

2019 Summary of Legislation



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INTRODUCTION

This publication includes summaries of the legislation passed by the 2019 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 146.

During the 2019 Session, 660 bills were introduced: 241 in the Senate and 419 in the House. Of these 660 bills, 68 (10.3 percent) became law: 29 Senate bills and 39 House bills. Further, of the 68 bills becoming law, 64 (94.1 percent) were introduced by committees and 4 (5.9 percent) were introduced by individual legislators. (Substitute bills or bills with conference committee reports whose original subject matter was substantially modified from the content in the introduced sponsor bill are included in the former category.)

The Governor vetoed 3 bills and 4 line items in an appropriations bill (House Sub. for SB 25). The veto of the line items was overridden.

A total of 563 bills will be carried over to the 2020 Session of the Legislature.

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ABORTION

Reproductive Health Act of New York; SCR 1606

SCR 1606 makes findings concerning abortion policy in Kansas and enactment of the Reproductive Health Act by the State of New York.

The resolution states the State of Kansas condemns enactment of the Reproductive Health Act of New York and encourages legislators and executive officials in all 50 states to reject similar legislation.

The resolution requires the Secretary of State to send enrolled copies of the resolution to the Governor of New York and to each member of the New York State Senate and New York State Assembly.

AGRICULTURE AND NATURAL RESOURCES

Kansas Agricultural Remediation Fund; Program Sunsets; HB 2001

HB 2001 extends the sunset on the Kansas Remediation Linked Deposit Loan Program, the Kansas Remediation Reimbursement Program, and the Kansas Agricultural Remediation Fund (Fund) from July 1, 2020, to July 1, 2030.

The bill also lowers the maximum and minimum thresholds of the unobligated principal balances of the Fund from \$5.0 million to \$3.0 million and from \$1.5 million to \$1.0 million, respectively.

In addition, the bill changes the following assessments:

- Increases the amount from \$20 to \$40 for each commercial fertilizer required to be licensed under state law;
- Decreases the amount from \$60 to \$30 for each agricultural chemical required to be licensed under state law;
- Decreases the amount from \$0.00050 to \$0.00025 per bushel of storage capacity for each public warehouse required to be licensed under state law or the federal Warehouse Act; and
- Decreases the amount from \$0.00050 to \$0.00025 per bushel of storage capacity for each public warehouse in the state licensed pursuant to the federal Warehouse Act.

Commercial Industrial Hemp Program; Senate Sub. for HB 2167

Senate Sub. for HB 2167 requires the Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, to submit a plan to the U.S. Department of Agriculture (USDA) regarding how the KDA will monitor and regulate the commercial production of industrial hemp within the state, in accordance with federal law. In addition, the bill establishes the Commercial Industrial Hemp Program; makes changes to the Industrial Hemp Research Program; and establishes hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Creation of the Commercial Industrial Hemp Program

Legislative Intent [New Section 1]

The bill declares it is the intent of the Legislature that the KDA's implementation of the Commercial Industrial Hemp Act (Act) will be conducted in the least restrictive manner allowed under federal law.

Commercial Plan Requirements [New Section 2(a)-(b)]

The bill requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The bill requires the plan to include the following:

- A procedure to maintain relevant information regarding land on which industrial hemp is produced, including a legal description of the land, for a period of no less than three calendar years;
- A procedure for testing the delta-9 tetrahydrocannabinol (THC) concentration levels of industrial hemp produced by using post-decarboxylation or other similarly reliable methods;
- A procedure for the effective disposal of industrial hemp and hemp products found to be in violation of the Act;
- Any licensing requirements or other rules and regulations the KDA deems necessary for the proper monitoring and regulation of industrial hemp cultivation and production for commercial purposes, including, but not limited to, license fees, license renewals, and other necessary expenses to defray the cost of implementing and operating the plan on an ongoing basis;
- A procedure for creating documentation that all persons in possession of industrial hemp before it is processed may use to prove to law enforcement officers the industrial hemp was lawfully grown under this section of the bill;
- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify industrial hemp is not produced in violation of the Act; and
- Any other necessary procedures to meet federal requirements.

Violations [New Section 2(c)]

The bill states a hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations relating to commercial hemp production under an approved commercial plan is not subject to any state or local criminal enforcement action, but is required to comply with the following corrective actions, as applicable:

- Establish a reasonable date by which the hemp producer must correct the negligent violation; and

- Require the hemp producer to periodically report to the KDA on compliance with the production laws and rules and regulations for a period of not less than the next two calendar years.

A hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations three times in a five-year period is ineligible to produce industrial hemp for a period of five years from the date of the third violation.

The bill requires the KDA to immediately report any violation by a hemp producer with a greater culpable mental state than negligence to the Attorney General; the producer may be subject to criminal enforcement.

Ineligibility [New Section 2(d)]

The bill provides an individual is not eligible to produce industrial hemp if the individual has submitted any materially false information in any application to become a licensed hemp producer.

Fingerprinting Requirements and Background Checks [New Section 2(e)]

The bill mandates the KDA to require, as a qualification for initial or continuing licensing, any individual seeking a license or renewal as a hemp producer to be fingerprinted and submit to a state and national criminal history background check. The KDA is authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) for the background checks.

The KDA is allowed to use the information obtained from fingerprinting and background checks for verifying the identification of the individual and for making a determination of the qualifications for initial or continuing licensing as a hemp producer. Disclosure or use of any information received by the KDA for any purpose other than provided for in the Act is a class A misdemeanor and constitutes grounds for removal from office or termination of employment.

The bill disqualifies an individual who has been convicted of a controlled substances felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

The KBI is authorized to charge a reasonable fee for the background check, and the individual seeking a license or license renewal as a hemp producer must pay the costs of fingerprinting and the state and national background checks.

Rules and Regulations [New Section 2(f)]

The bill requires the Secretary of Agriculture (Secretary) to promulgate rules and regulations to implement the plan submitted to the USDA and to otherwise effectuate the production of commercial industrial hemp.

Fees [New Section 2(h)-(i)]

The bill requires any modification fee established by the KDA for any requested change to a license previously issued by the KDA under the Act to not exceed \$50.

The bill also changes the name of the Alternative Crop Research Act Licensing Fee Fund to the Commercial Industrial Hemp Act Licensing Fee Fund (Hemp Fund). Any licensing or other fees collected pursuant to the bill or any adopted rules and regulations will be deposited in the Hemp Fund for all administration costs of the commercial production of industrial hemp.

Changes to the Industrial Hemp Research Program

Accepting Applications [New Section 3]

The bill requires the Secretary to continue accepting any applications for licensure submitted under the Industrial Hemp Research Program enacted in 2018 for the 2019 growing season from March 1, 2019, through June 1, 2019.

Modification Fee [Section 8(c)]

The bill requires any modification fee established by the KDA for any requested change to a license previously issued by the KDA under the Industrial Hemp Research Program to not exceed \$50.

Disqualifications [Section 8(d)(2)]

The bill disqualifies an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

Rules and Regulations [Section 8(e)]

The bill requires the KDA to promulgate rules and regulations to carry out the provisions regarding the research and development of industrial hemp by December 31, 2019, rather than December 31, 2018. The bill prohibits the KDA from promulgating rules and regulations concerning the recording of license plates.

Discontinuing the Program [New Section 2(g)]

The bill allows the KDA to discontinue the Industrial Hemp Research Program if one or more of the following occurs:

- The federal law authorizing states to operate an industrial hemp research program is repealed;

- A federal plan by the USDA allowing for the cultivation and production of commercial industrial hemp is adopted; or
- Rules and regulations by the KDA establishing commercial industrial hemp production in the state are adopted.

Effective Date

Changes to the Industrial Hemp Research Program become effective July 1, 2019, except for changes in application deadlines that took effect April 18, 2019.

Definitions Applicable to Both the Commercial and Research Programs [Section 7]

The bill makes the following changes to definitions in the Act:

- Adds the definitions of “commercial,” “effective disposal,” “hemp producer,” “hemp processor,” “person,” and “authorized seed or clone plants”;
- Deletes the definitions of “certified seed” and “department”; and
- Amends the definitions of “delta-9 tetrahydrocannabinol concentration,” “hemp products,” and “industrial hemp.”

Crimes and Controlled Substances Exceptions [Section 12(aa), Section 13(h)(1)]

The bill includes “industrial hemp” as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances.

The bill also excludes from the Schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;
- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

Hemp Processors [New Section 4]

Hemp Processor Registration [New Section 4(a)-(h)]

The bill requires the KDA to create and maintain a registry of all hemp processors operating within the state. Any person engaged in the processing of industrial hemp must register annually

with the Secretary prior to processing industrial hemp. Such processors must apply for registration on a form provided by the Secretary, and the registration expires on April 30 each year. The fee for registration cannot exceed \$200 and will be established by the Secretary through rules and regulations.

The bill requires the annual registration application, provided by the Secretary, to include at least the following:

- The name, address, and telephone number of the applicant;
- The physical location of any hemp processing operations;
- A brief description of the industrial hemp processing methods, activities, and products; and
- Certification an applicant has fully complied with the fingerprinting and criminal history record check requirements, if applicable.

Any applicant providing a false statement of compliance is guilty of a class C nonperson misdemeanor.

The KDA is required to provide, as often as is reasonably required or requested, an updated list of all hemp processors to the KBI and to the county sheriff in each county where a hemp processor is located.

Hemp processors licensed under the Alternative Crop Research Act (ACRA) are exempt from the hemp processor registration requirements; however, the Secretary must include the processors licensed under the ACRA in the list of registered hemp processors.

The bill requires all fees collected from the registrations to be deposited in the Hemp Fund.

Violations [New Section 4(i)]

The bill makes it unlawful for any person to operate as a hemp processor without valid registration and provides the following sentencing guidelines:

- Upon first conviction for operating as a hemp processor without valid registration, a person is guilty of a class A nonperson misdemeanor; and
- Upon second or subsequent conviction for this violation, a person is guilty of a severity level 9 nonperson felony.

Hemp Processor Employee Fingerprinting and Criminal Record History Checks [New Section 4(j)]

The bill requires registered hemp processors, or those people applying to become registered hemp processors, to request the KBI to conduct state and national criminal record history checks on any employees who will be involved in the extraction of cannabinoids, including through the disposal of cannabinoids from industrial hemp under Section 6. The bill requires the criminal history record checks to include the individual's fingerprints and a copy of a completed and signed statement furnished by the hemp processor. The bill requires the signed statement to include:

- A waiver permitting the hemp processor to request and receive the criminal history record check for the purpose of determining the individual's qualification and fitness to process industrial hemp;
- The name, address, and date of birth of the individual as it appears on a valid identification document;
- A disclosure if the individual has ever been convicted, or is the subject of pending charges, of a criminal offense and, if convicted, a description of the crime and result of conviction; and
- A notice to the individual subject to the criminal history record check that the individual is entitled to obtain a copy of the criminal history record check report to challenge the accuracy and completeness of any information contained in the report before a final determination is made by the hemp processor.

The bill requires a registered hemp processor or an applicant to become a registered hemp processor to be fingerprinted and submit the fingerprints to the KBI and the FBI for a criminal history record check. The bill requires local and state law enforcement officers and agencies to assist the hemp processor in taking and processing an individual's fingerprints.

The bill requires the registered hemp processor or applicant to use the individual's fingerprints to identify the individual and determine whether the individual has a record of criminal history in Kansas or other jurisdictions or countries. The bill authorizes the processor or applicant to use information obtained by the criminal history checks in the official determination of the individual's qualifications and fitness to process industrial hemp. Disclosure or use of any information received by the processor or applicant for any purpose other than provided for in the Act is a class A nonperson misdemeanor.

The KBI is required to release to the registered hemp processor or applicant all records of the individual's adult convictions in Kansas and other states, jurisdictions, or countries in order to make a final determination of the individual's qualification to process industrial hemp.

The bill disqualifies an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from processing hemp.

The bill requires the hemp processor to make the sole determination of the individual's fitness to extract cannabinoids from industrial hemp and does not require the KBI to make such a determination on behalf of any hemp processor.

The bill authorizes the KBI to charge a reasonable fee to conduct a criminal history record check. The bill requires the hemp processor or applicant to pay the costs of fingerprinting and the state and national criminal history record check for the individual seeking employment under the hemp processor.

Rules and Regulations [New Section 4(k)]

The bill authorizes the Secretary to promulgate rules and regulations for registration of hemp processors.

Prohibition on Products; Sentencing Guidelines

Prohibition on Products [New Section 5(a)-(b),(d)]

The bill prohibits the manufacture, marketing, selling, or distribution of the following hemp products:

- Cigarettes containing industrial hemp;
- Cigars containing industrial hemp;
- Chew, dip, or other smokeless material containing industrial hemp;
- Teas containing industrial hemp;
- Liquids, solids, or gases containing industrial hemp for use in vaporizing devices; and
- Any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs Act. This does not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

For this purpose, the bill defines the terms "human or animal consumption" and "intended for human or animal consumption."

