletes criteria that generally describes a dependent child and instead specifies coverage will be provided to "eligible" dependent children under the age of 26 years. (The federal Affordable Care Act requires health insurance plans and issuers that offer dependent coverage to make the coverage available until a child reaches the age of 26 years.)

Limited Lines of Insurance

The bill amends the Insurance Code to add definitions to the existing list of limited lines insurance and to clarify continuing education requirements for insurance agents who sell certain limited lines of insurance.

Specifically, the bill adds the following new definitions of limited lines insurance:

- Crop insurance—limited line insurance for damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease or other

yield-reducing conditions, or any other peril subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;

- Title insurance—limited line insurance that insures titles to property against loss by reason of defective titles or encumbrances;
- Travel insurance—limited line insurance for personal risks incidental to planned travel (includes interruption or cancellation of trip or event and loss of baggage or personal effects);
- Pre-need funeral insurance—limited line insurance that allows for the purchase of a life insurance or annuity contract by or on behalf of the insured solely to fund a pre-need contract or arrangement with a funeral home for specific services; and
- Bail bond insurance—limited line insurance that provides surety for a monetary guarantee that an individual released from jail will be present in court at an appointed time.

The bill provides that the insurance ethics biennial continuing education requirement (at least one hour of instruction) for licensed insurance agents who are qualified to write business in either property or casualty (or both) or personal lines, or life, accident, and health, or variable contracts also could include regulatory compliance.

The bill requires each insurance agent who holds a life insurance license solely for the purpose of selling pre-need funeral insurance or annuity products to file a report on or before the agent's biennial due date affirming that the agent has transacted no other insurance business during the period covered by the report. Upon the Commissioner's request, an agent is required to provide certification from an officer of each insurance company (that has appointed the agent) that the agent transacted no other insurance business during the reporting period.

The bill also provides exemptions from the biennial continuing education credits requirements for licensed insurance agents who sell only pre-need funeral insurance and for agents who hold only a bail bond qualification.

JUDICIARY

Kansas Offender Registration Act; SB 20

SB 20 amends the Kansas Offender Registration Act to:

- Change the effective dates for registration requirements to reflect when various types of offenses originally were codified;
- Correct an inaccurate statutory reference to the crime of aggravated incest;
- Specify that persons convicted of involuntary manslaughter while driving under the influence are not required to register as this crime inadvertently was included when recodification of the criminal code placed the crime within the involuntary manslaughter section;
- Clarify registration requirements for offenders in the custody of a correctional facility and prior to the offender being discharged, paroled, furloughed, or released on work or school release;
- Strike language concerning “the duration of registration” that is unnecessary and has caused confusion as to how long an offender must register;
- Provide that registration is complete even when the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor or, if within 15 days of the most recent registration 2 or more full payments have not been remitted, a severity level 9, person felony; and
- Amend requirements for providing DNA samples to the Kansas Bureau of Investigation to align the requirements with current KBI practices.

Children’s Advocacy Center Fund Fee Increase; SB 88

SB 88 increases the Children’s Advocacy Center Fund fee paid by defendants convicted of certain crimes involving child victims from \$100 to \$400. The bill also eliminates a provision allowing the court to waive payment of all or part of the fee if the court is satisfied that payment of the fee would impose manifest hardship on the defendant. The Fund is used to defray operating expenditures for children’s advocacy centers in the state.

Kansas Restraint of Trade Act—Harmonization; Reasonable Restraints; Exceptions; Damages; SB 124

SB 124 creates or amends sections of the Kansas Restraint of Trade Act (KRTA).

The bill creates a new section declaring the purpose of the new section and the amendments to existing sections is to clarify and reduce uncertainty or ambiguity in the application of the KRTA and applicable evidentiary standards to certain business contracts,

agreements, and arrangements that are not intended to unreasonably restrain trade or commerce and do not contravene public welfare.

The new section directs that the KRTA be construed in harmony with ruling judicial interpretations of comparable federal antitrust law by the U.S. Supreme Court, with certain exceptions. These exceptions include:

- Actions or proceedings concerning intrastate commerce;
- Causes of action brought by indirect purchasers under the KRTA;
- Recovery of damages for violations under the KRTA;
- Remedies or penalties provided in the KRTA; and
- Actions or proceedings brought by the Attorney General under the KRTA, or other powers or duties of the Attorney General under the Act.

The new section specifies that the KRTA shall not be construed to apply to the following:

- Associations that comply with the Kansas Cooperative Marketing Act;
- Associations, trusts, agreements, or arrangements governed by the federal Capper-Volstead Act;
- Corporations organized under the Kansas Electric Cooperative Act, or Kansas wholesale electric service companies owned by four or more electric cooperatives, or any member-owned corporation formed before 2004;
- Associations governed by the Kansas Credit Union Act;
- Associations, trusts, agreements, or arrangements governed by the federal Packers and Stockyards Act; and
- Franchise agreements or covenants not to compete.

Further, the new section declares that an arrangement, contract, agreement, trust, understanding, or combination cannot be deemed a trust pursuant to the KRTA and cannot be deemed unlawful, void, prohibited, or wrongful under the KRTA if such arrangement, contract, agreement, trust, understanding, or combination is a reasonable restraint of trade or commerce. The reasonableness analysis depends on a view of all of the facts and circumstances of a particular case. A restraint contravening public welfare is not considered reasonable. To the extent U.S. Supreme Court judicial interpretations are in conflict with or inconsistent with this reasonableness provision, the reasonableness provision controls.

The new section contains a severability clause.

The KRTA section defining trusts is amended to recognize the applicability of the new section and to remove references to “aids in commerce.”

Additional KRTA sections are amended to recognize the applicability of the new section and make references consistent.

KRTA damages sections are amended or repealed to eliminate the ability to recover full consideration damages and clarify that a plaintiff may recover treble the *actual* damages sustained.

The bill contains a retroactivity clause applying the new law and amendments made by the bill to any choses in action or defenses based on any KRTA provision repealed by the bill. Any such choses in action or defenses accruing by the effective date of the Act (publication in the *Kansas Register*) shall be abated, but any cause of action pending in any court before the effective date shall not be abated. All other non-remedial provisions will be applied prospectively.

Marital Property; Enforcement of Support Orders; HB 2015

HB 2015 amends the law concerning marital property, service of process in dissolution of marriage proceedings, and enforcement of support orders. Specifically, the bill amends the list of property that remains the sole and separate property of a married person, notwithstanding the marriage, to eliminate an exception for gifts received from the person’s spouse. Spousal gifts thus are included in the list of sole and separate property. There are exceptions, however, for transfers that violate the Statute of Frauds and Uniform Fraudulent Transfer Act. The bill also makes a technical amendment to the law concerning service of process in a dissolution of marriage proceeding to correct a reference changed during the domestic recodification enacted in 2011.

Further, the bill creates new sections and amends existing law related to the distribution of child support, income withholding for the enforcement of support orders, and debt setoff procedures. In a new section, the bill directs that support orders, regardless of when entered or modified, paid through the Kansas Department for Children and Families (DCF) central unit be distributed in accordance with rules and regulations adopted by the Secretary for Children and Families (Secretary), based on child support distribution requirements set forth in Title IV-D of the federal Social Security Act and accompanying federal regulations. This section is effective on and after July 1, 2015, and the Secretary must adopt rules and regulations implementing the section by July 1, 2015, which will not take effect until that date.

The bill also allows an income withholding order to attach to a “lump sum payment,” which includes bonuses, commissions, vacation or other leave time payments, or any other payment to an obligor. This payment form does not include regular payday compensation, reimbursement of expenses, or severance pay. An order for attachment of a lump sum payment attaches to any intangible property, funds, credits, or other indebtedness of a non-recurring nature belonging or owing to the obligor due from the payor or in the possession of the payor at the time of service, as well as any personal property becoming due to the obligor by the 35th day after service. An order must specify the amount the payor is required to withhold for support from the lump sum payment.

A payor who has been served a Title IV-D income withholding order that includes an amount to defray an arrearage must contact the Title IV-D agency at least 14 days prior to making payment of any lump sum amount to the obligor. The payor could pay the lump sum to the obligor once 14 days have passed after this contact, unless additional process or notice of the same has been received. Further, the bill sets forth additional procedures for a payor to follow in holding and remitting the attached funds, credits, or indebtedness after receiving service of the income withholding order.

The bill adds requirements for providing notice to an obligor of an income withholding order for attachment of a lump sum payment. The new section allows an obligor to request a hearing to assert any claim of exemption within ten days of notice being served. The notice and timing requests for such a hearing are specified, as well as the obligor's burden of proof.

Additionally, the bill authorizes the Secretary to collect support owed in a Title IV-D case from unemployment insurance benefits payable to the obligor. Such collections could be remitted directly to the Secretary, who is directed to use electronic processes to the greatest extent feasible. Any cost recovery fee as a result of withholding of unemployment insurance benefits from the state employment security agency (Department of Labor) are paid by DCF and not by the obligor. The Secretary could apply a collection received directly from another state agency for a debtor with more than one income withholding order in any manner allowed under Title IV-D, so long as the payor agency does not identify the amounts to be applied to each order and all current support due for the month is satisfied first.

The bill also amends existing sections of the Income Withholding Act to:

- Define "periodic payment";
- Require income withholding orders to be prepared in a standard format prescribed by the Secretary or pursuant to the standard federal notices and forms;
- Allow service of an income withholding order by first-class mail or by alternate methods acceptable to the payor, including fax, e-mail, or other electronic interface;
- Allow notice of intent to initiate income withholding by first-class mail;
- Require all remittances from any income withholding order, regardless of when such order was entered or modified, to be directed to the DCF central unit for collection and disbursement of support payments;
- Allow a payor to withhold and retain a cost recovery fee of up to \$10 per income withholding from a lump sum payment, which would be in addition to any cost recovery fee charged for withholding from periodic payments and in addition to the amount withheld as support;
- Clarify that the entire sum withheld by the payor shall not exceed 50 percent of the obligor's disposable income as defined by updated references to the federal Consumer Credit Protection Act; and
- Update effective dates.

Finally, the bill amends income withholding order provisions in sections of law addressing social welfare to correspond with the amendments made to the Income Withholding Act with regard to service by first-class mail.

Appointment of Court of Appeals Judges; HB 2019

HB 2019 amends the procedure for the appointment of Court of Appeals Judges to allow the Governor, with the consent of the Senate, to appoint a qualified person to fill any vacancy on the Kansas Court of Appeals. The bill requires the Clerk of the Supreme Court to give prompt notice of a vacancy to the Governor, who must then make an appointment within 60 days. Otherwise, the Chief Justice of the Supreme Court, with the consent of the Senate, will appoint a qualified person for the position.

The bill requires the Senate to vote to consent to the appointment within 60 days of being received or, if the Senate is not in session and will not be in session within the 60-day time limit, within 20 days of the next session. If the Senate fails to vote within the time limit, its consent will be deemed given. If the appointee does not receive a majority vote in the Senate, the Governor will appoint another qualified person within 60 days, and the same consent procedure will be followed.

The bill also strikes language that makes the 14th Court of Appeals position subject to appropriations.