In addition, the bill prohibits the marketing, selling, or distribution of industrial hemp buds, ground industrial hemp floral material, or ground industrial hemp leaf material to any person in Kansas who is not registered as a hemp processor by the KDA under a commercial plan.

The bill clarifies this section does not prohibit a state educational institution or affiliated entity from using any hemp product for research purposes or the production, use, or sale of any hemp product otherwise not prohibited by Kansas or federal law.

Sentencing Guidelines [New Section 5(c)]

The bill states, upon first conviction for violation of the section, a person is guilty of a class A nonperson misdemeanor and, upon second or subsequent conviction, a person is guilty of a severity level 9 nonperson felony.

Research Purposes [New Section 5(d)]

The bill ensures nothing in the section prohibits the use of any hemp product for research purposes by a state educational institution or affiliated entity or the production, use, or sale of any hemp product that is otherwise not prohibited by state or federal law.

Waste [New Section 6]

The bill requires all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act to be managed in accordance with all applicable solid and hazardous waste laws and regulations.

If the waste can be used in the same manner as, or has the appearance of, a controlled substance, the bill requires the waste to be rendered unusable and unrecognizable before being transported or disposed. This requirement does not apply to waste managed as a hazardous waste and sent to a hazardous waste facility.

The bill also defines the term “unusable and unrecognizable” with regard to waste derived from the cultivation, production, or processing of industrial hemp under the Act.

The bill makes any violation of this section unlawful under continuing law regarding solid waste.

ALCOHOL AND DRUGS

Temporary Permits; Common Consumption Areas; License Terms; Delivery of Alcoholic Liquors; Farm Wine; Official Red and White Wine Grapes; SB 70

SB 70 amends law concerning temporary permits to serve liquor for consumption on premises; amends law concerning common consumption areas; amends law related to the issuance of licenses by the Division of Alcoholic Beverage Control (ABC), Department of Revenue; creates law related to delivery of alcoholic liquors within the state and required reporting of such deliveries; amends the Liquor Control Act to allow producers of certain fermentative products to sell wine made at a farm winery; and designates the official Kansas red and white wine grapes.

Application for a Temporary Permit

The bill requires applications to be submitted electronically to the Director of Alcoholic Beverage Control (Director). The bill requires a nonrefundable \$25 temporary permit application fee to be paid by a check or a credit card. The bill removes the requirement for any check used to pay the permit fee to be from a bank located in Kansas.

The bill requires an application for a temporary permit to include a diagram showing the boundaries of the premises, entrances, and exits and the area where liquor is served as part of the requirement to specify the premises covered by the temporary permit.

The bill authorizes the Director to reject an application for a temporary permit if:

- The applicant has been granted four permits in the current calendar year;
- The application was not filed with the Director at least 14 days prior to the event;
- The applicant, or any officer, director, partner, registered agent, trustee, manager, or owner of the applicant, has previously owned or operated any entity holding a temporary permit, club, drinking establishment, or caterer's license and had to surrender such permit or license and had been ordered to appear and show cause why the permit or license should not be revoked or suspended;
- The applicant has designated an area for an event that was the subject of the order to appear and show cause and it appears the new application is an attempt to avoid remedial action taken by the Director; or
- The applicant has had a license or permit revoked under the Club and Drinking Establishment Act, or has been convicted of a violation of the Kansas Liquor Control Act, the Club and Drinking Establishment Act, the Kansas Cereal Malt Beverage Act, or laws related to liquor drink tax.

Rights and Responsibilities of Temporary Permit Holders

The bill allows a temporary permit holder to charge an entrance fee for the premises or any portion of the premises.

The bill permits a temporary permit holder to serve liquor for consumption on licensed or unlicensed premises, or on premises otherwise subject to a separate temporary permit. The bill removes the requirement for all proceeds from an event for which a temporary permit is issued to be used only for the purposes stated in the application.

Purchase and Transfer of Liquor

The bill permits a temporary permit holder to purchase and possess liquor for resale three days prior to the first day of sale of such liquor. Temporary permit holders may purchase liquor only from a farm winery or a retailer with a federal wholesaler's permit. Temporary permit holders purchasing liquor from farm wineries or retailers are required to keep the following records for one year after the date of purchase: date of purchase; name and address of the retailer or farm winery; name and address of the temporary permit holder as it appears on the temporary permit; brand, size, proof, and amount of all liquor purchased; and the subtotal of the cost and total cost, including enforcement tax, of all liquor purchased.

The bill requires all liquor purchased on any one day to be removed from the licensed premises of any retailer or farm winery within 48 hours. Temporary permit holders are prohibited from warehousing any liquor on the licensed premises of any retailer or farm winery for more than 48 hours.

The bill allows a distributor to deliver liquor to the permit premises, without permission from the Director, so long as the liquor was purchased from a retailer that is a wholesaler under federal law. If a licensee sold liquor to a temporary permit holder and the distributor directly delivered the liquor to a temporary permit holder, but the licensee's normal operating hours prevent immediate payment to the distributor, the licensee may pay the retailer and the retailer may pay the distributor within 48 hours of the sale.

The bill removes the requirement for written permission from the Director for a temporary permit holder to sell back to the retailer or farm winery from whom the liquor was purchased within three business days after the event. However, after four business days, written permission from the Director continues to be required.

Consumption of Liquor on a Public Street, Alley, Road, or Highway

The bill permits the consumption of liquor on a public street, alley, road, or highway when:

- A temporary permit has been issued;
- A caterer's licensee has provided the required notification for a catered event; or
- A drinking establishment licensee has been authorized to extend its licensed premises.

The bill requires consumption of liquor on public streets, alleys, roads, sidewalks, or highways to be approved by the local governing body where the consumption will occur through an ordinance or resolution. The bill prohibits consuming liquor inside a vehicle while on a public street, alley, road, or highway at any time instead of only at any special event or catered event.

Extended Premises

The bill allows a drinking establishment licensee, public venue, hotel, hotel caterer, or drinking establishment caterer to extend its licensed premises.

The bill allows the licensed premises covered by a temporary license to be extended into a city, county, or township street, alley, road, sidewalk, or highway if:

- Such street, alley, road, sidewalk, or highway is closed to motor vehicle traffic by the local governing body during any time period that liquor is to be sold or consumed; and
- Such extension has been approved by the city, county, or township by ordinance or resolution that specifies the exact times during which liquor may be sold or consumed on a street, alley, road, sidewalk, or highway.

The bill includes the extended licensed premises of a drinking establishment as one of the boundaries from which liquor provided by the temporary permit holder may not be removed. The bill removes a restriction on possessing or consuming liquor inside the premises licensed as a special event that was not sold or provided by the temporary permit holder.

Premises Boundaries

The bill requires the boundary of any premises covered by a temporary permit to be marked by a line of demarcation.

Dispensing and Removal of Liquor from Premises

The bill allows only temporary permit holders who obtained the permit to sell liquor at a charitable auction or one or more limited-issue porcelain containers containing liquor to sell liquor for removal from or consumption off the licensed premises, except that liquor may be removed to a drinking establishment that has extended its premises into the event area. The bill repeals other provisions related to charitable auctions and limited-issue decanter sales.

The bill requires all liquor sold at an event covered by a temporary permit to be dispensed only from original containers. An individual is permitted to carry an original container of liquor onto the event premises with the approval of the temporary permit holder and under the following conditions:

- The temporary permit holder may not store any containers of liquor on the event premises; and
- Each individual carrying such a container onto the premises must remove such container when the individual exits the event premises.

Samples

The bill authorizes temporary permit holders to provide samples of wine, beer, and spirits as follows, subject to the provisions of the Liquor Control Act and the Club and Drinking Establishment Act:

- All wine, beer, and spirits sampled must come from the inventory of the temporary permit holder. A person other than the temporary permit holder, or a temporary permit holder's employee or agent, may not dispense or participate in the dispensing of alcoholic beverages;
- A supplier's permit holder, or a supplier permit holder's agent or employee, may provide samples of wine, beer, and distilled spirits on the permit premises, and may open, touch, or pour liquor; make a presentation; or answer questions at sampling events. Any liquor sampled must be purchased from a retailer or temporary permit holder on whose premises the sampling event is held;
- No charge may be made for a sample serving;
- A person may be served more than one sample;
- Samples may not be given to minors;
- No samples may be removed from the permit premises; and
- The providing of samples to consumers is exempt from the requirement to hold a Kansas food service dealer license.

The bill defines "sample" in both the Liquor Control Act and the Club and Drinking Establishment Act as 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. The bill specifies a sample of a mixed alcoholic beverage shall contain no more than one-half ounce of distilled spirits.

Keg Identification Numbers

The bill exempts the retail sales of liquor to temporary permit holders from the Beer and Cereal Malt Beverage Keg Registration Act, which requires affixing a keg identification number to a cereal malt beverage or beer container having a liquid capacity of four or more gallons.

Employees and Services Contracted by Temporary Permit Holders

The bill prohibits temporary permit holders from employing or using the services of any person who:

- Is under 18 years old to serve liquor;

- Is under 21 years old to mix or dispense drinks containing liquor;
- Is under 21 years old and not supervised by the temporary permit holder or an employee who is at least 21 years old;
- Has been convicted of a felony or any crime involving a morals charge to dispense, mix, or serve liquor; or
- Has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state, or the United States, to dispense, mix, or serve liquor.

Enforcement

Temporary permit holders will be subject to the enforcement provisions of the Kansas Liquor Control Act and the Club and Drinking Establishment Act and the rules and regulations adopted under these acts. The bill authorizes the Secretary of Revenue to adopt rules and regulations for the administration and enforcement of the temporary permit provisions.

The bill specifies the terms used in the temporary permit provisions have the same meaning as such terms in KSA 2018 Supp. 41-102 (the Kansas Liquor Control Act) or 41-2601 (the Club and Drinking Establishment Act). The bill removes the definition for a “special event” from a statute prohibiting consumption of alcoholic liquor in certain places.

Liability

The bill specifies each temporary permit holder selling liquor for consumption on the permit premises is liable for all violations of laws governing the sale and consumption of liquor in areas covered by multiple temporary permits.

The bill includes employees of temporary permit holders and any person contracting with temporary permit holders to provide services or food in connection with an event, as well as any person dispensing, mixing, or serving alcohol at an event, as individuals the temporary permit holder is responsible for if such an individual were to violate the Club and Drinking Establishment Act while on the permit premises.

Common Consumption Areas

The bill allows licensees that have permission to participate in a common consumption area (CCA) to sell and serve liquor from one non-contiguous service area, in addition to the licensed premise, within the CCA and requires such licensee to prominently display a copy of its drinking establishment license and the approval of the CCA permit holder at the non-contiguous service area.

ABC License Terms

The bill provides the term for a license issued by ABC commences on the effective date specified on the license.

Additionally, the bill amends law relating to the license term of Class B clubs, drinking establishments, public venues, and caterer's licenses by providing that such licenses will be issued for two-year terms commencing on the effective date specified on the license, rather than such licenses expire two years after issuance.

Delivery of Alcoholic Liquors

The bill requires every express company or other common carrier (carrier) that delivers alcoholic liquors from outside the state to consumers within the state to prepare a monthly report of known alcoholic liquors shipped by the carrier and file it with the Director.

The bill requires such report to contain the following information:

- The name of the express company or other common carrier that delivered the liquors;
- The period of time covered by the report;
- The name and business address of the consignor of the liquors;
- The weight of the package delivered to each consignee;
- A unique tracking number; and
- The date of delivery.

The bill requires any carrier, upon request by the Director, to make any additional records supporting the report available to the Director. The bill requires such records to be kept and preserved for a period of two years unless the Director authorizes the destruction of the records in writing.

The bill imposes a penalty of not more than \$500 upon any carrier that willingly fails, neglects, or refuses to file any report required by the bill.

The bill further provides each report is an open record available for public inspection in accordance with the Kansas Open Records Act. The bill prohibits the inclusion of the name and business address of the consignee of such alcoholic liquors in reports made available to the public. The provisions concerning the exclusion of certain information in reports made available to the public expire on July 1, 2024, unless the Legislature reenacts such provisions.

Sale of Farm Wine by Producer Licensees

The bill allows producers of certain fermentative products to sell wine made at a farm winery. The bill requires the farm wine to meet the minimum Kansas content requirements. A vineyard permit is renamed a producer license, which is available to producers of grapes with not less than 100 vines; ripe fruit or berries, not less than 1,000 pounds; or honey, not less than 100 pounds. Each producer licensee is required to secure a \$500 bond under the Liquor Control Act and is liable for payment of liquor drink and liquor enforcement taxes. A producer license is valid for two years, and it costs \$200. The bill requires licensees to maintain records and sales receipts, which may be inspected by the ABC, the Secretary of Revenue, or any law enforcement officer.

If a producer licensee is also licensed as a club or drinking establishment, the producer license allows for the sale of domestic wine and other alcoholic liquor, as authorized by the Club and Drinking Establishment Act. If the producer licensee also has a cereal malt beverage license, the producer is allowed to sell beer not exceeding 6.0 percent alcohol by volume, as authorized by the Kansas Cereal Malt Beverage Act. The bill allows a producer licensee to prohibit a person from possessing alcoholic liquor or cereal malt beverage not purchased on the licensee's premises.

Official Red Wine and White Wine Grapes

The bill designates chambourcin as the official Kansas red wine grape and vigoles as the official Kansas white wine grape.

Cereal Malt Beverage Act Violations; Liquor Enforcement Tax; HB 2035

HB 2035 specifies notice and procedural requirements for violations of the Cereal Malt Beverage (CMB) Act and places violations of the Act under the authority of the Division of Alcoholic Beverage Control (ABC), Department of Revenue. The bill makes notice and procedural requirements for violations of the Act the same as for violations of the Liquor Control Act and the Club and Drinking Establishment Act.

Law enacted during the 2017-2018 biennium that became effective on April 1, 2019 (2017 House Sub. for SB 13 and 2018 HB 2502), allows CMB retailers to sell beer containing no more than 6.0 percent alcohol by volume, and provides ABC with enforcement authority for violations involving the sale of such beer by those retailers. The bill makes this authority uniform across state liquor laws.

The bill also clarifies all retail sales of liquor, CMB, and non-alcoholic malt beverage are subject to the liquor enforcement tax described in KSA 79-4101. The bill specifies, for provisions related to the liquor enforcement tax, "retailer" has the same meaning as in continuing law.

BOARDS, COMMISSIONS, AND COMMITTEES

State Use Law Committee Continued; HB 2174

HB 2174 extends the sunset date for the State Use Law Committee, which is organized within the Department of Administration, from July 1, 2019, to July 1, 2024. The Committee encourages state and local units of government to purchase goods and services from qualified vendors that employ minimum numbers of disabled persons.

Kansas State Fair Board, Nonprofit Corporation; HB 2215

HB 2215 authorizes the Kansas State Fair Board (Fair Board) to establish a 501(c)(3) nonprofit corporation. The purpose of the nonprofit corporation is to receive gifts, donations, grants, and other moneys and engage in fundraising projects that benefit the Kansas State Fair. The board of directors of the nonprofit corporation will consist of the members of the executive committee of the Fair Board, the General Manager of the Kansas State Fair, and other directors designated by the Fair Board.

CHILDREN AND YOUTH

Children and Minors—Actions Required When Reports of Sexual Behavior Problems; SB 77

SB 77 creates law in the Revised Kansas Code for Care of Children (CINC Code); defines a “child with sexual behavior problems” to mean a person under 18 years of age who has allegedly committed sexual abuse against another person under 18 years of age; and requires the Department for Children and Families (DCF) to take certain actions when reports of child abuse or neglect are received, the subject of such report is a child with sexual behavior problems, and DCF determines a joint investigation with law enforcement is required in accordance with the CINC Code. Under such circumstances, DCF must immediately provide a referral to a child advocacy center or other mental health provider and, as needed, offer additional services to the child and the child’s family. Such services shall be voluntary, unless DCF determines there will be a high risk of future sexual behavior problems by the child if the child or family refuses services.

The bill also requires DCF to document attempts to provide voluntary services, reasons the services are important to reduce the risk of future sexual behavior problems by the child, whether services are accepted and provided, and the outcome for the child and family.

The bill specifies none of its provisions shall prohibit any action or investigation by DCF otherwise authorized by law.

Revised Kansas Code for Care of Children Amendments; Family First Prevention Services Act; HB 2103

HB 2103 amends the Revised Kansas Code for Care of Children and enacts statutory provisions to enable the state to meet the requirements of the federal Family First Prevention Services Act (FFPSA). [Note: The FFPSA allows for an enhanced federal match rate toward the use of Social Security Act Title IV-E funds for certain child welfare system evidence-based prevention services and programs beginning October 1, 2019.] The bill defines a qualified residential treatment program (QRTP), establishes notice and hearing requirements when a child is placed in a QRTP, requires certain action to be taken by the court when QRTP placement occurs, and places additional documentation requirements on the court in a permanency hearing involving a child placed in a QRTP.

Further, the bill amends the definition of a secure facility and requires a copy of any prevention plan for a child to be attached to a child in need of care petition.

Definitions

A QRTP means “a program designated by the Secretary for Children and Families [Secretary] as a qualified residential treatment program pursuant to federal law.”

[*Note:* The bill also appears to amend the definition of a secure facility to exclude a juvenile detention facility. However, this change was made in 2018 legislation and the amendment in this bill reconciles different versions of the statute.]

QRTP Placement Notice and Hearing Requirements

Placement Notice

The Secretary is required to notify the court in writing within seven days of a child's placement in a QRTP. The bill requires written notice also to be given to the petitioner; the attorney for the parents, if any; each parent at the last known address; the child, if 12 years of age or older; the child's guardian *ad litem*; any other party or interested party; and the child's court-appointed special advocate.

Placement Hearing Requirements

Within 30 days after a child is placed in a QRTP, any person to whom written notice of such placement is required may request, in writing, the court conduct a hearing. If a hearing is requested, the court must conduct the hearing within 60 days of placement in a QRTP and provide a notice of hearing to the persons who the law requires receive written notice of placement in a QRTP.

The Secretary must provide the court with a written assessment and documentation of the need for QRTP placement.

Within 60 days of placement in a QRTP, the court is required to:

- Consider the assessment and documentation provided by the Secretary;
- Determine whether the needs of the child could be met through placement in a foster family home or whether QRTP placement provides the most effective and appropriate level of care for the child in the least restrictive environment and whether the QRTP placement is consistent with the short-term and long-term goals specified in the child's permanency plan; and
- Approve or disapprove QRTP placement.

Permanency Hearing Requirements for QRTP Placement

In addition to statutory findings and documentation requirements to be made by a court in a permanency hearing, the bill also requires the court to document the following in a permanency hearing involving a child placed in a QRTP:

- The ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster family home, QRTP placement provides the most effective and appropriate level of

care for the child in the least restrictive environment, and the placement is consistent with the short-term and long-term goals specified in the child's permanency plan;

- The specific treatment or service needs that are met for the child through QRTP placement and the expected length of time the child needs the treatment or services; and
- The Secretary's efforts to prepare the child to return home or be placed with a fit and willing relative, a legal guardian, or an adoptive parent or in a foster family home.

Additionally, the bill requires the court to set a subsequent permanency hearing within 60 days of a finding that reasonable efforts have not been made by appropriate public or private agencies to rehabilitate the family and achieve the permanency goal in place at the time of the hearing, or the reasonable and prudent parenting standard has not been met.

CRIMES AND CRIMINAL MATTERS

Omnibus Crimes, Punishment, and Criminal Procedure Bill; SB 18

SB 18 amends statutes regarding the crime of counterfeiting currency, access to presentence investigation reports, authority to enter into diversion agreements, out-of-state criminal history, appeals related to criminal cases, correction of illegal sentences, drug abuse treatment programs, probation violation sanctions, the penalties for the crimes of involuntary manslaughter and abuse of a child, a mitigating factor for sentencing when a victim is an aggressor or participant in the criminal conduct associated with a crime of conviction, and law enforcement notifications to domestic violence victims, as follows.

Counterfeiting Currency

The bill amends the crime of counterfeiting currency to:

- Add the term “currency” to the first (making, forging, or altering) and second (distributing or possessing with the intent to distribute) means of committing the crime;
- Add the term “note” to the second means;
- Add the term “computer” and replace the phrase “produce any counterfeit” with “make, forge, or alter any” in the third means (possessing certain items with the intent to counterfeit);
- Remove the “intent to defraud” element currently applicable to all three means of committing the crime, add this intent to the first means, and add knowledge of this intent to the second means; and
- Remove the term “seized” and add the terms “notes” and “currency” to the penalty provisions.

Access to Presentence Investigation Reports

The bill amends the statute governing the presentence investigation report prepared in criminal cases to allow access to the report by community correctional services and any entity required to receive the information under the Interstate Compact for Adult Offender Supervision.

Attorney General’s Authority to Enter into Diversion Agreements

The bill amends statutes relating to diversion in criminal cases to include the Attorney General within the definition of “district attorney,” thereby specifically authorizing the Attorney General to enter into diversion agreements pursuant to these statutes; adds a provision specifying any diversion costs or fees collected under a diversion agreement entered into by the Attorney General will be

deposited in the Fraud and Abuse Criminal Prosecution Fund; and adds a provision allowing the Attorney General to enter into agreements with the appropriate county or district attorney, or other appropriate parties, regarding the supervision of conditions of the diversion agreement.

Out-of-State Criminal History

The bill amends a statute in the Kansas Criminal Code governing criminal history classification to make continuing provisions for classification of an out-of-state crime as person or nonperson applicable only to misdemeanors. The bill adds the following provisions applicable to out-of-state felony crimes.

Out-of-State Felony Crimes

The bill requires an out-of-state conviction or adjudication for the commission of a felony offense or an attempt, conspiracy, or criminal solicitation to commit a felony offense (out-of-state felony) to be classified as a person felony if one or more of the following circumstances is present, as defined by the convicting jurisdiction in the elements of the out-of-state offense:

- Death or killing of any human being;
- Threatening or causing fear of bodily or physical harm or violence; causing terror; physically intimidating; or harassing any person;
- Bodily harm or injury, physical neglect or abuse, restraint, confinement, or touching of any person, without regard to degree;
- The presence of a person, other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a controlled substance or non-controlled substance;
- Possessing, viewing, depicting, distributing, recording, or transmitting an image of any person;
- Lewd fondling or touching, sexual intercourse, or sodomy with or by any person, or an unlawful sexual act involving a child under the age of consent;
- Being armed with, using, displaying, or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
- Entering or remaining within any residence, dwelling, or habitation.

Additionally, the bill requires an out-of-state felony be classified as a person felony if the elements of the out-of-state felony necessarily prove a person was present during the commission of the offense, if the person present was someone other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a

controlled substance or non-controlled substance. “Presence of a person” includes physical presence and presence by electronic or telephonic communication.

An out-of-state felony will be classified as nonperson if the elements of the offense do not require proof of any of the above circumstances.

Claims in Appeals Related to Criminal Cases

The bill amends a provision listing certain claims arising from criminal cases that may be reviewed in “any appeal” to specify these claims may be reviewed in “any appeal from a judgment of conviction.” The claims, which are not amended by the bill, are:

- A departure sentence resulted from partiality, prejudice, oppression, or corrupt motive;
- The sentencing court erred in including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or
- The sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

The bill states these amendments are procedural and are to be construed and applied retroactively.

Correction of Illegal Sentence

The bill amends the statute governing correction of an illegal sentence to specify an illegal sentence may be corrected only while the defendant is serving such sentence and to define “change in the law” as a statutory change or an opinion by a Kansas appellate court, unless the opinion is issued while the sentence is pending an appeal from the judgment of conviction.

The bill states these amendments are procedural and are to be construed and applied retroactively.

Drug Abuse Treatment Programs

The bill expands eligibility for the nonprison sanction of placement in a certified drug abuse treatment program to include offenders convicted of a controlled substance cultivation or distribution offense that falls within continuing severity level and criminal history categories eligible for such treatment for controlled substance possession offenses. These categories include drug severity level 5 offenses without certain previous convictions and drug severity level 4 offenses with a criminal history score of E or lower without certain previous convictions.

Probation Violation Sanctions

The bill amends the authorized dispositions statute in the Kansas Criminal Code to remove the ability of the sentencing court to specifically withhold authority from supervising court services or community corrections officers to impose certain probation violation sanctions of confinement in a county jail for a two-day or three-day period. The bill also requires the sentencing court to authorize an additional 18 days of confinement in a county jail for the purpose of these and similar sanctions.

The bill amends the statute governing probation violations to remove violation sanctions allowing the court to remand the defendant to the custody of the Secretary of Corrections for periods of 120 days or 180 days. The bill removes procedural provisions related to or dependent on these sanctions, removes statutory references to the sanctions (including those in the statute governing postrelease supervision), and moves provisions allowing revocation without first imposing remaining sanctions in certain situations. The bill requires a court that continues or modifies the probation, assignment to a community correctional services program, suspension of sentence, or nonprison sanction to authorize an additional 18 days of sanction time in a county jail for use in imposing the two-day and three-day sanctions.