Venue in Civil Forfeiture Proceedings; HB 2028

HB 2028 amends provisions of the Kansas Standard Asset Seizure and Forfeiture Act concerning venue in forfeiture proceedings brought by the Attorney General. Previously, a proceeding could be commenced and maintained in the county where the property is located or where a civil or criminal action could be commenced and maintained against an owner or interest holder for the alleged conduct giving rise to the forfeiture. The bill adds a provision allowing a proceeding brought by the Attorney General to commence and be maintained in Shawnee County. If, however, a motion to change venue is properly filed within 20 days after service of the petition commencing such proceeding, the court must transfer the proceeding to another county where there is proper venue. The bill also provides that if the proceeding brought by the Attorney General involves property, law enforcement agencies, or owners or interest holders of property in multiple counties, venue is proper in Shawnee County or any county where there is proper venue, as described above.

Municipal Court Reporting of Criminal History Record Information; HB 2041

HB 2041 amends provisions concerning a municipal judge's duty to ensure certain conviction information for city ordinance violations is forwarded to the Kansas Bureau of Investigation (KBI) central repository. The bill expands the duty to include all violations comparable to convictions for statutory criminal offenses, not only convictions for class A and B misdemeanors. The bill also requires reporting of filing and disposition of cases alleging operation of a vessel while under the influence of alcohol or drugs (boating under the influence) to the central repository. Reporting of filing and disposition of cases involving driving under the influence (DUI) and commercial DUI already was required and, along with reports concerning boating under the influence, the bill extends from July 1, 2013, to July 1, 2014, the date by which those reports must be made electronically.

Further, the bill requires the KBI Director to adopt rules and regulations by July 1, 2013, requiring district courts to report the filing and disposition of all cases alleging DUI or refusal to submit to a test to determine the presence of alcohol or drugs (criminal refusal). The former requirement was adoption of rules and regulations by July 1, 2012, concerning just the filing of cases alleging DUI. Similarly, the bill requires the Director to adopt rules and regulations by July 1, 2014, requiring district courts to electronically report all case filings and dispositions for DUI or criminal refusal. The former requirement was adoption of rules and regulations by July 1, 2013, concerning just the filing of cases alleging DUI.

Finally, the bill amends the definition of “criminal history record information” to exclude information regarding the release of defendants from confinement by the Department of Corrections or a jail, which is intended to clarify that the Department or a jail may provide notice of release.

Attorney General—Duties; Notice of Intent to Seek the Death Penalty; Senate Sub. for HB 2043

Senate Sub. for HB 2043 amends the statute setting forth the duties of the Attorney General to clarify that the Attorney General will represent the State in “any and all” actions in the Kansas Supreme Court, Kansas Court of Appeals, and in all federal courts in which the state is interested or a party. The bill clarifies that the Attorney General, when so appearing, controls the State’s prosecution or defense.

The bill also amends the law concerning notice required in capital murder cases that a county or district attorney intends to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. The bill allows the Attorney General to file notice in cases where the county or district attorney or a court determines a conflict exists. The bill also changes “county or district attorney” to “prosecuting attorney” to reflect the Attorney General’s ability to file notice.

Kansas Consumer Protection Act, Kansas Code of Civil Procedure—Temporary Restraining Orders, Temporary Injunctions, Poverty Affidavits, Redemption of Real Property, and Civil Forfeiture; HB 2081

HB 2081 amends the Kansas Consumer Protection Act (KCPA) and the Kansas Code of Civil Procedure in the areas of temporary restraining orders and temporary injunctions, poverty affidavits, redemption of real property, and civil forfeiture.

KCPA

The bill adds a new section named the “Wayne Owen Law” stating the conduct outlined in the definitions of the crimes of identity theft and identity fraud constitutes unconscionable acts or practices prohibited by the KCPA, and any person who engages in such conduct is subject to the remedies and penalties provided by the KCPA.

Temporary Restraining Orders and Temporary Injunctions

The bill allows a court to issue a temporary restraining order without notice or bond to the adverse party only if:

- Specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard;
- The movant’s attorney certifies in writing any efforts to give notice and why it should not be required; and
- Notice of the issuance of a temporary restraining order is provided to the Attorney General if the adverse party is the State or an agency, officer, or employee thereof, or to the appropriate city clerk or county clerk if the adverse party is a city or county or an agency, officer, or employee thereof.

The bill requires each temporary restraining order issued without notice to include its issuance date and time, information regarding the irreparable injury, and the reason the order was issued without notice. The order must be promptly filed in the clerk’s office and entered in the record. The order expires at the time set by the court, not to exceed 14 days, unless the court extends the order for good cause or the adverse party consents.

If a temporary restraining order is issued without notice, the bill requires the motion for a temporary injunction to be set for hearing at the earliest possible time.

The adverse party can appear before the court to move to dissolve or modify the temporary restraining order, after giving two days’ notice to the party who obtained the order.

Under the bill, the court can issue a temporary injunction or a temporary restraining order only if the movant gives security in an amount the court considers proper to pay the costs and damages sustained by the party wrongfully enjoined or restrained. Security is not required from the State or an agency, officer, or employee of the State, however, and the court can waive the security requirement for any city or county or an agency, officer, or employee thereof.

Poverty Affidavits

The bill modifies the requirements for poverty affidavits filed by plaintiffs in civil cases who seek to be relieved from paying the docket fee. Such affidavits must include a factual basis for the plaintiff’s allegation of poverty, including, but not limited to, the source and amount of the plaintiff’s weekly income. The plaintiff must sign and swear to the affidavit, under penalty of perjury. An affidavit in substantial compliance with the form set forth by the Kansas Judicial Council is deemed sufficient.

Upon the filing of a petition with a poverty affidavit, the court must review the petition and, if the court finds the allegation of poverty is untrue, must direct the plaintiff to pay the docket fee or dismiss the petition without prejudice. Service of process will not be made unless the court grants leave following the review.

Redemption of Real Property

The bill amends a provision allowing a mortgagor to agree in the mortgage instrument to a shorter period of redemption than 12 months or wholly waive the period of redemption. The bill

clarifies that an existing exception for mortgages covering single- or two-family dwellings owned by or held in trust for natural persons is applicable only when held in trust by natural persons owning or holding the dwelling as their residence.

Civil Forfeiture

The bill adds to the list of conduct and offenses giving rise to forfeiture indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child. The bill also specifies that, if used during the commission of an offense giving rise to forfeiture, any computer, computer system, computer network, or any software or data owned by the defendant is subject to forfeiture. Previously, these items were forfeited only if used in commission of the crime of unlawful possession of a scanning device or reencoder. Further, the bill provides for forfeiture of an “electronic device” used during the commission of an offense giving rise to forfeiture.

Crimes and Criminal Procedure—DNA Testing, Felony Murder, Computer Crimes, and Identity Theft and Identity Fraud; HB 2093

HB 2093 amends the law concerning crimes and criminal procedure, on topics including DNA testing, felony murder, computer crimes, and identity theft and identity fraud.

DNA Testing

The bill amends the statute allowing a person convicted of first-degree murder or rape to petition the court for forensic DNA testing of certain biological material. Specifically, in the provision addressing the duties of the court when the results of such testing “are favorable to the petitioner,” the bill adds that the results “are of such materiality that a reasonable probability exists the new evidence would result in a different outcome at trial or sentencing.”

Felony Murder

The bill amends the law concerning felony murder to specify:

- Felony murder is an alternative method of proving first degree murder;
- Provisions allowing for prosecution of more than one crime and governing lesser included crimes do not apply to felony murder;
- Felony murder is not a separate crime or a lesser included offense of first degree murder or capital murder; and
- Felony murder has no lesser included offenses.

The bill also states these amendments establish a procedural rule for the conduct of criminal prosecutions and shall be construed and applied retroactively to all cases currently pending.

Computer Crimes, Identity Theft, and Identity Fraud

The bill amends statutes concerning computer crimes and the definitions of the crimes of identity theft and identity fraud. The bill makes it unlawful for any person to knowingly and without authorization to disclose a number, code, password, or other means of access to a social networking website or personal electronic content. It also is unlawful for any person to knowingly and without authorization access or attempt to access any social networking website. Commission of these acts is a class A nonperson misdemeanor. Further, the bill increases the severity level from a level 8, nonperson felony to a level 5, nonperson felony for certain computer crimes where the monetary loss to the victim is more than \$100,000.

The bill amends the definition of the crime of identity theft to include obtaining, possessing, transferring, using, selling, or purchasing any personal identifying information, or document containing the same, belonging to or issued to another person with intent to misrepresent that person in order to subject that person to economic or bodily harm. Commission of such acts is a severity level 8, nonperson felony, except where monetary loss to the victim is more than \$100,000, in which case it will be a severity level 5, nonperson felony.

Additionally, the bill amends the definition of “personal identifying information,” which appears in the definitions of identity theft and identity fraud, to include passwords, usernames, or other log-in information that can be used to access a person’s personal electronic content, including, but not limited to, content stored on a social networking website. The bill includes definitions for “personal electronic content” and “social networking website.”

Retired Judges Program; Debt Setoff; HB 2115

HB 2115 removes requirements that a retired judge enter into a written agreement with the Kansas Supreme Court for temporary judicial employment either before retirement or within five years after retirement and within 30 days before the judge’s retirement anniversary. The bill also extends, from 12 to 15, the aggregated number of years a retired judge may enter into agreements for temporary judicial employment.

Additionally, the bill amends the state debt setoff law to provide that the collection assistance fee for all debts owed to a court shall be paid by the debtor as an additional cost, rather than deducted from the debts owed to a court.

Garnishment Proceedings; HB 2163

HB 2163 amends the requirement in garnishment proceedings that a garnishee respond to an order of garnishment within 14 days after service by completing the answer in substantial compliance with the forms provided by the Judicial Council and stating the facts with respect to the demands of the order. If the garnishee does not have the assets of the judgment debtor, the bill requires the garnishee to send the completed answer to the judgment creditor’s attorney at the address listed on the answer form or, if the judgment creditor does not have an attorney, to the judgment creditor at the address listed on the answer form. The bill also requires such an answer be supported by an unsworn declaration in the manner set forth on the answer form. Further, in instances where the garnishee does have the assets of the judgment debtor, the bill

requires the answer to be sent to the judgment creditor's attorney or, if the judgment creditor does not have an attorney, to the judgment creditor.

Information Regarding Citizenship of Prospective Jurors; Grand Juries; HB 2164

HB 2164 amends the law concerning juries. First, the bill requires a jury commissioner to submit to the Secretary of State information regarding citizenship received from a prospective juror or court that disqualifies or potentially disqualifies the prospective juror from service. The information is limited to the full name, current and prior addresses, age, telephone number, and, if available, the date of birth of the prospective juror. The bill requires the jury commissioner to submit the information in a form and manner approved by the Secretary of State and specifies the information will be used for maintaining voter registrations.

Additionally, the bill amends grand jury statutes to:

- Allow the district attorney or county attorney in such attorney's county to petition the chief judge or designee to summon a grand jury to consider any alleged felony violation;
- In any judicial district, allow the Attorney General to petition the chief judge or the chief judge's designee in such judicial district to consider any alleged felony violation if authorized by the district or county attorney in such judicial district, or if jurisdiction is otherwise authorized by law;
- Add a requirement that the district court, if it finds the petition is in proper form and orders a grand jury to be summoned, issue such order within 15 days after receipt of the petition;
- Clarify that grand jury members must be "qualified" in the same manner as petit jurors;
- Clarify that grand juries impaneled by petition of a county attorney, district attorney, or the Attorney General may not employ special counsel;
- Specify the following duties of the prosecuting attorney to grand juries impaneled by such attorney's petition:
 - Attend all sessions and inform the grand jury of all offenses liable to indictment and evidence to be presented;
 - Present and examine witnesses on all matters to be considered; and
 - Provide members of the grand jury with advice related to all questions as to the proper discharge of their duties;
- Revise the provision governing what matters a grand jury member, attorney, interpreter, reporter, or typist may disclose, to require a court order and permit disclosure only of:

- Witness testimony to a defendant to determine consistency, only upon a showing of good cause;
- Evidentiary materials presented to one grand jury to a succeeding grand jury; and
- Grand jury testimony by a defendant to the defendant, but only in the criminal action resulting from such testimony;
- Allow a grand jury impaneled by petition of a prosecuting attorney to serve for a period of six months, which can be extended before expiration for another period of up to six months, for good cause shown by the grand jury; and
- Allow the court to order the amendment of an indictment with regard to non-substantive matters that would not prejudice the defendant on the merits, and allow the court to grant the defendant a continuance to prepare a defense upon such amendment.