Penalties for Involuntary Manslaughter and Abuse of a Child

The bill amends the penalty for the crime of involuntary manslaughter to raise it from a severity level 5 to a severity level 3 person felony if the victim is under six years of age.

The bill amends the penalty for the crime of abuse of a child to raise it from a severity level 5 to a severity level 4 person felony if the victim is under six years of age.

The bill states these provisions shall be known as “Mireya’s Law.”

Mitigating Factor when Victim is an Aggressor or Participant in Criminal Conduct

The bill amends the statute setting forth a nonexclusive list of mitigating factors that may be considered by a sentencing court in determining whether substantial and compelling reasons for a departure sentence exist. Specifically, the bill amends a mitigating factor that may be applied when the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, to prohibit the application of this factor to a sexually violent crime or to electronic solicitation, when:

- The victim is less than 14 years of age and the offender is at least 18 years of age; or
- The offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.

Continuing law defines “sexually violent crime” to include the following offenses:

- Rape;

- Indecent liberties with a child and aggravated indecent liberties with a child;
- Criminal sodomy and aggravated criminal sodomy;
- Indecent solicitation of a child and aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography;
- Commercial sexual exploitation of a child; or
- An attempt, conspiracy, or criminal solicitation of the above offenses.

Domestic Violence Calls; Law Enforcement Agency Notification Policies

Continuing law requires law enforcement agencies in the state to adopt written policies regarding domestic violence calls and make such policies available to all officers of the agency. The bill requires all law enforcement agencies in the state to provide training to law enforcement officers regarding the agency's adopted policy.

The bill adds requirements that such written policies provide, when an arrest is made for a domestic violence offense, including an arrest for violation of a protection order, the officer shall provide the victim information regarding:

- The fact that in some cases the person arrested can be released from custody in a short amount of time;
- The fact that in some cases a bond condition may be imposed on the person arrested that prohibits contact with the victim for 72 hours, and if the person arrested contacts the victim during that time, the victim should notify law enforcement immediately; and
- Any available services within the jurisdiction to monitor custody changes of the person being arrested, including, but not limited to, the Kansas Victim Information and Notification Everyday (VINE) service, if available in the jurisdiction.

Technical Amendments

The bill adds statutory references to reconcile conflicting versions of the statute. The bill accordingly also repeals a conflicting version of a criminal history statute.

Cost of Civil Imprisonment in County Jails; HB 2097

HB 2097 amends law related to the cost of keeping civil prisoners in county jail. The bill changes the amount taxed as costs in an action for keeping a civil defendant imprisoned in county jail from \$1.50 per day to an amount equal to that provided by the county for the maintenance of other prisoners. The bill also requires the same provision be made for civil prisoners as is made for other county prisoners.

ECONOMIC DEVELOPMENT

Evaluation and Transparency of Economic Development Programs and Tax Incentives; Rural Housing Bond Maturity; HB 2223

HB 2223 requires analyses and reporting of certain economic development incentive programs to be performed by the Legislative Division of Post Audit (LPA) and the Department of Commerce (Department).

The bill also extends the maximum maturity on bonds issued to finance projects under the Kansas Rural Housing Incentive District Act.

Legislative Division of Post Audit

The bill authorizes the Legislative Post Audit Committee (Committee) to conduct a systematic and comprehensive review, analysis, and evaluation of each “economic development incentive program,” as that term is defined by the bill, every three years.

Subject to appropriation and as directed by the Committee, the Post Auditor must include in each evaluation:

- A description of the economic development incentive program, including its history and goals;
- A literature review of the effectiveness of the incentive program, including an inventory of similar programs in other states;
- An estimate of the economic and fiscal impact of the incentive program, which may include:
 - The extent to which the incentive program changed business behavior;
 - The results of the incentive program on the Kansas economy, including direct and indirect impacts and negative effects on Kansas businesses;
 - A comparison with other incentive programs or economic development policies;
 - An assessment of whether the State can afford the incentive program;
 - An assessment of the incentive program’s design and administration;
 - An assessment of whether the incentive program’s goals are achieved;

- Recommendations that allow for the incentive program to be more easily or conclusively evaluated in the future;
- A “return on investment calculation,” as that term is defined by the bill;
- Methodology and assumptions used in the evaluation and a critique of multiplier methodologies; and
- An analysis of significant opportunity costs; and
- Any other information the Committee deems necessary to assess the effectiveness of the incentive program.

Confidential information must be redacted from any audit report.

The bill does not limit the Legislature’s oversight of economic development incentive programs.

Department of Commerce

The Department must establish a database for the purpose of disclosing information on economic development incentive programs. “Economic development incentive program” is defined to include certain income tax credits and locally granted property tax exemptions, in addition to various programs administered by the Department, including the Job Creation Program Fund and the Economic Development Initiatives Fund.

Relative to economic development incentives, the Department must provide data on certain programs providing more than \$50,000 in annual incentives and make the information available to the public in a digital format. The bill requires the information to be available for multiple years and searchable and available on the Internet *via* the Department’s website. The database must contain the names and addresses of “recipients,” as that term is defined by the bill, receiving Sales Tax and Revenue (STAR) Bond benefits, as well as the names of principals and officers for each STAR Bond project developer; annual amount of incentives claimed and distributed to each recipient; and qualification criteria for each economic development program, including the number of jobs created or amount of capital investments made. The bill requires additional descriptive information to include the history of each program; its purpose and goals; current applications; the program cost and return on investment (ROI), including assumptions used to calculate ROI; annual reports; and the amount of incentives by county. However, information on the economic development incentive programs will not be disclosed if the disclosure would violate any federal law or confidentiality provisions of agreements executed prior to July 1, 2019, or if the Secretary of Commerce determines the disclosure would be detrimental to an incentive program or a project, including a STAR Bond project. In the latter case, the bill requires the Secretary of Commerce to submit a written report to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce any information not disclosed and the reasons for nondisclosure. That report and any associated testimony or committee discussion are exempt from the open meeting and record laws; this provision sunsets on July 1, 2024.

Taxpayer confidentiality provisions are modified to allow the Secretary of Revenue to disclose certain income and privilege tax credit information to the Department, except that certain social and domestic tax credits are excluded from the provisions of the bill, including adoption credits, earned income tax credits, food sales tax credits, child and dependent care tax credits, and homestead property tax refund credits.

Starting in the 2020 Session, the Secretary of Commerce is required to make annual oral presentations to the Legislative Post Audit Committee; the House Committee on Commerce, Labor and Economic Development; and the Senate Committee on Commerce regarding incentive programs and their economic impact.

Kansas Rural Housing Incentive District Act

The bill extends from 15 years to 25 years the maximum maturity on bonds issued to finance projects under the Kansas Rural Housing Incentive District Act. The governing body of a city or county may extend from 15 years to 25 years the maximum period for individual projects authorized under this act.

EDUCATION

K-12 School Finance; Kansas School Equity and Enhancement Act Amendments; House Sub. for SB 16

House Sub. for SB 16 amends the Kansas School Equity and Enhancement Act (KSEEA), creates law and amends current statutes related to public schools, and appropriates funds to the Kansas State Department of Education (KSDE) for fiscal year (FY) 2020 and FY 2021.

KSEEA Amendments

The bill makes several amendments to the KSEEA, as follows.

Base Aid for Student Excellence (BASE)

The bill amends the BASE for school years 2019-2020, 2020-2021, 2021-2022, and 2022-2023. The following table shows the BASE former amount and the BASE amount under the bill.

Base Aid for Student Excellence		
<u>School Year</u>	<u>Former Amount</u>	<u>House Sub. for SB 16</u>
2019-2020	\$ 4,302	\$ 4,436
2020-2021	4,439	4,569
2021-2022	4,576	4,706
2022-2023	4,713	4,846

At-risk Education Programs

The bill requires the Kansas State Board of Education (KSBE) to identify and approve evidence-based programs provided by state-based national nonprofit organizations that:

- Focus on students who are eligible to receive at-risk program services or who face other identifiable barriers to success;
- Provide evidence-based instruction and support services to such students; and
- Evaluate outcomes data for such students, including, but not limited to, school attendance, academic progress, graduation rates, pursuit of postsecondary education, or other career advancement.

The bill also defines “evidence-based instruction” to mean an education delivery system based on peer-reviewed research that consistently produces better student outcomes over a five-year period than would otherwise be achieved by the same students who are receiving at-risk program services.

School Finance Audits

The bill amends the planned schedule of school finance audits to be completed by the Legislative Division of Post Audit. The bill replaces the planned cost-function performance audit in FY 2021 with an audit of school district unencumbered cash balances and moves the audit of bilingual education from FY 2022 to FY 2021. The new audit schedule is as follows:

- FY 2020: At-risk education;
- FY 2021: School district unencumbered cash balances and bilingual education;
- FY 2023: Virtual school programs; and
- FY 2024: Cost-function performance audit.

Accountability Reports

The bill requires KSDE to create one-page performance accountability reports for the state, each school district, and each school building. The performance accountability reports must include information required by the federal Every Student Succeeds Act, or any successor act, and the college and career readiness metrics developed and implemented by the KSBE.

The bill also requires KSDE to prepare annual longitudinal reports on student achievement on the state assessment for English language arts, mathematics, and science.

School District Funding Report

The bill amends law that requires KSDE to prepare annual school funding reports. The bill requires the following to be reported:

- The virtual student full-time equivalent (FTE) enrollment in addition to the full FTE for the school district; and
- All expenditures for legal services challenging the constitutionality of the school finance system under Article 6, Section 6 of the *Kansas Constitution*, including any dues or fees paid to an organization participating in such litigation.

Accountability and Funding Report Publications

The bill establishes uniform Internet publication requirements for all reports the law requires KSDE and school districts to publish. The bill requires KSDE to publish school district budget documents, the one-page performance accountability reports, the annual longitudinal reports on student achievement, and the school district funding report on the homepage of the KSDE website under a prominently displayed link titled “Accountability Reports.”

The bill requires school districts to publish school district budget documents and the school district funding report on the homepages of their websites under a prominently displayed link titled “Accountability Reports.” The bill also requires the school district budget documents and the school district funding report to be posted on the websites of individual schools in the school district, if such schools have separate websites.

The bill requires each school district to provide a link to the KSDE webpage where the one-page performance accountability reports and longitudinal reports on student achievement are posted. The link must be prominently displayed on the school district’s accountability reports webpage.

ACT and WorkKeys Assessments

The bill requires the KSBE to provide the ACT college entrance exam and the three ACT and WorkKeys assessments required to earn a national career readiness certificate to each student enrolled in grades 11 and 12 at no charge to the student. The bill also requires KSBE to provide the PreACT college entrance exam to each student enrolled in grade 9. [Note: Sub. for SB 423 (2018) requires KSDE to provide the ACT and WorkKeys assessments to students in grades 9 through 12 during FY 2019.]

Other Provisions

Low-income Tax-credit Scholarship Program

The bill changes the definition of “public school” for purposes of the Low-income Student Scholarship Program from the 100 lowest performing schools to the 100 lowest performing elementary schools. The bill also allows students already receiving scholarships to continue receiving scholarships so no student will become ineligible due to the definition change.

Legislative Task Force on Dyslexia

The bill extends the Legislative Task Force on Dyslexia until June 30, 2022, allowing the Task Force to meet once each year.

Extension of 20-mill Property Tax Levy

The bill extends the statewide 20-mill property tax levy for schools to FY 2020 and FY 2021. The bill also extends the \$20,000 homestead exemption for the 20-mill levy for the same fiscal years.

School District Capital Improvements

The bill makes Capital Improvement State Aid a revenue transfer from the State General Fund (SGF) for FY 2020, FY 2021, and FY 2022. Capital Improvement State Aid had been scheduled to revert to a demand transfer from the SGF in FY 2020.

Methods of Public Education Financing

The bill adds Jobs for America's Graduates–Kansas (JAG-K) and Boys and Girls Clubs to Communities in Schools in KSA 72-5193, which lists methods of public education financing included in satisfying the requirements under Article 6 of the *Kansas Constitution*.

Appropriations

The bill appropriates \$104.5 million, all from the SGF, for FY 2020 to KSDE. This amount includes \$92.7 million for State Foundation Aid; \$10.3 million for Kansas Public Employees Retirement System (KPERs) employer contributions for school districts; and \$1.6 million for KPERs employer contributions for community colleges, technical colleges, and interlocals.

The bill also appropriates to KSDE \$114.2 million, all from the SGF, for FY 2021. This amount includes \$89.7 million for State Foundation Aid; \$21.2 million for KPERs employer contributions for school districts; and \$3.3 million for KPERs employer contributions for community colleges, technical colleges, and interlocals.

School Safety Drills; SB 128

SB 128 amends law related to the minimum number of safety drills required to be conducted in schools each school year.