Additionally, the bill amends provisions concerning grand juries summoned by petition, commonly referred to as citizens grand juries. The bill requires a petition to summon a grand jury to state the name, address, and phone number of the person filing the petition, the subject matter of the prospective grand jury, a reasonably specific identification of areas for inquiry, and sufficient general allegations to warrant a finding that such inquiry may lead to information, which, if true, would warrant a true bill of indictment.

After a prosecutor has conducted an examination of the prospective grand jurors, the bill requires the court to approve and submit to the clerk of the county a list of all remaining legally qualified grand jurors for a second drawing of grand juror names. Upon receipt of the list, the clerk will draw for a second time 15 names of persons to serve as grand jurors from that list. If the county has an alternate method for securing jury panels directly from the computer, the clerk must use the computer to generate 15 names of persons to serve as grand jurors from that list.

After a citizens grand jury is summoned, but before it begins its deliberations, the bill requires the judge or judges of the district court of the county in which the petition is presented to provide instructions to the grand jury regarding its conduct and deliberations. The bill lists those instructions required to be presented, but states the instructions given are not limited to the instructions listed in the bill.

The bill also requires the person filing the petition to be the first witness called by the grand jury for the purpose of presenting evidence and testimony as to the subject matter and allegations of the petition. The bill allows the grand jury to investigate any concerns associated with the petition and to select any special counsel or investigator employed by the grand jury by majority vote after hearing testimony from the person filing the petition. The bill also allows any person to file with the prosecuting attorney or with the foreman of the grand jury a written request to testify or retestify in an inquiry before a grand jury or to appear before a grand jury. The written request includes a summary of that person's written testimony.

Upon a majority vote of the grand jury, the bill allows the grand jury to seek the removal of the assigned judge pursuant to existing law that provides for removal if a party or party's attorney believe the judge to whom an action is assigned cannot afford that person a fair trial in the action.

Finally, the bill makes a variety of non-substantive, technical changes to update and restructure the statutes.

Kansas Preservation of Religious Freedom Act; HB 2203

HB 2203 enacts the Kansas Preservation of Religious Freedom Act, which provides government shall not substantially burden a person's civil right to exercise religion, even if the burden results from a rule of general applicability, unless the government demonstrates, by clear and convincing evidence, application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. The Act applies to all government action, including state and local laws, ordinances, rules, regulations, and policies, and to their implementation, whether enacted or adopted before, on, or after the Act's effective date.

The bill defines key terms, including "compelling governmental interest," and provides that, in determining whether a compelling governmental interest justifies a substantial burden on a person's exercise of religion, only those interests of the highest order and not otherwise served can overbalance the fundamental right to the exercise of religion preserved by the Act. Further, for the government to meet the standard outlined above, it must demonstrate that the standard is satisfied through application of the asserted violation of this act to the particular claimant whose sincere exercise of religion has been burdened. The bill also states the religious liberty interest the Act protects is an independent liberty that occupies a preferred position, and prohibits encroachments upon this liberty, whether direct or indirect, unless required by clear and compelling governmental interests of the highest order.

The bill allows a person whose exercise of religion has been burdened or is substantially likely to be burdened, in violation of the Act, to assert the violation as a claim or defense in a judicial proceeding. Courts may grant appropriate relief as may be necessary, including injunctive relief, protective orders, a writ of mandamus or prohibition, declaratory relief, actual damages, and costs and attorney fees determined by the court. If a court finds a person made a fraudulent claim under the Act, the court can enjoin the person from filing further claims under the Act without leave of court. Further, the bill provides the Act shall not be construed to:

- Impair the fundamental right of parents to control the care and custody of their minor children, as provided by state and federal law;
- Authorize any relationship, marital or otherwise, that would violate Art. 15, Sec. 16 of the *Kansas Constitution*;
- Authorize the application or enforcement in Kansas courts of any law, rule, code, or legal system, other than state and federal law;
- Limit any religious organization from receiving any funding or other assistance from a government, or of any person to receive government funding for a religious activity to the extent permitted by state and federal law; or
- Protect actions or decisions to end the life of any adult or child, born or unborn.

Additionally, the bill does not apply to penological rules and regulations, conditions, or policies established by a jail, correctional institution, juvenile correctional facility, juvenile detention facility, or an entity supervising offenders in the community that are reasonably related to the safety and security of incarcerated persons, staff, visitors, supervised offenders, or the

public, or to maintenance of good order and discipline in any jail, correctional institution, or juvenile detention facility.

Judicial Surcharge; HB 2204

HB 2204 extends, for two years, through July 1, 2015, the judicial surcharge the Legislature authorized in 2010 to fund non-judicial personnel.

LAW ENFORCEMENT

Attorney General—Reward for Information; SB 59

SB 59 authorizes the Attorney General to pay a reward of up to \$5,000 to anyone who first provides information concerning a violation of the Medicaid Fraud Control Act, the False Claims Act, or any other law that protects the integrity of the public treasury. Payment must be made from the Medicaid Fraud Prosecution Revolving Fund, and the Attorney General has discretion in determining whether to pay a reward, the exact amount of the payment, and whether the informant was eligible to receive the award.

No governmental employee is eligible for the award, unless the information provided does not relate to the employee's responsibilities as a government employee. In paying the award, the Attorney General is required to certify that the information was not previously known to the Attorney General and materially contributed to an investigation conducted by the Attorney General. Rewards may be paid only after entry of judgment in favor of the state or a conviction regarding the matter upon which the informant provided information.

The Attorney General is directed to provide information to the public regarding the awards and is given authority to promulgate rules and regulations to carry out the provisions of the bill.

Missing Persons; High-Risk Missing Persons; SB 118

SB 118 amends statutes related to missing persons. The bill creates the category of "high-risk missing person," defined as any person who is at heightened risk of bodily harm or death, including a person who has been abducted, is missing under suspicious or known dangerous circumstances, has been missing more than 30 days, or is missing under any facts or circumstances leading the law enforcement agency to believe the person may be at risk of bodily harm or death.

Upon receiving a missing person report or any subsequent new information concerning a missing person, a law enforcement agency is required to immediately determine whether the person may be a high-risk missing person. Upon determining that a missing person is a high-risk missing person, the agency is required to immediately make this determination known to the Kansas Bureau of Investigation (KBI) missing and unidentified person system and the National Crime Information Center (NCIC) missing person system.

Upon receiving information that a person is a high-risk missing person, the director of the KBI missing and unidentified person system is required to immediately provide information regarding the missing person to every law enforcement agency in the state.

All state or local law enforcement agencies are required to accept and process, without delay, any report of a missing person, and are prohibited from refusing or otherwise failing to accept a missing person report for any reason, unless the agency knows the location of the person reported missing, has confirmed the safe status of the person reported missing, or has confirmed that another law enforcement agency has already completed a report on the missing person incident. The agency is required to enter the report as soon as practical into the KBI and NCIC missing person systems. The agency is also required to provide the person making the report with contact information and information regarding the National Center for Missing and Exploited Children and the National Center for Missing Adults.

LEGISLATURE

Repealing Certain Joint Committees; Amending the Joint Committee on Special Claims Against the State; HB 2216

HB 2216 eliminates the following joint legislative committees: Arts and Cultural Resources; Children's Issues; Economic Development; Energy and Environmental Policy; Legislative Educational Planning; and the KPERS Study Commission. In addition, the Joint Committee on Special Claims Against the State is reduced from 13 members to 7 and the number of required attorney members is reduced from 4 to 2.

LOCAL GOVERNMENT

Prohibiting the Adoption or Enforcement of Certain Compensation or Leave Policies by Cities, Counties, or Local Government Units; HB 2069

HB 2069 prohibits cities, counties, and local government units from using ordinances, resolutions, or law to require private employers to:

- Provide leave, with or without pay, to employees;
- Pay compensation for any leave;
- Pay compensation or wages at a higher rate than the state or federal minimum wage, unless the higher compensation or wages are required by state or federal law; or
- Offer any employee benefit.

Existing policies enacted by cities and counties are void. This prohibition does not apply to the compensation or leave requirements placed on employers by state or federal law. This prohibition also does not apply to economic development programs of state or local governments.

Cities, counties, or local government units also are prohibited from requiring, showing preference (either for or against), or basing any policy on the provision of leave (with or without pay), compensation, wages, or benefits by construction contractors or subcontractors on any projects entailing real estate construction or infrastructure work.

Property Issues: Tax Refunds for Fire Service, Solid Waste Disposal, and Historic Property Reviews; HB 2249

HB 2249 addresses property issues related to taxation, solid waste, and historic preservation.

Tax Refunds Related to Annexed Fire District Lands

The bill permits a landowner to receive a property tax refund for fire services for any year when the property was not detached from a fire district after the property had been annexed by a city.

The refund will be paid by either the city or the fire district, whichever entity levied tax for fire service but did not provide the service.

Property taxes paid for general obligation bonds issued by a fire district prior to annexation are not eligible for refund.

Solid Waste Disposal Limitations

The bill creates new law concerning solid waste disposal areas and restrictions. A city or county is prohibited from adopting restrictions for solid waste disposal areas within its boundaries if the restrictions would supersede or impair the local legislation of another city or county served by the same solid waste disposal area, or if the restrictions require another city or county to adopt new solid waste management requirements not currently required by statewide rules and regulations.

However, restrictions on solid waste disposal areas are allowed if the city or county owns the disposal site or if the restrictions apply only to the residents of the city or county enforcing the restrictions and not to residents of cities or counties outside the jurisdiction.

The Secretary of Health and Environment is required to prepare a report on solid waste management in Kansas for the Senate Committee on Ethics, Elections, and Local Government and for the House Committee on Local Government by January 1, 2014. The report must include:

- A review of statutes, rules, regulations, and policies related to solid waste disposal in the state, including but not limited to, details on yard waste, recycling, generation rates, composting, precipitation, source reduction efforts, population, landfill capacity, and gas recovery in landfills; and
- Recommendations for legislative changes and the costs associated with the proposed changes.

The Secretary's report will be prepared with review and input from operators of municipal solid waste landfills, haulers of solid waste, customers of haulers of solid waste, and cities and counties.

Historic Property Reviews

The bill deletes provisions related to environs restrictions from historic property reviews.

Previously, proposed projects within 500 feet of the boundaries of a historic property located in a city or within 1,000 feet of the boundaries of a historic property located in an unincorporated portion of a county were subject to historic design and appearance restrictions.

The bill limits historic reviews conducted under the act to proposed projects that would directly involve, damage, or destroy a property included in the National Register of Historic Places or the State Register of Historic Places.