The bill requires the State Fire Marshal to adopt rules and regulations requiring administrators of public and private schools and educational institutions, except community colleges, colleges, and universities, to conduct at least four fire drills, two tornado drills (one in September and one in March), and three crisis drills each school year.

The bill requires the three crisis drills to be conducted at some time during school hours, aside from the regular dismissal at the close of the day's session. [*Note:* Continuing law requires fire and tornado drills to be conducted at some time during school hours, aside from the regular dismissal at the close of the day's session.] The bill states the manner in which such crisis drills are conducted may be subject to approval by the Safe and Secure Schools Unit of the Kansas State Department of Education.

The bill authorizes the State Fire Marshal to grant an exemption pursuant to KSA 31-136 authorizing a variance for the number or manner of fire drills, tornado drills, and crisis drills for students receiving special education or related services.

AO-K to Work Program; SB 199

SB 199 establishes the AO-K to Work Program (Program). The provisions applicable to the Program apply to all adult education programs in Kansas.

Definitions

The bill establishes definitions for the following terms:

- “AO-K” or “Accelerating Opportunity: Kansas” to mean a career pathways program model that assists students in obtaining a high school equivalency, becoming ready for transferable college-level courses, and earning an industry credential;
- “Career readiness assessment” to mean an assessment approved by the Kansas Board of Regents (KBOR) to measure foundational skills required for success in the workplace and workplace skills that affect job performance;
- “Career readiness certificate” to mean a certificate that uses a career readiness assessment approved by KBOR to document an individual’s skills in applied math, graphic literacy, and workplace documents;
- “Industry recognized credential” to mean a credential recognized by multiple employers across an industry as determined by KBOR;
- “Kansas adult education program” to mean any educational institution or approved agency that receives adult education funding through KBOR; provides adult education or English language acquisition programs; serves Kansas adults age 16 and over who are in need of basic skills for the workforce, community participation, and family life; and prepares adults for achieving industry recognized credentials and college certificates and degrees; and
- “Qualified student” to mean an individual who has attained the age of 21, has not been awarded a high school diploma, has been accepted into a Kansas adult education program, has demonstrated high school equivalency by meeting the criteria established by KBOR pursuant to the bill, and has declared an AO-K career pathway interest.

The bill also specifies the definitions of “community college” and “technical college” have the same meaning as in continuing law (KSA 71-701 for community colleges and KSA 71-1802 for technical colleges).

Awarding of a Credential to a Qualified Student

The bill requires KBOR to award a Kansas high school equivalency credential to any qualified student who is recommended and approved to participate in an AO-K career pathway approved by KBOR for college credit, successfully completes an approved AO-K career pathway and receives

the industry-recognized credential appropriate to the completed pathway, takes a career readiness assessment and earns a career readiness certificate at a level approved by KBOR, and satisfies any other requirement deemed necessary by KBOR.

Access to Resources

The bill requires any qualified student participating in the Program to be provided reasonable access to all available student resources of the adult education program, the participating technical or community college, and the appropriate community partners, including, but not limited to, appropriate academic support, barrier mitigation, and employment or career assistance.

Fee and Fund

The bill requires each application to KBOR for issuance or duplication of a Kansas high school equivalency credential to be accompanied by a fee, established by KBOR, in an amount of not more than \$25.

The bill requires KBOR, on or before June 1 of each year, to determine the amount of revenue required to properly administer the provisions of the bill during the next ensuing fiscal year and establish the Kansas high school equivalency credentials processing fee for such year in the amount deemed necessary for such purposes. The fee will become effective on the succeeding July 1 of each year.

KBOR must remit all moneys received from the fee to the State Treasurer in accordance with KSA 75-4215 (remittance of state moneys; fee agency accounts; reports; post audit). Upon receipt of such remittance, the bill requires the State Treasurer to deposit the entire amount in the State Treasury to the credit of the Kansas High School Equivalency Credential Processing Fees Fund (Fund) and establishes the Fund in the State Treasury. The Fund will be used only for the payment of expenses connected with the processing, issuance, or duplication of Kansas high school equivalency credentials, and for the keeping of records by KBOR. The bill requires all expenditures from the Fund to be made in accordance with appropriations acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by KBOR or by a person or persons designated by KBOR.

Rules and Regulations

The bill authorizes KBOR to adopt rules and regulations to implement and administer provisions of the bill.

ELECTIONS AND ETHICS

Advance Ballots and Signature Requirements; Polling Places; Municipal Office Filing Date; Oaths of Office for Township Officers; School Board Changes; Sub. for SB 130

Sub. for SB 130 amends law concerning advance ballots and associated signature requirements; polling places; the filing date for municipal offices and the date certain newly elected township officers take the oath of office; dates appointed school board officials take office; school board regular meeting times; and school board voting plan elections.

Advance Ballots and Signature Requirements

The bill requires county election officers to make an attempt to contact each voter who submitted an advance voting ballot without a signature or with a signature that does not match the signature on file and allow the voter to correct the deficiency before the commencement of the final county canvass.

Polling Places

The bill allows all voters in a county to vote at any polling place on election day, at the discretion of the county election official.

Municipal Office Filing Date

The bill changes the filing deadline for any candidate in a municipal election from September 1 prior to the general election in odd-numbered years (or the next day that is not a Saturday, Sunday, or holiday, if the filing deadline falls on such date) to June 1, or the next day that is not a Saturday, Sunday, or holiday, before the primary election in even- and odd-numbered years, regardless of whether a primary is required.

Oaths of Office for Township Officers

The bill removes from the requirement for a newly elected trustee, clerk, or treasurer of any township or any appointed road overseer in any road district to take the oath of office that the oath be taken within 20 days after being notified of such election.

School Board-related Changes

The bill removes language requiring local board of education (board) officials who are replacing members of the board to be appointed by November 15.

The bill requires the first meeting of the board to be on or after the second Monday in January or at a later meeting during the calendar year, if so determined by the board at the first meeting, rather than in July.

The bill requires the board to adopt a resolution specifying the regular meeting time, the regular hour for the meeting to begin, the day of the week, and the week of the month on or after the second Monday in January and before February 1, or at a later date during the calendar year if so determined by the board, instead of during the month of July.

The bill removes the requirement school districts make changes in the method of elections or voting plans, or both, during the period beginning on the first Wednesday in November of each even-numbered year and ending on the first Tuesday in June of each odd-numbered year and requires a change in the method of elections or voting plan, or both, to be submitted to voters at any primary or general election, or at a special election called for that purpose.

Constitutional Amendment to Remove Requirement to Adjust Certain U.S. Census Data; SCR 1605

SCR 1605 submits to the qualified electors of the state an amendment to Article 10, Section 1 of the *Kansas Constitution*, which concerns reapportionment of senatorial and representative districts, to remove the census adjustment for military personnel and students.

The amendment will be submitted to the electors at the general election in November 2019.

FINANCIAL INSTITUTIONS

Amendments to the State Banking Code; SB 82

SB 82 amends provisions of the State Banking Code (Code) related to certificate of existence, voting rights for conversion to a state charter, and the method of delivery for certain notices.

Certificate of Existence

The bill specifies no party may infer a financial institution relying on a certificate of existence has knowledge of the terms of an entity's documentation (such as a resolution, certificate of good standing, request for taxpayer identification number, entity agreements, or other documents) solely because the financial institution holds a copy of all or part of the entity's documentation. [*Note*: "Financial institution" is defined in continuing law as any federal- or state-chartered commercial bank, savings and loan association, or savings bank. "Entity" is defined as any government or governmental subdivision or agency, any domestic or foreign corporation, limited liability company, general partnership, limited liability partnership, joint venture, cooperative, association, or other legal entity, whether operated for profit or not-for-profit.]

Conversion to a State Charter—Voting Rights

The bill authorizes any national bank, federal savings association, or federal savings bank to become a state bank upon the affirmative vote of not less than two-thirds of the institution's voting interests of members. [*Note*: Continuing law permits an affirmative vote of two-thirds of the institution's outstanding voting stock.] The bill also requires the submission of a transcript of minutes from the meeting if two-thirds of the voting interests of members approve of the proposed conversion to a state bank.

Method of Delivery for Certain Notices

The bill authorizes notice by certified mail or electronically pursuant to the Uniform Electronic Transactions Act (KSA 16-1601 *et seq.*) to all stakeholders at least five days in advance of a meeting to vote on the issuance of preferred stock.

The bill also authorizes a safe deposit lessor to provide notice by certified mail or electronically pursuant to this act to the lessee when a safe deposit box lease is being terminated.

State Credit Union Code Designation; HB 2101

HB 2101 makes several amendments and technical updates to the laws governing credit unions and related credit union procedures and designates Article 22 of Chapter 17, *Kansas Statutes Annotated*, as the State Credit Union Code (Code).

Definitions and Changes in Terminology

Definitions

The bill modifies, moves to another section in the Code, and creates the following definitions:

- “Branch” (previously defined in KSA 2018 Supp. 17-2221a) to mean any office, agency, or other place of business located within the state, other than the place of business specified in the credit union’s certificate of organization, at which deposits are received, checks paid, or money lent;
- “Corporate credit union” to mean a credit union that is cooperatively organized and owned by its members that offers liquidity, investment, back office processing, deposit and lending facilities, and other products and services tailored to the unique needs of its members;
- “Credit union services organization” to mean an organization established to provide operational and financial services to credit unions [*Note:* This term is also defined in KSA 17-2204a.];
- “Electronic notice” to mean notice provided in writing and delivered by electronic means to the electronic mail address specified by the member for that purpose. A member who provides an electronic mail address to the credit union for such purposes shall be deemed to have consented to receive notices and correspondence by electronic means; and
- “Federal intermediate credit bank” to mean a bank sponsored by the federal government to provide funds to financial institutions for the making of agricultural loans.

Terminology Updates

The bill generally replaces references to “nonprofit” with “not-for-profit.” The bill also replaces references to “shareholder” with “member” in the statute relating to written contracts for payment of members’ accounts to beneficiaries upon a member’s death (KSA 2018 Supp. 17-2263). The bill also removes references to federally chartered credit unions (continuing law would apply only to state-chartered credit unions) in the statute addressing the personal liability of officers and directors of credit unions (KSA 17-2268).

Credit Unions—General Procedures and Organization

The bill amends and updates general procedures and organization of credit unions, including:

- Removing a requirement that two-thirds of a credit union’s board of directors (board) must approve amendments to the credit union’s bylaws or charter (KSA 2018 Supp. 17-2202);

- Stating an entity not organized under the Code and misrepresenting itself as a credit union or credit union organization in a website URL to be guilty of a class A misdemeanor (KSA 17-2203);
- Removing specific annual and special board meeting requirements, instead requiring such meetings to be held in accordance with the credit union's bylaws (KSA 17-2207);
- Removing the requirement that persons who are denied loans may appeal the denial if the bylaws provide for such an appeal (KSA 2018 Supp. 17-2210);
- Extending the amount of time a credit union must hold a board meeting after the supervisory committee suspends an officer or member of the credit committee or board from within 7 to 21 days after the suspension to within 60 days after the suspension (KSA 2018 Supp. 17-2211);
- Removing the authority of the supervisory committee to call a meeting of shareholders by a majority vote to consider any violation of the Code or bylaws or any other practice deemed unsafe and unauthorized (KSA 2018 Supp. 17-2211);
- Removing the requirement that the supervisory committee certify the accounts of its members at least once every two years using a controlled certification, or at least once a year using a controlled random statistical sampling of accounts (KSA 2018 Supp. 17-2211);
- Establishing 10.0 percent of the credit union's assets as the maximum loan amount (changed from \$500 or 10.0 percent of the assets, whichever is greater) (KSA 2018 Supp. 17-2216);
- Increasing the limitation on the aggregate of outstanding loans from \$50,000 to \$100,000 in a provision governing loans to directors, credit committee members, and supervisory committee members or other members for which the director or committee acts as a guarantor or endorser and removing the requirement these loans be reported annually to the Credit Union Administrator (Administrator) (KSA 2018 Supp. 17-2216a);
- Clarifying corporate credit unions' compliance provisions to require compliance with the reserve requirements of the National Credit Union Administration rules and regulations (KSA 17-2217);
- Eliminating the requirement that written notice of the credit union's expulsion policy be mailed to each member of the credit union (KSA 2018 Supp. 17-2219); and
- Removing the requirement that, without the written approval of the Administrator, expenditures to purchase, lease, hold, or rent real estate, as well as make capital improvements, cannot exceed 5.0 percent of the total shareholdings, reserves, and undivided earnings of the credit union (KSA 17-2226).