OPEN RECORDS

Open Records—Exemptions Related to Law Enforcement Officers, Judges, Prosecuting Attorneys, Concealed Carry; Requests to KBI Central Repository; SB 81

SB 81 amends two statutes in the Kansas Open Records Act (KORA).

The bill amends exemptions from KORA related to law enforcement officers, parole officers, probation officers, court services officers, community correctional officers, federal judges, Supreme Court justices, Court of Appeals judges, district judges, district magistrate judges, U.S. attorneys, the Kansas Attorney General, assistant attorneys general, and county and district attorneys, in KSA 45-221. Specifically, the bill amends the exemption from KORA for the home address or home ownership records of such persons to restrict the exemption to records on a public website that are searchable by a keyword search. The bill extends from seven to ten days the length of time a public agency has to restrict such information from public access after receiving a request to do so.

Additionally, the bill strikes a provision allowing agency heads or employers to make such requests under these exemptions on behalf of their officers or employees. The bill also establishes that the restrictions under the exemption expire after five years, requiring a person covered by the exemption to file a new request to continue the restriction.

The bill creates a new exemption prohibiting a public agency from disclosing the name, home address, e-mail address, phone numbers, or other contact information for any person licensed to carry concealed handguns, any person who has enrolled in or completed weapons training for concealed carry licensure, or any person who has applied for a concealed carry license.

The bill also resolves two conflicts between different versions of the statute by striking a reference to the Ombudsman of Corrections and by repealing a version of the statute containing an exemption for the contents of appraisals or engineering or feasibility estimates or evaluations made by or for a public agency relative to the disposal of property.

Finally, the bill requires requests for records submitted to the Kansas Bureau of Investigation (KBI) central repository or other KBI repositories supporting the criminal justice information system to be directed to the criminal justice agency from which the records originated. An exception is provided for requests of summary data compiled from information submitted by multiple criminal justice agencies.

Kansas Open Records Act Exceptions; HB 2012

HB 2012 extends to July 1, 2018, the following Kansas Open Records Act exceptions that had been set to expire July 1, 2013:

- Documents and records related to contract negotiations or civil proceedings to which the DeSoto/Johnson County Riverfront Authority is a party (KSA 12-5811);
- Preliminary examination reports or results, examination reports, or matters relating thereto performed by the Commissioner of Insurance of any insurance

company in the process of organizing or applying for admission to do business in the state (KSA 40-222);

- Documents, materials, or other information furnished to the Insurance Department pursuant to the Property and Casualty Actuarial Opinion Letter Law or obtained in an investigation pursuant to this section (KSA 40-223j);
- Various documents related to viatical settlement contracts and the Viatical Settlements Act of 2002 (KSA 40-5007a, KSA 40-5009a, and KSA 40-5012a);
- Prescription Monitoring Program database, all information contained therein, and any records maintained by the Board of Pharmacy or any entity contracting with the Board, submitted to, maintained, or stored as a part of the database (KSA 65-1685);
- Portions of the administrative record of Board of Pharmacy disciplinary proceedings (KSA 65-1695);
- Non-disciplinary resolutions adopted by the Board of Healing Arts or a peer review committee (KSA 65-2838a);
- Information provided by providers of wireless, wireline, cable-modem and other technological means of providing high speed internet access to the Broadband Deployment Reporting Program (KSA 66-1251; act set to expire pursuant to KSA 66-1254);
- Data or information provided by an operator of a tier 1, 2, or 3 facility to the Underground Utility Damage Prevention Notification Center (KSA 66-1805);
- Information or official records of the Compact on Educational Opportunity for Military Children that would adversely affect personal privacy rights or proprietary interests and all minutes and documents of a closed meeting (KSA 72-60c01);
- Information received by the Kansas Bureau of Investigation as part of background investigations for appointees to positions subject to confirmation by the Senate and, at the direction of the Governor, all judicial appointments (KSA 75-712); and
- Agreements between the Secretary for Children and Families and an entity engaged in the business of matching information about child support debtors and insurance claimants (KSA 75-5366).

The bill also provides that an exception no longer would be subject to review and expiration if the Legislature twice has reviewed and continued the exception or reviews and continues the exception during the 2013 Legislative Session or thereafter.

Open Records Act Exception for Utilities; HB 2128

HB 2128 provides that a public agency is not required to disclose records of a utility concerning information about cyber security threats, attacks, or general attempts to attack utility operations provided to law enforcement agencies, the Kansas Corporation Commission, the Federal Energy Regulatory Commission, the Department of Energy, the Southwest Power Pool, the North American Electric Reliability Corporation, the Federal Communications Commission, or any other federal, state, or regional organization that is responsible for safeguarding telecommunications, electric, potable water, waste water disposal or treatment, motor fuel, or natural gas energy supply systems.

The bill also strikes a reference to the Ombudsman of Corrections to reflect repeal of statutory provisions concerning the Ombudsman in 2012. In addition, the bill makes a technical amendment.

RETIREMENT

Changes in KPERS Retirement Law; HB 2213

HB 2213, the 2013 KPERS Omnibus bill, modifies the Kansas Public Employees Retirement System (KPERS), the Retirement System for Judges, and the Kansas Police and Fireman's (KP&F) Retirement System.

Updates to 2012 KPERS Retirement Law

The bill revises the KPERS Act of 2015, enacted in 2012, and other KPERS provisions to correct certain technical errors in the current Tier 1 and Tier 2 plans, and in the Tier 3 plan (the new cash balance plan):

- Corrects internal references in statute relating to a member failing to make an election;
- Clarifies the higher 1.85 multiplier applies to Tier 2 members retiring under early retirement provisions, as well as to those retiring on or after normal retirement dates;
- Conforms the term "additional interest rate" to match the term "additional interest credit," as used elsewhere in the law;
- Clarifies a vested member who terminates with ten years of service without withdrawing the employee's contributions and interest may retire under early retirement provisions at age 55;
- Changes a reference to the "pre-2014 act" (Tiers 1 and 2) to the "pre-2015 act" to reflect the effective date of the Tier 3 cash balance plan; and
- Corrects internal references to ensure members retiring under either early retirement provisions or at normal retirement are eligible for the \$4,000 retiree death benefit.

Updates to Judges, KP&F Retirement Plans

The bill makes changes in the Retirement System for Judges and the KP&F Retirement System.

The changes in the KP&F plan:

- Raise the cap on maximum KP&F member retirement benefits from 80.0 percent to 90.0 percent of final average salary;

- Increase the KP&F employee contribution rate from 7.0 percent to 7.15 percent for all years of service to self-fund the benefit increase from the active KP&F employees; and
- Permit active KP&F members to pay a lump-sum amount prior to or on the member's date of retirement if they are currently employed and eligible for the higher retirement benefit, if they have more than 32 years of service, and if they elect to enhance the individual retirement benefit at their own cost.

The changes in both the Judges and KP&F plans:

- Allow retired members who divorce after retirement to have the District Court order the cancellation of the joint annuitant option for the ex-spouse. Additionally, the retired member's benefit would be returned to the maximum amount, if ordered by the District Court of the county where the divorce action was filed. The retired member would not be able to name a subsequent joint annuitant once the original joint annuitant option has been canceled.

KPERS—Employer Contribution Moratorium; HB 2228

HB 2228 reduces the Kansas Public Employers Retirement System (KPERS) participating employers' contribution rate to 0.85 percent from July 1, 2013, to June 30, 2015. The rate will return to 1.0 percent on July 1, 2015, for the Death and Long Term Disability Benefits Plan administered by KPERS for state, school, and local public employees who are eligible for membership.

The bill also institutes a moratorium on all payments by KPERS participating employers from April 1 to June 30, 2013, in order to make the statutory change approved by the 2012 Legislature in enacted House Sub. for SB 294 (the 2012 appropriations bill).

STATE FINANCES

State Budget; SB 171

SB 171 makes supplemental appropriations for FY 2013 (and FY 2014 for selected fee-funded agencies); and appropriations, including capital improvements for FY 2014 and FY 2015.

FY 2013

The approved FY 2013 budget totals \$14.324 billion, including \$6.166 billion from the State General Fund. The approved budget is a reduction of \$49,086, or less than 0.1 percent, below the amended Governor's recommendation from all funding sources. It is a reduction of \$10,864, or less than 0.1 percent, below the amended Governor's recommendation from the State General Fund. FTE positions total 38,343.1, a decrease of 47.0 FTE positions below the Governor's amended recommendation. The FY 2013 approved budget provides for a State General Fund ending balance of \$613.3 million, or 10.0 percent of expenditures.

FY 2014

For FY 2014, the approved budget totals \$14.536 billion, including \$5.964 billion from the State General Fund. This represents a decrease of \$64.9 million, or 0.4 percent, below the amended Governor's recommendation from all funding sources, and a decrease of \$105.7 million, or 1.7 percent, below the Governor's amended recommendation from the State General Fund. FTE positions total 38,035.9, a decrease of 241.5 FTE positions, or 0.6 percent below the Governor's recommendation. The FY 2014 approved budget provides for a State General Fund ending balance of \$520.3 million, or 8.7 percent of expenditures. Among the approved adjustments to the Governor's FY 2014 recommendations:

- The net deletion of \$33.0 million, including \$23.3 million from the State General Fund, for FY 2014 in the budget of the **State Board of Regents and the postsecondary education institutions**, largely for FY 2014 salary reductions (\$10.3 million) and for a 1.5 percent reduction to most State General Fund expenditures (\$9.4 million).
- The deletion of \$34.0 million, all from the State General Fund, for FY 2014, in the Department of Education. The Governor had recommended utilizing \$107.3 million from the **State Highway Fund** to pay costs associated with student transportation in the budget of the Department of Education. Most of the deletion in the approved budget (\$33.0 million) is due to the decision to accelerate an additional \$33.0 million of funding the Governor had recommended be transferred from the State Highway Fund to the Special Education Transportation Weighting Fund in FY 2015 to FY 2014. As a result of the increased State Highway Fund transfer, State General Fund special education expenditures are decreased by the same amount.
- The deletion of \$8.2 million, including \$8.0 million from the State General Fund, for FY 2014 in the budgets of the **Department of Corrections, including the adult and juvenile correctional facilities**. Most of the reduction (\$6.5 million) is

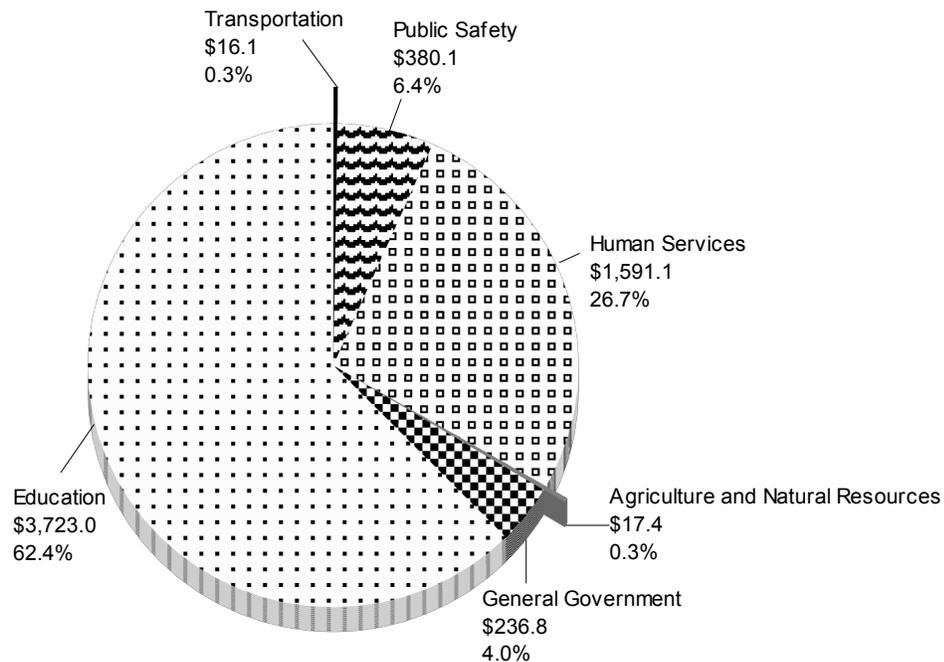
related to passage of 2013 HB 2170, which makes changes to sentencing, probation, and postrelease supervision statutes and is expected to generate State General Fund savings.