Credit Unions—Powers

The bill amends provisions generally governing the powers of credit unions, including investment and the making of loans. Among the amendments, the bill:

- Clarifies a credit union may invest in all types of shares and accounts of a corporate credit union that is federally insured;
- Removes a requirement that the funds of a credit union must first be used for loans to members, with preference given to small loans, if not all loans can be approved; and
- Removes the requirement that investments, except those in corporate credit unions, must not exceed 25.0 percent of the investing credit union's shares, undivided earnings, and reserves (KSA 2018 Supp. 17-2204).

Credit Unions—Management and Oversight

The bill also amends statutes pertaining to the management in and oversight of state-chartered credit unions. Among those changes, the bill:

- Allows vacancies on the credit committee and supervisory committee to be filled in accordance with the credit union's bylaws. In addition, the board is allowed to remove members of these committees for failure to perform their duties (KSA 2018 Supp. 17-2208);
- Removes and clarifies general management provisions assigned to the board and replaces them with provisions requiring the board to:
 - Set the par value of shares of the credit union and the minimum of shares required for membership;
 - Designate those persons or positions authorized to execute or certify documents or records on behalf of the credit union;
 - Authorize the purchase of insurance coverage and authorize the employment and compensation of the chief executive officer;
 - Approve an annual operating budget for the credit union;
 - Review and approve an annual audit;
 - Appoint any necessary committees;
 - Establish conditions under which a member may be removed for cause;

- Perform such other duties or authorize any action not inconsistent with the Code;
- Unless delegated, establish policies under which the credit union may borrow, lend, and invest money;
- Unless delegated, act upon applications for membership;
- Unless delegated, establish loan policies and determine loan amounts, terms, and conditions for members;
- Unless delegated, declare dividends on shares and set interest rates on deposits; and
- Unless delegated, approve the charge-off of credit union losses (KSA 17-2209);
- Removes the requirement that the board approve all employee salaries (KSA 17-2209);
- Provides that certificates of merger no longer need to be made in triplicate (KSA 2018 Supp. 17-2228);
- Creates a minimum threshold by requiring a credit union selling assets valued at greater than 10.0 percent of either the purchasing credit union's or the selling credit union's total amount of shares, undivided earnings, and reserves to file a copy of the agreement with the Administrator within one month of signing the agreement (KSA 17-2229);
- Removes requirements on the Administrator to establish an annual salary schedule for financial examiners, financial examiner administrators, case managers, a business manager, and administrative assistant based on an equitable salary schedule approved by the Governor (KSA 2018 Supp. 17-2234); and
- Removes the requirement on the salary schedule to not exceed the average compensation of corresponding state regulatory positions in similar areas (KSA 2018 Supp. 17-2234). [*Note:* The salary schedule provisions were authorized by 2012 House Sub. for SB 287.]

HEALTH

Professions Licensed by the Behavioral Sciences Regulatory Board; Adult Care Home Licensure Act and Receiverships; Naturopathic Doctors; SB 15

SB 15 provides for licensure by reciprocity for social workers at baccalaureate, master's, and specialist clinical levels; amends requirements for licensure by reciprocity for other professions regulated by the Behavioral Sciences Regulatory Board (BSRB); provides for provisional licenses; amends provisions related to temporary licenses; clarifies the use of professional titles; amends statutes in several named acts for professions regulated by the BSRB; and amends the licensure requirements for a specialist clinical social worker.

The bill also amends the Adult Care Home Licensure Act regarding the application for licensure, financial solvency, and receivership of adult care homes.

The bill revises the Naturopathic Doctor Licensure Act and the Radiologic Technologists Practice Act with regard to the ordering of diagnostic imaging studies.

Licensure of Professions Regulated by the BSRB

The bill provides for licensure by reciprocity for social workers at baccalaureate, master's, and specialist clinical levels and amends the requirements for licensure by reciprocity for other professions regulated by the BSRB. The bill allows applicants who are deficient in the qualifications or in the quality of educational experience required for licensure to obtain provisional licenses to allow the applicants time to fulfill remedial or other requirements prescribed by the BSRB. For several professions, the bill also amends provisions related to temporary licenses for applicants who have met all licensure requirements except for taking the required licensing examination. Further, the bill clarifies the allowable use of professional titles for individuals with provisional and temporary licenses, amends the statutes included in several named acts for professions regulated by the BSRB, and amends the licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience required.

Social Work Licensure by Reciprocity [New Section 1]

Baccalaureate level. The bill authorizes the BSRB to issue a license to an individual who is currently registered, certified, or licensed to practice social work at the baccalaureate level in another jurisdiction, if the BSRB determines:

- The standards for registration, certification, or licensure to practice social work at the baccalaureate level in another jurisdiction are substantially the equivalent of the requirements in the Social Workers Licensure Act and rules and regulations of the BSRB for licensure as a baccalaureate social worker; or
- The applicant demonstrates compliance on forms set by the BSRB and meets the following standards as adopted by the BSRB:

- Registration, certification, or licensure to practice social work at the baccalaureate level for at least 48 of the last 54 months immediately preceding the application, with at least the minimum professional experience established by rules and regulations of the BSRB;
- No disciplinary actions of a serious nature brought by a registration, certification, or licensing board or agency; and
- Completion of a baccalaureate degree in social work from a regionally accredited university.

Master's level. The bill authorizes the BSRB to issue a license to an individual who is currently registered, certified, or licensed to practice social work at the master's level in another jurisdiction, if the BSRB determines the same requirements outlined above for the baccalaureate level have been met, but at the master's level.

Specialist clinical level. The bill requires an applicant seeking reciprocal licensure as a specialist social worker to demonstrate:

- Compliance with the requirements for reciprocal licensure to practice social work at the master's level;
- A current license to practice social work at the clinical level in another state; and
- Competence to diagnose and treat mental disorders by meeting at least two of the following areas acceptable to the BSRB:
 - Passage of a BSRB-approved national clinical examination;
 - Three years of clinical practice with demonstrated experience in diagnosing or treating mental disorders; or
 - Attestation from a professional licensed to diagnose and treat mental disorders in independent practice or licensed to practice medicine and surgery, stating the applicant is competent to diagnose and treat mental disorders.

[*Note:* The requirements for provisional licensure for the practice of social work at the clinical level in KSA 65-6309 move from that statute to New Section 1 of the bill and are amended as noted above.]

Application fee for reciprocal licensure. If required by the BSRB, an applicant for reciprocal licensure at the baccalaureate, master's, and specialist clinical levels must pay the application fee established by the BSRB and set out in statute.

Licensure by Reciprocity for Other Professions

The bill amends the statutes establishing the requirements for licensure by reciprocity for professions other than the practice of social work to create uniform requirements across the professions licensed by the BSRB. One of the available qualifying requirements for reciprocal licensure is amended by reducing the number of months an applicant needs to be registered, certified, or licensed to practice a profession in another jurisdiction from at least 60 of the last 66 months immediately preceding the application to at least 48 of the last 54 months preceding the application. The amended time frame is the same as that set out in New Section 1 for the practice of social work at the three levels and applies to the following professions:

- Professional counseling (Section 9) [*Note:* The bill also clarifies a requirement that “at least” a master’s degree in counseling or a related field from a regionally accredited university or college is required.];
- Marriage and family therapy (Section 14) [*Note:* The bill also clarifies the requirement of completion of “at least” a master’s degree in marriage or family therapy or allows for “at least” a master’s degree “in a related field as approved by the [BSRB].”];
- Addiction counseling at the baccalaureate, master’s, and clinical levels (Section 17);
- Doctoral level psychologist (Section 20); and
- Master’s level psychologist (Section 23). [*Note:* The bill also clarifies the requirement of completion of “at least” a master’s degree in psychology from a regionally accredited university or college.]

Provisional License

Remediation of deficiency. The bill authorizes the BSRB to require an applicant for licensure for any of the following professions to fulfill remedial or other requirements as prescribed by the BSRB if, after evaluation, the BSRB determines such applicant is deficient in the qualifications or in the quality of the applicant’s educational experience required by the applicable statute or by rules and regulations adopted by the BSRB for that profession:

- Professional counselor (New Section 2);
- Marriage and family therapist (New Section 3);
- Master’s level psychologist (New Section 4);
- Baccalaureate, master’s, and specialist clinical social worker (New Section 5) [*Note:* The bill provides that New Section 5 is part of and supplemental to the Social Workers Licensure Act.];

- Addiction counselor (New Section 6) [*Note:* The bill provides that New Section 6 is part of and supplemental to the Addiction Counselor Licensure Act.]; and

- Psychologist (New Section 7).

Application for provisional license. The bill allows an applicant for licensure for any of the professions listed above who is completing remedial or other requirements prescribed by the BSRB due to a deficiency to apply to the BSRB for a provisional license in the applicable profession. The application for provisional licensure must be made on a form and in a manner prescribed by the BSRB.

Expiration, renewal, and reissuance of provisional license. The bill states a provisional license for any of the professions listed under the section on remediation of deficiency expires upon the earlier of the date the BSRB issues or denies a license or 12 months after the date of issuance of the provisional license. The renewal or reissuance of a provisional license upon subsequent application for the same license level is prohibited.

Professional title designation. The bill authorizes an individual holding a provisional license for any of the professions listed under the section on remediation of deficiency to use the statutorily permitted title or initials for such profession only if the designation is preceded by the word “provisional.”

Temporary Licenses

When an applicant meets all requirements for licensure except for taking the required examination, the bill allows such applicant to apply for a temporary license pending completion of the examination. The amendments made to temporary licensure statutes for multiple professions are discussed below.

Social worker (Section 10). The bill extends the expiration of a temporary license to practice social work from 6 to 12 months after the date of issuance of the temporary license. Additionally, a person practicing social work with a temporary license is prohibited from using the title “licensed baccalaureate social worker” or “licensed master social worker,” or use the initials “LBSW” or “LMSW,” unless followed by the words “by temporary license.”

Marriage and family therapist (Section 13). The bill amends the statute pertaining to the temporary licensure of marriage and family therapists to include a reference to a statute amended by the bill that establishes a temporary license fee for marriage and family therapists not to exceed \$175 (Section 15).

Addiction counselor (Section 16). The bill amends the statute pertaining to the temporary licensure of addiction counselors and master’s addiction counselors to clarify the requirement to pay both a fee for a temporary license and an application fee for licensure as an addiction counselor, and to correct statutory references.

Practice of psychology (Section 21). The bill amends the statute pertaining to the temporary license to practice psychology to require, absent extenuating circumstances approved by the BSRB, such a temporary license expires upon the earlier of the date the BSRB issues or denies a license to practice psychology or two years after the date of issuance of the temporary license. The renewal or reissuance of a temporary license on any subsequent application for licensure under the Licensure of Psychologists Act of the State of Kansas is prohibited. No limit is placed on the number of times an applicant is allowed to take the required examination for licensure.

Doctoral practice of psychology (Section 21). The bill amends the statute pertaining to the issuance of a temporary license for the doctoral practice of psychology to prohibit the reissuance of a temporary license on any subsequent application for licensure under the provisions of the Licensure of Psychologists Act of the State of Kansas. No limit is placed on the number of times an applicant is allowed to take the required examination for licensure.

Master's level psychologists (Section 22). The bill amends the statute pertaining to the temporary license to practice as a master's level psychologist to require the practice to be under the direction of a licensed psychologist, licensed clinical psychotherapist, a person licensed by the State Board of Healing Arts to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental health disorders.

Licensure of Psychologists [Section 19]

The bill amends the statute providing for the licensure of psychologists to make the required application fee nonrefundable.

Exemption from Examination for Social Workers [Section 10]

The bill amends the statute pertaining to an exemption from the examination requirement for licensure as a social worker to require only that the applicant has taken and passed an examination similar to that for which an exemption is sought, as determined by the BSRB.

Change in Licensure Requirement for Specialist Clinical Social Worker [Section 25]

The bill amends the licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience from 4,000 hours to 3,000 hours and the number of hours of clinical supervision from not less than 150 hours to not less than 100 hours.

Changes to Act Citations

The bill amends the statutes and bill sections referenced when citing the named acts described as follows.

Professional Counselors Licensure Act (Section 8). The Professional Counselors Licensure Act includes KSA 65-5801 through 65-5818 and New Section 2 of the bill, and amendments made to these statutes and New Section 2.

Social Workers Licensure Act (Section 11). The Social Workers Licensure Act includes KSA 65-6301 through 65-6321 and New Sections 1 and 5 of the bill and amendments to them.

Marriage and Family Therapist Licensure Act (Section 12). The Marriage and Family Therapist Licensure Act includes KSA 65-6401 through 65-6414 and New Section 3 and amendments to them.

Licensure of Psychologists Act of the State of Kansas (Section 18). The Licensure of Psychologists Act of the State of Kansas includes KSA 74-5301 through 74-5350 and New Section 7 and amendments to them.

Licensure of Master's Level Psychologists Act (Section 24). The Licensure of Master's Level Psychologists Act includes KSA 74-5361 through 74-5375 and New Section 4 and amendments to them.

Amendments to Adult Care Home Licensure Act and Receiverships

The bill amends the Adult Care Home Licensure Act regarding the application for licensure, financial solvency, and receivership of adult care homes. The bill requires the application for a license to operate an adult care home to include evidence of access to sufficient working capital necessary to operate an adult care home and include a list of current or previously licensed facilities in Kansas or outside the state in which an applicant has or previously had any ownership interest in the operations or the real property of the facility.

With regard to a receivership, the bill addresses restrictions on licensure; adds a venue for filing an application for receivership; modifies the powers and duties of a receiver; places a restriction on the application or renewal of a license for a licensee and applicant under a receivership; addresses the number of copies of an application for receivership to be sent to and posted at a facility; addresses the timing of hearings and continuances on an application for receivership; modifies the powers and duties of a receiver; and adds operators and any individuals or entities that appear on a license to operate an adult care home to the list of those who are required to repay the payments made by the Secretary for Aging and Disability Services (Secretary) and personnel costs and other expenses to establish a receivership and assist the receiver, and who are subject to a lien on non-exempt personal and real property until amounts owed are repaid.

Definitions [Section 26]

The bill defines "insolvent" to mean the adult care home, or any individual or entity that operates an adult care home or appears on the adult care home license, has stopped paying debts in the ordinary course of business or is unable to pay debts as they come due in the ordinary course of business.

As it pertains to the denial, suspension, or revocation of a license to operate an adult care home, the bill amends the definition of “person” to eliminate the requirement that such individual have an indirect or direct ownership interest of 25 percent or more in an adult care home and instead requires the individual have only any indirect or direct ownership interest.

Application for Licensure [Section 27]

In addition to the affirmative evidence of the applicant’s ability to comply with reasonable standards and rules and regulations adopted under the provisions of the Adult Care Home Licensure Act, as required under continuing law, the bill requires an application for a license to operate an adult care home contain the following additional information, if applicable:

- A detailed projected budget for the first 12 months of operation prepared according to generally accepted accounting principles and certified by the principal officer of the applicant, accompanied by evidence of access to sufficient working capital to operate the adult care home in accordance with the budget, in the form of cash on deposit, a line of credit, applicant’s equity, or any combination of these; and
- A list of each current or previously licensed facility in Kansas or any other state, territory, or country or the District of Columbia in which the applicant has or previously had any percentage of ownership in the operations or the real property of the facility.

Amendments to Receivership Statutes

Restrictions on new license or reinstatement (Section 28). When the district court appoints a receiver, the bill prohibits the applicant or licensee under the receivership from being eligible to apply for a new or reinstated license for ten years from the date of termination of the receivership action.

Procedural changes. The bill makes the following procedural changes with regard to receiverships:

- Adds Shawnee County District Court as another venue option for filing the application for receivership (Section 30);
- Reduces from five to one the number of copies of the application for receivership the applicant is required to send to the adult care home and requires the adult care home to post only the one copy of the application in a conspicuous place within the adult care home (Section 31);
- Requires an answer to the application for receivership to be filed by a party within five days after the service of process of such application (Section 32);
- Specifies the time frame in which the application for receivership must be heard is no later than the seventh day following the filing of the answer or other responsive

pleading, rather than the seventh day following the filing of the application (Section 33);

- Extends the length of time for which the district court is allowed to grant a continuance for good cause from 10 days to not more than 14 days (Section 33); and
- Removes the requirement the receiver apply for a license to operate an adult care home on forms provided by the licensing agency (Section 33).

Powers and duties of the receiver (Section 34). The bill reorganizes and relocates the statutory powers and duties of the receiver within KSA 39-959 and:

- Adds the receiver is entitled to the immediate use of all proceeds of any accounts receivable to discharge the powers and duties of the receiver;
- Adds the authority to terminate contracts as necessary to carry out the receiver's powers and duties;
- Modifies the receiver's authority to enter into contracts necessary to carry out the receiver's powers and duties and to incur expenses for individual items for repairs, improvements, or supplies without having to procure competitive bids, by removing the requirement that the total amount of such individual item cannot exceed \$500;
- Adds authorization for the receiver to repay the receiver's expenditures from moneys appropriated to the Kansas Department for Aging and Disability Services (KDADS) for receivership purposes set in statute, if incoming payments from the operation of the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties;
- Deletes the requirement the receiver honor all existing leases, mortgages, chattel mortgages, and security interests; and
- Adds, if incoming payments from the operation of the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties, the receiver may pay post-receivership quality care assessments, as established under state law.

Payment and liens (Sections 35 and 36). Continuing law allows the Secretary to authorize expenditures from moneys appropriated for receiverships if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions or for the initial operating expenses of the receivership. Continuing law also requires KDADS to keep an itemized ledger showing costs of personnel and other expenses in establishing the receivership and assisting the receiver and requires KDADS be paid for these costs.

The bill adds “operator” to the list of parties who owe and must repay the payments made by the Secretary and the costs of personnel and other expenses described above and against whom a lien on all non-exempt personal and real property is required until the debt is repaid. The bill also clarifies the owner, operator, or licensee responsible for payment of such debt and subject to a lien includes any individuals or entities that appear on the license to operate the adult care home.

Recovery of expenses and costs upon termination of receivership (Section 37). The bill removes the Secretary for Children and Families as an entity eligible to recover expenses and costs under a receivership, clarifying only KDADS is eligible to recover such expenses.

Naturopathic Doctors [Sections 38 and 39]

The bill revises the Naturopathic Doctor Licensure Act and the Radiologic Technologists Practice Act. The bill amends the definition of “naturopathic medicine” in the Naturopathic Doctor Licensure Act to include ordering diagnostic imaging studies, including, but not limited to, x-ray, ultrasound, mammogram, bone densitometry, computed tomography, magnetic resonance imaging, and electrocardiograms, except that naturopathic doctors must refer patients to an appropriately licensed and qualified healthcare professional to conduct diagnostic imaging studies and interpret the results of such studies (Section 38). The bill also amends the definition of “licensed practitioner” in the Radiologic Technologists Practice Act to include a Kansas licensed physician assistant, advanced practice registered nurse, and naturopathic doctor (Section 39).

Claire and Lola’s Law—Possession of Certain Cannabidiol Treatment Preparations, Actions and Proceedings Prohibited, Affirmative Defense; Grandfathering of Certain Podiatrists; SB 28

SB 28 creates and amends law related to possession of certain cannabidiol treatment preparations. The bill also grandfathers in doctors of podiatric medicine (DPMs) who have completed a two-year post-doctoral surgical residency program prior to July 1, 2007, in reconstructive rearfoot/ankle surgery, who were inadvertently excluded in a 2014 statutory revision, and who meet certain conditions, to the podiatrists who may perform surgery on the ankle.

Cannabidiol Treatment Preparations

Claire and Lola’s Law

The bill creates “Claire and Lola’s Law,” which prohibits state agencies and political subdivisions from initiating child removal proceedings or child protection actions or proceedings based solely upon the parent’s or child’s possession or use of cannabidiol treatment preparation in accordance with the affirmative defense established by the bill. “Cannabidiol treatment preparation” is defined to mean an oil containing cannabidiol and tetrahydrocannabinol and having a tetrahydrocannabinol concentration of no more than 5 percent relative to the cannabidiol concentration in the preparation verified through testing by a third-party, independent laboratory.

The bill prohibits construing its provisions to:

- Require the Kansas Medical Assistance Program or various other policies, plans, contracts, or organizations that provide coverage for accident and health services and that are delivered, issued for delivery, amended, or renewed on or after July 1, 2019, to provide payment or reimbursement for any cannabidiol treatment preparation; or
- Allow the possession, sale, production, redistribution, or use of any other form of cannabis.

The bill defines “debilitating medical condition” as a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.

The bill also defines “tetrahydrocannabinol concentration” and “third-party, independent laboratory.”

Amendments to Criminal Law

The bill amends the crime of unlawful possession of controlled substances to provide an affirmative defense to a prosecution of such crime arising out of a person’s possession of any cannabidiol treatment preparation (as defined in the bill) if the person has a debilitating medical condition (as defined in the bill) or is the parent or guardian of a minor child with such condition; is possessing a cannabidiol treatment preparation being used to treat such condition; and has simultaneous possession of a letter that (a) shall be shown to a law enforcement officer on such officer’s request, (b) is dated within the preceding 15 months and signed by the Kansas licensed physician who diagnosed the qualifying condition, (c) is on such physician’s letterhead, and (d) identifies the person or minor child as such physician’s patient and identifies the patient’s qualifying condition.

Grandfathering of Certain Podiatrists

The bill adds DPMs who have completed a two-year post-doctoral surgical residency program prior to July 1, 2007, in reconstructive rearfoot/ankle surgery to the podiatrists who may perform surgery on the ankle, provided such grandfathered podiatrists are also either board-certified or board-qualified progressing to board certification in reconstructive rearfoot/ankle surgery by a nationally recognized certifying organization acceptable to the State Board of Healing Arts.

The bill also removes statutory language referencing the Podiatry Interdisciplinary Advisory Committee; authority for it expired on July 1, 2018.

Electronic Prescription Orders; Administering a Drug by Injection; Authorization of Business Entities to Hire Physicians and Chiropractors; HB 2119

HB 2119 amends the Pharmacy Act of the State of Kansas (Pharmacy Act) to require certain prescription orders to be transmitted electronically and to permit a licensed pharmacist to administer a drug by injection in certain situations. The bill also allows a business entity issued a certificate of

authorization by the State Board of Healing Arts (BOHA) to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensee holds a valid license issued by BOHA.

Electronic Prescription Orders

The bill requires every prescription order issued for a controlled substance in Schedules II-V that contains opiate to be transmitted electronically, except as follows:

- Electronic prescription orders are not possible due to technological or electronic system failures;
- Electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber or other exceptional circumstances exist as demonstrated by the prescriber;
- The prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- The prescription order is issued by a licensed veterinarian;
- The prescriber reasonably determines it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
- The prescription order is issued pursuant to drug research or drug therapy protocols;
- The prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- The U.S. Food and Drug Administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

A prescriber is allowed to request a waiver from electronically transmitting prescriptions described above for a period not to exceed six months if the prescriber cannot comply with the electronic transmitting requirements due to economic hardship, technological limitations, or other circumstance demonstrated by the prescriber. The bill allows the prescriber to request renewal of a waiver granted by the State Board of Pharmacy, for a period not to exceed six months. The bill requires requests for waivers or renewals to be submitted to the State Board of Pharmacy in a form and manner prescribed by the State Board of Pharmacy and to include the reason for the request and any other information required by the State Board of Pharmacy.

If a prescriber prescribes a controlled substance by non-electronic prescription, the prescriber must indicate the prescription is made pursuant to a waiver. A pharmacist is not required to verify the

validity of the waiver, either with the prescriber or the State Board of Pharmacy, but is allowed to do so in accordance with continuing law.

The bill provisions requiring every prescription order issued for a controlled substance in Schedules II-V that contains opiate to be transmitted electronically takes effect July 1, 2021. [Note: Substances included in the schedules are listed in KSA 65-4107 *et seq.*]

Administration of a Drug by Injection

The bill also amends the Pharmacy Act to permit a licensed pharmacist to administer a drug by injection that, in the judgment of the prescriber, could safely be self-administered by a patient, to a patient pursuant to a prescription order, unless the prescription order includes the words “not to be administered by a pharmacist,” or words of like effect. The bill defines “medication order” to mean an order by a prescriber for a registered patient of a Kansas licensed medical care facility.

Nothing in the provisions of the bill replaces, repeals, or supersedes requirements of KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas.

Authorization of Business Entities to Hire Physicians and Chiropractors

The bill allows a business entity issued a certificate of authorization by BOHA to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such a licensee holds a valid license issued by BOHA. The bill provides nothing in the Kansas Healing Arts Act is to be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization as set forth in the bill. Medical care facilities in compliance with Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center are exempt from the provisions in the bill. The bill states it shall not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions are added to the Kansas Healing Arts Act.

Definitions

The bill defines the following terms:

- “Business entity” to mean:
 - An employer located in Kansas that utilizes electronic medical records and offers medicine and surgery or chiropractic services solely for its employees and the dependents of such employees at the employer’s work site;
 - An organization licensed to sell accident and sickness insurance in Kansas that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization that provides

medical services solely for the organization's enrollees and dependents of such enrollees; or

- An information technology company that designs, utilizes, and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or chiropractic services solely to its employees and the dependents of such employees at the employer's work sites in Kansas;
- "Licensee" to mean a person licensed by BOHA to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited, or placed under probationary conditions; and
- "Physician" to mean a person licensed by BOHA to practice medicine and surgery.

The bill specifies "business entity" does not include medical care facilities, corporations, and professional corporations as defined in continuing law.