- FY 2014 State General Fund reductions totaling \$26.8 million in the **Judicial Branch**, partially offset by increased docket fee expenditures of \$21.8 million related to continuing the Judicial Branch surcharge and redirecting docket fees to a newly created fund within the Judicial Branch.
- The addition of \$3.5 million in the budget of the **Kansas Department of Transportation** for FY 2014 for planning costs for a new forensic science laboratory at Washburn University for use by the Kansas Bureau of Investigation. The funding would come from a transfer from the State Highway Fund to the newly created Municipal University Forensic Laboratory Fund, and Washburn University would be required to repay the \$3.5 million back to the State Highway Fund during FY 2015.
- The deletion of \$41.8 million, including \$22.1 million from the State General Fund, to reflect agency salary reductions which **reduces the authority of agencies to expend funds for salaries and wages** for FY 2014. The reductions are the lesser of either the Governor's recommendation for FY 2014, or FY 2013 salaries as adjusted for increased Kansas Public Employees Retirement System contributions and salary adjustments made by the 2013 Legislature.
- The deletion of \$3.1 million, all from the State General Fund, for FY 2014 to require agencies to self-fund the State General Fund portion of the statutory \$40 **longevity** payment for eligible state employees.
- The deletion of \$3.6 million, including \$516,734 from the State General Fund, for FY 2014 for a \$1 per square foot **rent reduction** and a reduction in the **Monumental Building Surcharge Rate** negotiated with the Department of Administration.
- A reduction of \$7.1 million in State General Fund revenue for FY 2014, as the result of reinstating a portion of the transfer to the **Oil and Gas Valuation Depletion Trust Fund**. For FY 2014, 7.0 percent would go to the Special County Mineral Production Tax Fund; 6.0 percent to the Oil and Gas Valuation Depletion Trust Fund, and the remainder to the State General Fund.
- The Legislature approved the Governor's recommendation to the decrease the **KPERS death and disability insurance rate**, which had been scheduled to increase to 1.0 percent for FY 2014 (from 0.769 percent in FY 2013) and to continue at 1.0 percent for FY 2015. The Governor's recommendation decreased this percentage to 0.85 percent for both years.
- The reduction of 241.5 **FTE positions** for FY 2014, including reductions of vacant positions at the Department of Transportation (100.0 FTE positions); and the Department of Revenue (50.0 FTE positions), In addition, 38.5 FTE positions were deleted at Parsons State Hospital and Training Center in connection with

the deletion of funding for an aged and infirm unit for the Sexual Predator Treatment Program on the grounds of Parsons State Hospital.

The following pie chart reflects approved State General Fund expenditures by function of government for FY 2014:

**FY 2014 Approved State General Fund Budget
by Function of Government
(Dollars In Millions)**



Total: \$5,963.7

FY 2015

For FY 2015, the approved budget totals \$13.925 billion, including \$5.775 billion from the State General Fund. This represents a decrease of \$67.6 million, or 0.5 percent, below the amended Governor's recommendation from all funding sources, and a decrease of \$36.1 million, or 0.6 percent, below the Governor's amended recommendation from the State General Fund. FTE positions total 38,029.5, a decrease of 242.0 FTE positions, or 0.7 percent below the Governor's recommendation. The FY 2015 approved budget provides for a State General Fund ending balance of \$331.5 million, or 5.4 percent of expenditures. Among the approved adjustments to the Governor's FY 2015 recommendations:

- The net deletion of \$32.8 million, including \$25.4 million from the State General Fund, for FY 2015 in the budget of the **State Board of Regents and the postsecondary education institutions**, largely for FY 2015 salary reductions

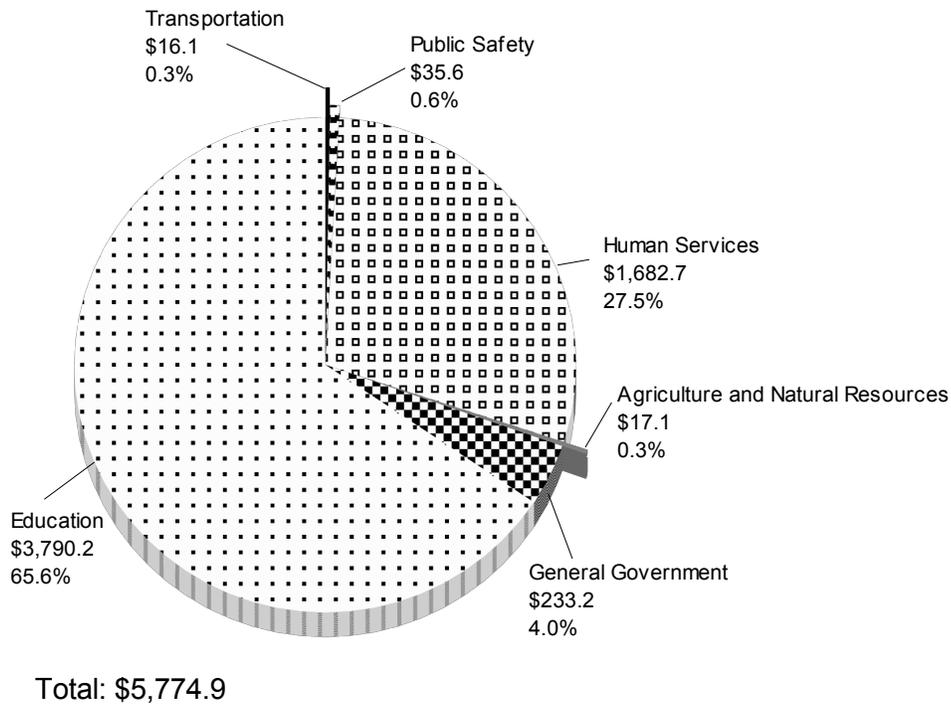
(\$5.3 million) and for a 1.5 percent reduction to most State General Fund expenditures (\$11.0 million).

- The addition of \$33.2 million, all from the State General Fund, for FY 2015 in the **Department of Education**. The Governor had recommended a total of \$140.3 million be transferred from the State Highway Fund to the Department of Education to provide funding for transportation weighting, special education services, and career and technical education. Most of the increase (\$33.0 million) is due to the decision to accelerate \$33.0 million of funding the Governor had recommended be transferred from the State Highway Fund to the Special Education Transportation Weighting Fund in FY 2015 to FY 2014. As a result of the decreased State Highway Fund transfer for FY 2015, State General Fund special education expenditures are increased by the same amount.
- The entire operating budget for the **Department of Corrections, including the adult and juvenile correctional facilities**, was vetoed by the Governor for FY 2015. This effectively eliminates the operating budget for these agencies leaving only a capital improvements budget for FY 2015.
- FY 2015 State General Fund reductions totaling \$27.9 million in the **Judicial Branch** were partially offset by increased docket fee expenditures of \$21.8 million related to continuing the Judicial Branch surcharge and redirecting docket fees to a newly created fund within the Judicial Branch.
- The deletion of \$38.3 million, including \$22.6 million from the State General Fund, to reflect agency salary limitations which continues to **limit the authority of agencies to expend funds for salaries and wages** for FY 2015.
- The deletion of \$3.2 million, all from the State General Fund, for FY 2015 to require agencies to self-fund the State General Fund portion of the statutory \$40 **longevity** payment for eligible state employee.
- The deletion of \$3.6 million, including \$517,883 from the State General Fund, for FY 2015 for a \$1 per square foot **rent reduction** and a reduction in the **Monumental Building Surcharge Rate** negotiated with the Department of Administration.
- A reduction of \$12.5 million in State General Fund revenue for FY 2015, as the result of reinstating a portion of the transfer to the **Oil and Gas Valuation Depletion Trust Fund**. For FY 2015, 7.0 percent would go to the Special County Mineral Production Tax Fund; 8.0 percent to the Oil and Gas Valuation Depletion Trust Fund; and the remainder to the State General Fund.
- The Legislature approved the Governor's recommendation to the decrease the **KPERS death and disability insurance rate**, which had been scheduled to increase to 1.0 percent for FY 2014 (from 0.769 percent in FY 2013) and to continue at 1.0 percent for FY 2015. The Governor's recommendation decreased this percentage to 0.85 percent for both years.

- The reduction of 242.0 **FTE positions** for FY 2015, including reductions of vacant positions at the Department of Transportation (100.0 FTE positions); and the Department of Revenue (50.0 FTE positions). In addition, 38.5 FTE positions were deleted at Parsons State Hospital in connection with the deletion of funding for an aged and infirm unit for the Sexual Predator Treatment Program on the grounds of Parsons State Hospital and Training Center.

The following pie chart reflects the FY 2015 approved State General Fund budget by function of government.

**FY 2015 Approved State General Fund Budget
by Function of Government
(Dollars In Millions)**



Canceled Warrants; HB 2139

HB 2139 amends the law governing canceled warrants and unclaimed property.

Under the prior law, State of Kansas checks have been canceled after being unclaimed for one year. The unclaimed funds were placed in the Canceled Warrants Fund, from which

payments could be made for up to four years from the original date of cancellation. This process, in effect, set a five-year limitation on the ability of taxpayers to claim their property.

The bill abolishes the Canceled Warrants Payment Fund and transfers all balances accrued from unpaid canceled warrants to the State General Fund. The bill also includes language stating any programming costs incurred by the Department of Administration to implement the bill will come from the agency's existing resources. In addition, the bill prohibits the agency from requesting any additional funding for programming costs associated with the bill.

Further, the bill considers the unclaimed funds to be unclaimed property as defined in state law and deletes the five-year limitation for taxpayers to claim funds from a canceled State check.

STATE GOVERNMENT

Periodic Audits; SB 1

SB 1 reduces the frequency of financial management practice audits of the State Treasurer's Office and the Pooled Money Investment Board (PMIB) from every year to every two years. In addition, the bill requires a transition audit within two weeks of a new State Treasurer taking office.

Division of Emergency Management—Land Transfer; SB 28

SB 28 authorizes the Division of Emergency Management, Adjutant General's Department, to accept from the federal government a transfer of land in Saline County. The tract of land includes Crisis City, a 153-acre training complex located eight miles southwest of Salina. (The Crisis City facility hosts training exercises for emergency responders and support agencies.)

Revision to Prison-made Goods Act; SB 74

SB 74 revises the Prison-made Goods Act. The Secretary of Corrections is prohibited from establishing or maintaining a home building program that would compete with manufactured or modular homes constructed privately. The bill allows for the continuation of a vocational building program, whereby the Department of Corrections may provide buildings to state agencies. The size of the buildings is limited to 1,000 square feet.

The terms "manufactured home," "manufactured home dealer," "manufactured home manufacturer," and "modular home" have the same definitions as found in the Kansas Manufactured Housing Act.

Native American Legislative Day at the Capitol, Native American Day, Awarding of Diplomas to Children in the Custody of an Indian Tribe; SB 111

SB 111 designates the first Wednesday of February 2014 and the first Wednesday of February each year thereafter as "Native American Legislative Day at the Capitol" and also changes the title of "American Indian Day" to "Native American Day," which continues to be recognized on the fourth Saturday of September.

The bill also adds children "in the custody of a federally recognized Indian tribe in this state" to the list of individuals awarded a high school diploma upon the completion of existing requirements.

Boiler Safety Act and Boiler Inspection Fee Fund; SB 135

SB 135 shifts responsibility for administering the Boiler Safety Act to the State Fire Marshal from the Department of Labor. The transfer includes the Boiler Inspection Fee Fund and certain employees to be transferred to the State Fire Marshal that are paid from that funding source.

In addition, the bill removes “pressure vessels used to store or transport anhydrous ammonia” from the provisions of the Act and authorizes the State Fire Marshal, upon finding a violation of the Act, to impose a civil penalty not to exceed \$1,000 for each day of unlawful operation. The entire amount received from the civil penalties is deposited in the State General Fund.

Highway Patrol Training Center Fund; HB 2149

HB 2149 eliminates an annual \$500,000 transfer from the Highway Patrol Training Center Fund to the State General Fund. All monies credited to the Highway Patrol Training Center Fund remain in the Fund.

Prohibiting Use of State Appropriated Moneys for Gun Control; HB 2162

HB 2162 prohibits the use of state-appropriated money, aside from normal and recognized executive and legislative relationships, for:

- Publicity or propaganda purposes relating to gun control; or
- Preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat:
 - The enactment of legislation before the federal government, state legislature, or a local government legislative body relating to gun control; or
 - Any proposed or pending regulation, administrative action, or order issued by the federal government, any state agency, or any local government relating to gun control.

Additional prohibited uses include paying the salary or expenses of any grant or contract recipient, or agent acting on behalf of a recipient, related to any activity designed to influence the enactment of legislation, an appropriation, a regulation, an administrative action, or an executive order proposed or pending before the federal government, the Kansas Legislature, or local government legislative body relating to gun control.

The bill specifies these prohibitions include any activity to advocate or promote any proposed, pending, or future:

- Federal, state, or local tax increase relating to gun control; or
- Requirement or restriction on any legal consumer product, including its sale or marketing, relating to gun control.

Executive Chief Information Technology Officer; HB 2200

HB 2200 establishes the Office of Information Technology Services, headed by the Executive Chief Information Technology Officer (ECITO), an appointee of the Governor. The bill abolishes the Division of Information Systems and Communications (DISC) and the position of Director of DISC. All responsibilities of DISC are transferred to the Office of Information Technology Services.

TAXATION

Taxation—Various Provisions; House Sub. for SB 83

House Sub. for SB 83 enacts service fees related to delinquent tax liabilities; makes adjustments to various income and severance tax provisions enacted in 2012; establishes “click-thru” nexus language relating to sales and use tax; provides a property tax exemption for certain new automobile manufacturing property; authorizes local units of government under certain circumstances to request state loans to assist with refunding money to property taxpayers; provides several changes relating to property tax valuation and administration; and implements a number of changes in the property tax system for watercraft.

The provisions of the bill are expected to reduce FY 2014 State General Fund receipts by \$10.5 million relative to prior law.

Service Fee Provisions

The bill increases the service fee assessed to set up an installment payment plan for delinquent tax liability in excess of 90 days from \$10 to \$25. The Department of Revenue is further authorized to assess a service fee of \$50 for partial or full abatement requests and to withhold \$22 for any funds remitted to the U.S. Internal Revenue Service. All moneys from the fees will be deposited into the Recovery Fund for Enforcement Actions and Attorney Fees and be used for administration and operational costs.

Income Tax Provisions

One part of 2012 legislation that had required taxpayers who are partners or Subchapter S corporation shareholders to compute a different adjusted basis for their partnership interests or Subchapter S stock for Kansas income tax purposes than they do for federal income tax purposes is repealed.

An additional section clarifies for Kansas income tax purposes, the add back to federal adjusted gross income required of certain losses for Subchapter S corporations does not apply to those entities with wholly owned subsidiaries subject to the financial institutions privilege tax.

A number of other provisions are technical in nature and do not change state policy, including clarifying references to certain federal forms and schedules; adjusting provisions relating to itemized deductions and the food sales tax rebate program; and correcting certain statutory references within the Kansas income tax code.

Severance Tax Provisions

Another section clarifies that the 50-barrel-per-day threshold enacted in 2012 relative to being excluded from the new pool severance tax exemption for oil will be determined based on the initial six months of production from each well.

Sales Tax “Click-Thru” Nexus Provisions

Additional sections implement “click-thru” nexus provisions relating to sales and use taxation. One part expands the definition of a retailer doing business in this state for purposes of sales and use tax collection to include those retailers and affiliated persons who enter into certain agreements with Kansas residents. Such agreements include those entered into with one or more residents of Kansas under which the resident, in exchange for some consideration, directly or indirectly refers potential customers from Kansas so long as the cumulative gross receipts stemming from transactions generated by such references exceed \$10,000 during the preceding 12 months. The bill also creates provisions of law by which retailers may submit proof they do not meet the requirements established in the expanded definition.

Other language in the bill provides that any vendor selling or leasing tangible personal property to the state is required to register as a retailer for Kansas sales tax purposes; and that any ruling, agreement, or contract between a retailer and the State of Kansas executive branch concerning a sales and use tax exemption, despite the presence of a warehouse or distribution center, is null and void unless specifically approved by each chamber of the Legislature.

Property Tax Exemption – Auto Manufacturing

The bill further provides a property tax exemption retroactive to tax year 2012 for all new automobile manufacturing property, defined generally to mean all real property purchased or constructed after December 31, 2011, by qualifying automobile manufacturers. The exemption applies only for a period of ten calendar years, and owners are required to make all payments in lieu of taxes mutually agreed to with local taxing subdivisions.

Pooled Money Investment Board (PMIB) Loans to Local Units

Another provision extends to all other taxing units authority currently only available to counties to request PMIB loans for payment of property tax refunds when taxpayers have prevailed in assessed valuation challenges involving more than 5 percent of total countywide valuation.

Property Tax – Valuation and Administration

Other sections of the bill make several changes relating to property tax valuation and administration.

One set of provisions clarifies that during valuation hearings at the Court of Tax Appeals, values determined by county appraisers will have the initial presumption of validity and correctness with regard to leased commercial and industrial property, unless taxpayers had, within 30 days after certain informal hearings conducted earlier in the appeals process, furnished to counties complete income and expense statements for the previous three years.

Additional provisions relating to the correction of errors expand the types of clerical errors resulting in understatement of values or taxes to include errors in the description or quantity of real estate listed, errors placing improvements in the wrong tract or lot and errors placing real or personal property in the wrong taxing jurisdiction; and clarify that the Court of Tax

Appeals has authority to order additional assessments or tax bills to be issued relative to the finding of such errors.

Taxation of Watercraft

A final section implements changes to the property tax system for watercraft such that the current 30 percent assessment level will be reduced to 11.5 percent in tax year 2014; and then to 5 percent in tax year 2015 and thereafter. The minimum amount of annual tax levied would never fall below \$12 under any circumstances for all watercraft subject to taxation.

“Watercraft” is defined to include those vessels requiring numbering pursuant to KSA 32-1110. The reduced assessment rates also will be extended to certain trailers designed to launch, retrieve, transport, and store the watercraft, as well as nonelectric motors necessary to operate them on the water.

Sales and Income Tax; HB 2059

HB 2059 makes a number of adjustments to sales and income tax law; clarifies the severance tax law on helium; expands the Rural Opportunity Zone (ROZ) Program; makes a minor change regarding the transfer of title of certain tax-exempt property; and authorizes tax abatement for disaster-damaged property.

Sales Tax Provisions

The bill sets the sales and use tax rate at 6.15 percent on July 1, 2013. The rate since July 1, 2010, had been 6.3 percent but had been scheduled to be reduced to 5.7 percent on July 1, 2013.

Sales and use tax disposition of revenue provisions are adjusted to provide that the net of additional revenues in excess of 5.7 percent is to be deposited exclusively into the State General Fund (SGF).

Income Tax Provisions

Relative to the individual income tax, a number of changes are enacted to Kansas itemized deductions. The deduction for certain gambling losses is repealed altogether. Most other itemized deductions (except the deduction for charitable contributions, which is fully retained) are reduced by 30 percent in tax year 2013; 35 percent in tax year 2014; 40 percent in tax year 2015; 45 percent in tax year 2016; and 50 percent in tax year 2017 and thereafter.

Kansas standard deduction levels for married taxpayers filing jointly and for single heads-of-household are reduced to \$7,500 and \$5,500 respectively, beginning in tax year 2013. Legislation enacted in 2012 had raised both standard deduction levels (from \$6,000 for married filing jointly and \$4,500 for heads of household) to \$9,000 beginning in tax year 2013.

A new series of individual income tax rate cuts are provided beginning in tax year 2014, when the current bottom bracket of 3.0 percent is reduced to 2.7 percent, and the current top bracket of 4.9 percent is reduced to 4.8 percent. In tax year 2015, the top bracket is further

reduced to 4.6 percent. The two rate brackets are set at 2.4 and 4.6 percent, respectively, in tax year 2016; 2.3 and 4.6 in tax year 2017; and 2.3 and 3.9 percent in tax year 2018.

Future formulaic income tax rate relief could be provided under certain circumstances, beginning as early as tax year 2019, based on the extent to which a specified group of SGF tax sources has increased over the previous fiscal year. Generally, rate relief will be triggered under the formula once that group of taxes exceeds the previous fiscal year's levels (beginning with FY 2018 growth over FY 2017) by 2 percent or more.

Additional language partially restores the food sales tax rebate program, which had been repealed altogether by 2012 law. The income tax credits that may be claimed by eligible households now will be nonrefundable, whereas under prior law (before the repeal) the credits had been refundable.

Severance Tax on Helium

The definition of natural gas for severance tax purposes also is modified to clarify that it includes "all other raw, unrefined gases, all constituent parts of any such gas or gases and refined products derived from any such gas or gases, including, but not limited to, methane, ethane, propane, butane, and helium."

The bill further eliminates retroactively all refund claims associated with the notion that any constituent part of gas and any refined products derived from gas were not taxable under the 1983 severance tax imposition.

ROZ Program

The bill places 23 additional counties (generally those with populations of 15,000 or less) into the ROZ Program. The program offers individuals who relocate from outside of the state to qualifying counties a full state income tax exemption through tax year 2016 and the opportunity to receive student loan repayments from those qualifying counties that also have chosen to participate in a special repayment-matching program with the state.

The following counties are added to the former 50 counties designated as ROZ-eligible: Allen, Anderson, Bourbon, Brown, Chase, Clay, Coffey, Doniphan, Ellsworth, Grant, Gray, Haskell, Jackson, Linn, Marshall, Meade, Morris, Nemaha, Neosho, Ottawa, Rice, Stevens, and Wabaunsee.

Title of Certain Tax-Exempt Property

The bill removes a requirement that the title of certain tax-exempt property constructed or purchased with the proceeds of Industrial Revenue Bonds (IRBs) be transferred to the city or county issuing the IRBs during the duration of the exemption.

Tax Abatement for Disaster-Damaged Property

The bill authorizes counties to grant property tax abatement or credits to owners of homesteads destroyed or substantially destroyed by earthquake, flood, tornado, fire, storm, or

other event that the Governor has declared a disaster, taking effect for taxable years after December 31, 2011, and ending before January 1, 2014.

If the destruction occurs between January 1 and August 15, the owner may apply to the board of county commissioners for the abatement on property taxes due in the current year; or if, in this time period, the taxes have been paid or partially paid, the homeowner may apply for a credit against property taxes payable during any or all of the following three taxable years. If the destruction occurs after August 15 but before the end of the year, the owner may apply to the board of county commissioners for a credit against taxes payable by the owner during any or all of the following three taxable years.

The bill is expected to have the following impact on receipts:

Disaggregated Details of HB 2059
(\$ in millions)

Sales Tax Provisions		Income Tax Provisions						Total
6.15%	Item Ded. Haircut	Changes Std. Ded.	Rate Cuts	ROZ	FS Rebates	Net Inc. Tax		
FY 2014	\$ 193.2	\$ 114.6	\$ 56.3	\$ (35.2)	\$ (1.0)	\$ (20.0)	\$ 114.7	\$ 307.9
FY 2015	218.7	107.4	59.1	(145.1)	(2.0)	(21.0)	(1.6)	217.1
FY 2016	226.9	127.0	62.1	(238.3)	(3.1)	(22.1)	(74.4)	152.6
FY 2017	235.4	148.3	65.2	(317.4)	(4.2)	(23.2)	(131.3)	104.1
FY 2018	244.3	166.5	68.4	(459.5)	0.0	(24.3)	(248.9)	(4.6)
5 yr-total	\$ 1,118.5	\$ 663.8	\$ 311.1	\$ (1,195.5)	\$ (10.3)	\$ (110.5)	\$ (341.4)	\$ 777.1

Note: Totals may not add due to rounding

Property Tax Exemption—Military Housing; HB 2135

HB 2135 clarifies, retroactive to tax year 2006, that any and all housing developments and related improvements located on U.S. military installations and used exclusively or primarily by military personnel and their families are exempt from property taxation, notwithstanding the fact the property may have been developed pursuant to the military housing privatization initiative.

TRANSPORTATION AND MOTOR VEHICLES

Locations of Driver's License Offices; SB 68

SB 68 allows all locations for driver's license examinations to be established by the Secretary of Revenue, by removing a requirement that a commercial driver's license also be issued at certain locations.

Vehicle Registration Requirement Updates; SB 69

SB 69 amends certain motor vehicle registration requirements.

- The bill requires a vehicle dealer or manufacturer to provide proof that at least the first half of owed property tax had been paid if the dealer or manufacturer applies for registration before May 10, changed from June 21, to reflect tax deadlines elsewhere in statute.
- The bill changes the fee for a duplicate registration receipt from \$.50 to \$1.00 to correct an inconsistency between two statutes and remove a redundant listing of the fee amount.
- The bill increases the weight limit for trucks for which the Secretary of Revenue could issue any rules and regulations necessary for amateur radio operator license plates, from 16,000 pounds to 20,000 pounds, to be consistent with the weight limit for eligibility for the license plate. (To date, there are no such rules and regulations.)
- The bill deletes language requiring multiple hard copy forms to be completed for the registration of antique vehicles, to reflect current Division of Vehicles procedures.
- The bill amends requirements by which vehicle dealers receive temporary registration permits, to reflect current practice.

Motor Vehicle Registration Facilities; SB 96

SB 96 allows a county with multiple vehicle registration facilities to charge a fee for each vehicle registration or renewal in an amount not to exceed \$5. A county with a single registration facility will be allowed to charge a fee for each vehicle registration or renewal in an amount not to exceed \$2.50. A county with multiple facilities previously has been authorized to charge such a fee at each of its registration facilities except one (usually excluding the primary county treasurer location).

Driver's Licenses and Identification Cards Related to Veterans; SB 136

SB 136 allows a veteran to have "VETERAN" printed on the front of a state-issued driver's license or non-driver identification card. The bill defines veteran as "someone who

served in the military and was honorably discharged or generally discharged under honorable conditions." The bill requires a veteran provide proof of military service and discharge by presenting a form DD214 or an equivalent form.

The bill also amends provisions related to motor vehicle records. The bill states such records are open except as provided by provisions of the Vital Statistics Act. The bill specifies that motor vehicle records may be transmitted for the purpose of processing voter registration applications. Also, the bill allows the Secretary of Revenue to provide names and addresses from motor vehicle records to the Kansas Commission on Veterans Affairs for the purposes of assisting the Commission in notifying veterans of the facilities, benefits, and services available to veterans in the State of Kansas.

The bill takes effect July 1, 2014.

Administration of Motor Vehicle Functions; Titling and Registration; SB 164

SB 164 creates the statutory mechanism to allow the Department of Revenue (Department) to contract out to a person, partnership, corporation, local or county government, county treasurer, or other state agency any services associated with vehicle functions. The bill also alphabetizes various definitions related to registration of vehicles, adds six definitions for terms related to vehicle registration ("contractor," "electric vehicle," "electronic notice of security interest," "lien," "notice of security interest," and "vehicle functions"), modifies two definitions, and makes related technical amendments.

The bill allows the Department to appoint contractors to perform functions relating to certificates of title, driver's licenses, division-issued identification cards, and personal property taxation duties. For services related to the application, processing, auditing, and distribution of original or renewal vehicle registrations, the Department first must determine that a county treasurer has failed to maintain minimum standards of practice and service, as determined by the Department, before a contractor may be appointed.

The Secretary of Revenue is authorized to adopt rules and regulations to implement and administer contracts with county treasurers and contractors to perform vehicle functions and establish minimum standards and practices for vehicle functions. Any Department order suspending or revoking a county treasurer's responsibility to perform vehicle functions must include requirements for the county treasurer's reinstatement.

The definition of "motor home" in the Uniform Act Regulating Traffic is modified, from "a vehicle designed, used or maintained primarily as a mobile dwelling, office or commercial space" to "a vehicle designed to provide temporary living quarters for recreational, camping or travel use." The definition of "automobile dealer" in an insurance statute is modified to reflect vehicle registration statute definitions of "new vehicle dealer" and "used vehicle dealer" and remove a reference to a repealed statute.

Restricted Driving Privileges; HB 2009

HB 2009 allows a driver facing driver's license suspension for failing to comply fully with a traffic citation to submit a written request to the Division of Vehicles for restricted driving privileges. The request is accompanied by a non-refundable \$25 application fee, which goes to

the Division's operating fund. If the Division finds the applicant is eligible, the Division can restrict driving privileges for up to a year, or until the person fully complies with all citations.

If the person fails to comply within a year, the license will be suspended until the court determines the person has complied with the terms of the traffic citation. The bill requires the court to immediately notify the Division when the person has complied with the terms of the traffic citation, after which the Division must immediately end the suspension action.

The restricted license available under the bill allows the person to drive to and from work or school, to and from an appointment with a health care provider, during a medical emergency, and to and from probation or parole meetings, drug or alcohol counseling, or any place the court requires a person to go.

License Plates; Special Educational Institution Plates for Motorcycles, Transfer of Distinctive Plates; Senate Sub. for HB 2011

Senate Sub. for HB 2011 authorizes special educational institution license plates for motorcycles, in addition to those that have been available for passenger vehicles and small trucks. Plates for passenger vehicles and small trucks are available for Emporia State University, Fort Hays State University, Kansas State University, Pittsburg State University, the University of Kansas, Washburn University, and Wichita State University.

The bill also directs the Secretary of Revenue to adopt rules and regulations to allow the transfer of distinctive license plates from one vehicle to another when the title to the original vehicle has not been transferred and the name or names of the owner listed on the titles of both vehicles are identical.

Eisenhower Foundation License Plates; HB 2176

HB 2176 authorizes Eisenhower Foundation license plates for passenger vehicles, small trucks, and motorcycles, to be issued on and after January 1, 2014. Anyone who wishes to receive an Eisenhower Foundation (Foundation) license plate would pay an annual royalty amount of at least \$25 but not more than \$100 to the Foundation for the use of its logo, in addition to other statutory license plate fees. Such payment may be made directly to the Foundation or through the county treasurer. The bill requires the Foundation to pay the initial costs of developing the license plate.

Motor Carrier Law Updates; HB 2177

HB 2177 amends certain statutes related to motor carriers:

The bill:

- Deletes an outdated reference to a "local wrecker permit";
- Requires each intrastate driver for a private motor carrier, in addition to each intrastate driver for a public motor carrier, to be at least 18 years old and clearly exempts the intrastate driver of a farm vehicle from that age requirement;

- Amends the seating capacity of a motor vehicle exempt from state motor carrier rules and regulations when not transporting people for profit from 15 plus the driver to 15 including the driver;
- Removes an exemption from state motor carrier rules and regulations for vehicles used to transport water for domestic or livestock consumption (which are exempted elsewhere in statute); and
- Removes language related to materials authorized to be transported by intrastate farmers in nonspecification bulk packaging which were redundant to provisions in the Kansas Corporation Commission's rules and regulations.

The bill also amends a section of the Uniform Commercial Driver's License Act to clarify the exemption for a farm vehicle used either in intrastate commerce or in interstate commerce within 150 air miles of any farm or farms owned or leased by the farm vehicle's registered owner.

Motor Carrier Regulation if Declaration of Drought; HB 2202

HB 2202 provides that whenever the Governor or the U.S. Department of Agriculture declares all or any portion of the State is in a state of drought, certain conditions will apply to motor carriers transporting hay or related animal forage feedstuffs to the geographic area specified in the drought declaration. Those certain conditions are as follows:

- Motor carrier registration and fuel tax permits will be temporarily suspended;
- Licensing, certification, and permitting rules and regulations of the State Corporation Commission will be temporarily suspended;
- These motor carriers may not operate during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise and will be required to comply with flags, signs, and lighting requirements applicable to overwidth vehicles;
- Motor carriers cannot operate during inclement weather;
- Oversize and overweight loads can not be transported when visibility is less than one-half mile or when conditions of moderate to heavy rain, sleet, snow, fog, or smoke exist, or when highway surfaces are slippery due to ice or packed snow; and
- Motor carriers cannot transport a load of more than 12 feet in width and 14 feet, six inches, in height.

Kansas Turnpike; HB 2234

HB 2234 names the Secretary of Transportation (Secretary) as the director of operations of the Kansas Turnpike Authority (KTA). The director of operations will be responsible for the daily administration of the toll roads, bridges, structures and facilities constructed, maintained,

or operated by the Authority, and the director or the director's designee would have such powers as are necessary to carry out those responsibilities. This provision will expire July 1, 2016.

The bill provides the KTA cannot use KTA toll or other revenue in ways other than those established in existing law: maintaining, repairing and operating turnpike projects; paying principal and interest on bonds and creating reserves for the same; fixing and collecting tolls; and entering into certain types of contracts.

The bill changes authority for contracting between KTA and the Kansas Department of Transportation (KDOT) for three years. The bill adds an effective date of July 1, 2016, to provisions in existing law regarding contracting between the KTA and KDOT (generally, allowing KTA to contract with KDOT for use of KDOT resources for certain types of work related to KTA projects).

In a new section, the bill states the KTA retains its separate identity, powers, and duties as an instrumentality of the state; however, the bill in this new section requires duplication of effort, facilities, and equipment between KDOT and the KTA be minimized in operation and maintenance of turnpikes and highways in the state. The KTA and the Secretary are authorized to take actions including the temporary transfer of personnel, property and equipment from the KTA to the Secretary and from the Secretary to the KTA. Further, the bill requires the integrity of the bonded indebtedness be maintained through the actions of the KTA. The provisions of this new section will expire July 1, 2016.

The bill also repeals a number of statutes specific to certain turnpike projects and a 1978 statute authorizing KDOT to sell certain land in Pottawatomie County.

John Bower Memorial Highway; HB 2269

HB 2269 designates a portion of K-92, from the junction of K-92 and 94th Street in Jefferson County south to the northern boundary of McLouth, as the John Bower Memorial Highway. According to testimony, Mr. Bower served 24 years in the House of Representatives, beginning in 1952, and was for many years chairperson of the Education Committee. He died in 2012 at age 100. The bill also would remove from that portion of K-92 the designation of the 95th Division, The Iron Men of Metz.

The bill requires the Secretary of Transportation to place suitable signs to indicate the designation when the Secretary has received moneys from gifts and donations to reimburse the Secretary for the initial costs of the signs plus an additional 50 percent of the initial cost to defray future maintenance or replacement costs.

Motorcycle Headlamps and Side Lights; HB 2318

HB 2318 allows a motorcycle's headlamp to be wired with a headlamp modulation system, which must meet federal standards. The bill also allows certain types of lights on the sides of motorcycles. The bill requires those lights to be visible only from the side and not from the front or rear and to not protrude beyond or outside the body or wheel of the motorcycle. The side lights may emit white, amber, or red light without glare.

242nd Engineer Company Highway; HB 2357

HB 2357 designates a portion of US-169, from the City of Coffeyville north to the junction of US-169 and 3000 Road in Montgomery County, as the 242nd Engineer Company – KS Army National Guard – Highway. According to testimony, the Company's service has included two deployments to Iraq and many missions to assist Kansans dealing with natural disasters, such as a blizzard, the Greensburg tornado, and major flooding in southeast Kansas all in 2007.

The bill requires the Secretary of Transportation to place suitable signs to indicate the designation when the Secretary has received moneys from gifts and donations to reimburse the Secretary for the initial costs of the signs plus an additional 50 percent of the initial cost to defray future maintenance or replacement costs.

VETERANS AND MILITARY

Licensure for Veterans; HB 2078

HB 2078 enacts new law and amends existing requirements for licensing bodies and licensure for military service members, and also amends prior law regarding military experience for the licensing of practical nurses and emergency medical technicians.

Licensing Bodies and Licensure for Military Service Members

Among the provisions relating to licensing bodies and licensure for military service members, the bill:

- Requires a licensing body to accept from an applicant with an honorable discharge (or a general discharge under honorable conditions) the education, training, or service completed in military service toward any educational requirements for certification or licensure;
- Requires the education, training, or service completed in the military to be substantially equivalent to the existing educational requirement of such licensure or certification;
- Allows the licensing body to require documentation related to the education, training, or service;
- Allows a licensing board to accept education, training, or service if a person was separated from military service with a general discharge under honorable conditions;
- Establishes new definitions in existing law;
- Allows a licensing body to issue a temporary permit so the military service member may lawfully practice their occupation when the military service member's current license is not equivalent to the standards of the licensing body. During this time, the military service member must complete any necessary requirements;
- Allows a licensing board to grant certification, licensure, or a temporary permit to any person who meets the necessary requirements and was separated from military service with a general discharge under honorable conditions; and
- Permits licensing bodies to adopt rules and regulations.

The bill defines, in the new law created by the bill, "applicant" as "a person who entered into military service and separated from such military service with an honorable discharge or a general discharge under honorable conditions." The bill also defines the terms "licensing body" and "military service." Under the new requirements established by the bill, a "licensing body"

does not include the Kansas State Board of Nursing and the Kansas Board of Emergency Medical Services.

Additionally, the new requirements do not apply to practice of law or the regulation of attorneys.

Practical or Professional Nursing and Emergency Medical Technician Experience, U.S. Military

The bill authorizes the Board of Nursing to waive a requirement that an applicant graduate from an approved school of practical or professional nursing if the applicant attained a passing score on the National Council Licensure Examination for Practical Nurses and provided evidence of practical nursing experience within the U.S. military.

The applicant must have separated from military service with an honorable discharge or under honorable conditions.

The bill also requires the granting of an Attendant's Certificate to an applicant who holds a current and active certification with the National Registry of Emergency Medical Technicians and who completed emergency medical technician training as a member of the U.S. military. For these provisions to apply, the applicant must have received an honorable discharge or have been separated under honorable conditions.

VCAP Service Grants; HB 2212

HB 2212 allows veterans' service organizations to apply both monetary and non-monetary support (called a "match") in order to continue to qualify for and receive service grants under the Veterans Claims Assistance Program (VCAP). The VCAP Advisory Board will make recommendations on match funding levels. These recommendations will be considered by the Kansas Commission on Veterans Affairs.

APPROPRIATION BILLS

SB 171

This bill contains appropriations for FY 2013, FY 2014, FY 2015, FY 2016, FY 2017 and FY 2018 for various state agencies, capital improvement projects, and claims against the state.

TECHNICAL BILLS

- SB 62** This bill replaces the terms “utility,” “public utility,” “corporation,” “municipal corporation,” and “quasi-municipal corporation” in certain statutes with the term “person” and adds various references to federal regulations, in effect on July 1, 2013.
- SB 246** The bill is a technical measure reconciling amendments to statutes that have been amended more than once during the 2013 Legislative Session and previous legislative sessions. The bill would combine non-contradictory amendments from enacted legislation to produce one version of the statute.
- HB 2006** The bill amends the Kansas Rules and Regulations Filing Act to remove “Kansas” from the name of the Act.
- HB 2013** The bill deletes from the definition of “perjury” a reference to a provision removed from the statutes in 1999. (The provision removed in 1999 required new employees to sign a statement under penalty of perjury concerning whether the person was currently or had been ordered to pay child support pursuant to a court order.)
- HB 2138** The bill repeals seventeen duplicative or obsolete statutes concerning oil and gas.
- HB 2144** This bill repeals outdated statutes concerning juveniles. Specifically, the bill removes an Open Records Act exception concerning confidential reports of foster parents summarizing the adjustment, progress, and condition of a juvenile offender placed in the foster parent’s home. The bill also repeals a statute concerning jurisdiction and placement of juvenile offenders with the Department for Children and Families or the Juvenile Justice Authority and a statute concerning records of certain juveniles in the possession of law enforcement and municipal courts.
- HB 2147** The bill repeals 15 outdated statutes related to roads and bridges. The repealed statutes include requirements for highway signs to list distances in metric units if a U.S. Department of Transportation demonstration project was approved; requirements for heavy planks over certain bridges, culverts, and crosswalks when moving certain types of heavy equipment; and authorization for construction of specified bridges over the Missouri River and requirements for those bridges.
- HB 2156** This bill repeals an obsolete statute regarding the Area Vocational School Fund in the unified school district budget document.
- HB 2294** The bill amends the Kansas Uniform Securities Act by updating references to the Federal Securities Act of 1933 that are no longer accurate and by updating other federal references in the statutes with appropriate section numbers and headings.

BILLS VETOED BY THE GOVERNOR

SB 37 This bill would have repealed the sunset that would have caused the Kansas Home Inspectors Professional Competence and Financial Responsibility Act to expire on July 1, 2013.

HB 2120 The bill would have amended the criminal code concerning the collection of DNA samples by the Kansas Bureau of Investigation (KBI), gambling crimes, and a special sentencing rule related to firearms.

To align the law concerning the KBI's collection of DNA samples with current practices, the bill would have removed references to drawing blood and requires specified persons to submit biological samples to the KBI when a person is fingerprinted as part of the booking procedure. The bill would have amended provisions outlining who must submit such a sample. The bill also would have struck outdated provisions, made other technical amendments, and defined key terms. In the area of gambling crimes, the bill would have amended the definition of "bet" to provide that a bet does not include a "raffle," which is defined in the bill as a fundraising event (criteria for such event is specified in the bill). Finally, the bill would have amended a special sentencing rule related to firearms. Under current law, the rule applies when an offender carried a firearm to commit a drug felony or possessed a firearm in furtherance of a drug felony. The bill would have changed this language to apply the rule when an offender possesses a firearm and such firearm was readily accessible during the commission of, or in furtherance of, a felony involving controlled substances, or any attempt to commit such a crime.

SB 171 This bill includes funding for claims against the state, FY 2013 supplemental expenditures, FY 2014 and FY 2015 appropriations for most state agencies, and FY 2014 and FY 2015 capital improvements for selected state agencies. The bill contains the following line item vetoes.

Dept. of Administration (Line Item) **FICA Refunds** - Section 29(f) would have transferred \$25.0 million to the State General Fund, representing the state share of FICA refunds originally made on behalf of medical residents.

Dept. of Corrections (Line Item) **Transfers** - Sections 44(c), (d), (e), (f); 45 (b); and 173 (h) would have lapsed \$1.9 million from the State General Fund and the Correctional Institutions Building Fund in the current budget and swept \$750,000 from the Correctional Industries Fund to the State General Fund in FY 2014.

Atty. General (Line Item) **Fee Sweeps to State General Fund** - Section 87(h), Section 87 (i), Section 88 (g), Section 88 (h), and Section 88 (i) would have transferred \$200,000 from the Concealed Carry Handgun Licensure Fund in FY 2014, \$1.0 million from the Medicaid Fraud Prosecution Revolving Fund in FY 2014, \$4.0 million from the Court Cost Fund in FY 2015, \$400,000 from the Concealed Handgun Licensure Fund in FY 2015, and \$1.0 million from the Medicaid Fraud Prosecution Revolving Fund in FY 2015 to the State General Fund.

Dept. of Administration (Line Item) **Reserve Fund Sweep** - Section 111(t) would have transferred \$400,000 from the Curtis Office Building Reserve Fund to the State General Fund in FY 2014.

(Line Item) **Elimination of Vacant Positions** - Section 111(w) and Section 112(s) would have abolished 70.0 percent of all vacant positions in each state agency that are vacant for more that 120 calendar days as of June 30, 2014 and June 30, 2015.

Dept. of Commerce (Line Item) **Fund Sweep** - Section 123(l) and Section 124(j) would have transferred \$1.0 million in FY 2014 and \$500,000 in FY 2015 from the Reimbursement and Recovery Fund to the State General Fund.

University of Kansas Medical Center (Line Item) **Enrollment Management** - Section 167(e) and 168(e) would have prohibited expenditures to reduce enrollment or eliminate programs at the Salina, Wichita, Lawrence or Kansas City campus of the University of Kansas Medical Center unless the percentage reduction is the same and imposed equally on all the Medical Center campuses for FY 2014 and FY 2015.

Dept. of Corrections (Line Item) **FY 2015 Budget** - Section 174 would have appropriated funding for the Department of Corrections for FY 2015.

Kansas Water Office (Line Item) - **Weather Modification** - portion of Section 193(c) would have appropriated \$100,000 to the Weather Modification Program Fund.

(Line Item) - **Agency Operations Limitation** - Section 199 and 200 would have limited agency salaries and wages and associated fringes to the FY 2013 levels, after adjusting for both committee action and Kansas Public Employee Retirement System (KPERs) increases for FY 2014 and FY 2015.

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