Certificate of Authorization

The bill allows a business entity to apply to BOHA for a certificate of authorization, on a form and in a manner prescribed by BOHA, and requires the following information to be included:

- The name of the business entity;
- A list of the names of the owners and officers of the business entity;
- A description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;
- A list of each responsible official if the business entity is organized as a governmental unit; and
- A list of all licensed physicians and chiropractors to be hired by the business entity.

The bill requires, as a condition of certification, a business entity to provide BOHA evidence of the following:

- The address of the business entity;
- A city or county occupational license; and
- Licensure of all physicians and chiropractors to be employed by the business entity.

The bill requires BOHA to issue a certificate of authorization if it finds the business entity is in compliance with the requirements stated above. The certificate designates the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

Application and renewal fee. The bill requires a business entity to remit an application fee set by BOHA through rules and regulations, not to exceed \$1,000. The bill requires a certificate of authorization to be renewed annually and be accompanied by a fee fixed by BOHA.

Liability

The bill provides, except as stated in the Health Care Provider Insurance Availability Act (HCPIAA) [KSA 2018 Supp. 40-3403], no business entity issued a certificate of authorization shall be relieved of responsibility for the conduct or acts of its agents or employees by reason of its compliance with the provisions of the bill, nor shall any individual licensed to practice the healing arts be relieved of responsibility and liability for services performed by reason of employment or relationship with such business entity. The bill specifies nothing in the bill exempts any business entity from the provision of any other law applicable to the business entity.

Restrictions

The bill prohibits a business entity from directly or indirectly interfering with, diminishing, restricting, substituting its judgment for, or otherwise exercising control over the independent professional judgment and decisions of its employed licensees as it relates to the care of patients; or from prohibiting or restricting any employed licensee from discussing with or disclosing to any patient or other individual any medically appropriate healthcare information that such licensee deems appropriate regarding the nature of treatment options, the risk or alternatives, the process used or the decision made by the business entity to approve or deny healthcare services, or the availability of alternate therapies, consultations, or tests; or from advocating on behalf of a patient.

Standards of Professional Conduct

The bill allows a business entity's certificate of authorization to be revoked, suspended, or limited; the entity to be publicly censured or placed under probationary conditions; or an application for a certificate or reinstatement of a certificate denied upon a finding of the existence of any of the following grounds:

- The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated certificate;
- The business entity has willfully or repeatedly violated the provisions in the bill, the Pharmacy Act, or the Uniform Controlled Substances Act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the Secretary of Health and Environment that are relevant to the practice of the healing arts;
- The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended, or limited; has been

censured or has had other disciplinary action taken; or has had an application for a certificate or license denied, by the proper licensing authority of another state;

- The business entity has violated any lawful rule and regulation promulgated by BOHA;
- The business entity has failed to report or reveal the knowledge continuing law requires to be reported or revealed;
- The business entity has failed to report to BOHA any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under provisions of the bill;
- The business entity has engaged in conduct likely to deceive, defraud, or harm the public;
- The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain;
- The business entity has used any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient healthcare record;
- The business entity has failed to furnish BOHA, or its investigators or representatives, any information legally requested by BOHA;
- The business entity has had, or failed to report to BOHA, any adverse judgment, award, or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to the acts or conduct that would constitute grounds for disciplinary action under provisions of the bill; or
- The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

A business entity that holds a certificate of authorization is allowed to operate under an assumed name.

Health Care Stabilization Fund

The bill requires, for the purposes of determining the impact on the Health Care Stabilization Fund (Fund) of requiring business entities to comply with the provision of the HCPIAA, the Fund to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the finding to the Legislature on or before January 1, 2020.

Rules and Regulations

BOHA is required to adopt rules and regulations as necessary to implement and administer the provisions in the bill.

Effective Date

The provisions of the bill authorizing business entities to hire physicians and chiropractors take effect on March 1, 2020.

INSURANCE

Insurance Code Amendments and Law—Fixed Index Annuities; RBC Instructions; Enterprise Risk Reports; Fraudulent Insurance Act; HB 2177

HB 2177 creates law and amends the Insurance Code to:

- Permit life insurance companies that offer fixed index annuities (FIAs) to utilize an alternative methodology accounting for certain reserves;
- Amend the effective date specified for risk-based capital (RBC) instructions;
- Amend registration requirements in the Insurance Holding Company Act related to a filing exemption for enterprise risk reports; and
- Amend provisions governing fraudulent insurance acts and associated criminal penalty provisions to add clarifying definitions and repeal nearly identical provisions also addressing fraudulent insurance acts.

Fixed Index Annuities [New Section 1]

The bill creates law permitting life insurance companies that offer FIAs to utilize an alternative methodology accounting for FIA hedging and associated reserves.

Definitions

The bill defines several terms, including:

- “Eligible derivative asset” to mean an option (as defined in law relating to financial futures contracts [KSA 40-2b25]) that is purchased or written to hedge the growth in interest credited to an indexed product as a direct result of changes in each related external index;
 - “Option,” as defined by KSA 40-2b25, means an agreement giving the buyer the right to buy or receive, sell or deliver, enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests;
- “External index” to mean a list of securities, commodities, or other financial instruments that is published or disseminated by a source other than an insurance company, including Standard & Poor’s, NASDAQ, and Dow Jones; and
- “Indexed annuity products” and “indexed life products” to each mean life insurance policies that:

- Provide a minimum guaranteed interest accumulation on a portion of all premium payments; and
- Include provisions under which interest is credited based upon the performance of one or more external indices.

The term “hedging transaction” is assigned its definition in KSA 40-2b25: a financial instrument transaction which is entered into and maintained to reduce the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring, or the currency exchange-rate risk or the degree of exposure as to assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring.

The bill also defines “indexed products” and “interest-crediting period.”

Criteria for Eligible Derivative Assets and Life Insurers

The bill will permit an insurance company to account for eligible derivative assets at amortized cost, if the insurer can demonstrate these assets meet the following criteria for an economic hedge at the inception of the hedge, or as of the date the insurer begins using the accounting practices established by the bill:

- There must be a formal documentation of the economic hedging relationship and the insurer’s risk management objective and strategy for undertaking the economic hedge, including certain information described by the bill; and
- At the end of each quarterly reporting period, the insurer must maintain documentation that the economic hedge is expected to be and continues to be highly effective in achieving offsetting changes in fair value attributable to the hedged risk during the period the economic hedge is designated.

The bill further provides that eligible derivative assets purchased or written within a year or less to maturity or expiration shall not be required to be amortized.

Accounting Practices Applying to FIA Reserves

The bill establishes the following accounting practices and further states this practice will not apply to the calculation of indexed life insurance product reserves:

- Indexed annuity product reserve calculations must be based on Actuarial Guideline XXXV, assuming the market value of the eligible derivative assets associated with the current interest crediting period is zero, regardless of the observable market for the eligible derivative assets; and

- At the conclusion of each interest-crediting period, the interest credited to such product must be reflected in the indexed annuity product reserve as realized, based on the actual performance of the relevant external index or internal indices.

Reporting Requirements; Rules and Regulations

The bill requires insurers opting to use the alternative accounting practices established in the bill to report quarterly to the Commissioner of Insurance (Commissioner), for analysis purposes, the market value of its eligible derivative assets, and what the Actuarial Guideline XXXV reserve would be, using the market value of such assets. The bill further prescribes that an insurer electing to use this methodology shall not change its accounting practices back to those that would apply in the absence of the statute without the prior approval of the Commissioner.

The bill also states the Commissioner shall have the power to adopt all reasonable rules and regulations necessary to implement provisions of the bill related to fixed index annuities.

Risk-based Capital Instructions [Section 2]

The bill changes the effective date specified in the Insurance Code for the RBC instructions promulgated by the National Association of Insurance Commissioners for property and casualty companies and for life insurance companies from December 31, 2017, to December 31, 2018.

Enterprise Risk Reports [Section 3]

The bill amends registration requirements in the Insurance Holding Company Act related to a filing exemption for enterprise risk reports. Specifically, the bill requires an enterprise risk report filed by the ultimate controlling person of every insurer subject to registration to be appropriate to the nature, scale, and complexity of the insurer.

The bill exempts the ultimate controlling person of a domestic insurer from submitting an enterprise risk report if the domestic insurer is authorized, admitted, or eligible to engage in the business of insurance only in Kansas with total direct and assumed annual premiums of less than \$300.0 million, unless the ultimate controlling person of the domestic insurer also controls other insurers not meeting the requirements of the subsection. The bill specifies an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in Kansas if the insurer directly or indirectly writes or assumes insurance in any other manner in another state.

Fraudulent Insurance Acts [Section 4; Section 5]

The bill amends provisions governing fraudulent insurance acts and associated criminal penalty provisions to add clarifying definitions (KSA 2018 Supp. 40-2,118) and repeals nearly identical provisions also addressing fraudulent insurance acts (KSA 2018 Supp. 40-2,118a).

The bill creates the following definitions and updates references in criminal penalty provisions to specify “amount involved,” as the term relates to the severity level of the crime:

- “Amount involved” to mean the greater of:
 - The actual pecuniary harm resulting from the fraudulent insurance act;
 - The pecuniary harm that was intended to result from the fraudulent insurance act; or
 - The intended pecuniary harm that would have been impossible or unlikely to occur, such as in a government sting operation or a fraud in which the claim for payment or other benefit pursuant to an insurance policy exceeded the allowed value. The aggregate dollar amount of the fraudulent claims submitted to the insurance company shall constitute *prima facie* evidence of the amount of intended loss and is sufficient to establish the aggregate amount involved in the fraudulent insurance act, if not rebutted; and
- “Pecuniary harm” to mean harm that is monetary or that otherwise is readily measurable in money, and does not include emotional distress, harm to reputation, or other non-economic harm.

Cybersecurity Insurance; Life Insurance; Unfair Trade Practices; Expansion of AHPs; Exemption from Jurisdiction of the Commissioner of Insurance; Third Party Administrators and Fees; HB 2209

HB 2209 creates and amends law pertaining to insurance.

The bill amends and makes several updates to the Insurance Code, including:

- Establishing the Unclaimed Life Insurance Benefits Act;
- Amending the unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals;
- Amending license and renewal application fees and establishing an annual report fee in the Third Party Administrators (TPA) Act;
- Amending several health insurance provisions related to the regulation of association health plans (AHPs) and small employer plans and designating certain statutes as the Small Employer Health Insurance Availability Act; and
- Exempting an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner of Insurance (Commissioner).

The bill also permits the Kansas Board of Regents (KBOR) to purchase cybersecurity insurance.

Unclaimed Life Insurance Benefits Act [New Sections 1-3]

The bill establishes the Unclaimed Life Insurance Benefits Act.

Definitions [New Section 2]

The bill establishes definitions for the following terms under the Unclaimed Life Insurance Benefits Act:

- “Contract” to mean an annuity contract. The term “contract” does not include an annuity used to fund an employment-based retirement plan or program where the insurer does not perform the record keeping services, or the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants;
- “Death Master File” to mean the U.S. Social Security Administration’s (SSA) Death Master File (DMF), or any other database or service that is at least as comprehensive as the SSA’s DMF for determining that a person has reportedly died;
- “Death Master File match” to mean a search of the DMF that results in a match of the Social Security number (SSN), or the name and date of birth of an insured, annuity owner, or retained asset account holder;
- “Knowledge of death” to mean receipt of an original or valid copy of a certified death certificate, or a DMF match validated by the insurer in accordance with the bill;
- “Policy” to mean any policy or certificate of life insurance that provides a death benefit. The term “policy” does not include:
 - Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) [29 USC Section 1002] or under any federal employee benefit program;
 - Any policy or certificate of life insurance used to fund a preneed funeral contract or prearrangement;
 - Any policy or certificate of credit life or accidental death insurance; or
 - Any policy issued to a group master policyholder for which the insurer does not provide record keeping services;
- “Record keeping services” to mean those circumstances under which the insurer has agreed with a group policy or contract customer to be responsible for obtaining, maintaining, and administering in its own or its agents’ systems information about

each individual insured under an insured's group insurance contract, or a line of coverage thereunder, at least the following information: SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status; and

- "Retained asset account" to mean any mechanism whereby the settlement of proceeds payable under a policy or contract is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity benefits other than death benefits.

Requirements of Insurers; Prohibitions; Unclaimed Property; Unfair or Deceptive Acts [New Section 3]

Comparison of policies and accounts against a DMF. The bill requires an insurer to compare its insureds' in-force policies, contracts, and retained asset accounts against a DMF, on at least a semi-annual basis, by using the full DMF once and then using the DMF update files for future comparisons to identify potential matches of its insureds.

Confirmation of death and location of beneficiary or beneficiaries within 90 days. The bill requires the insurer, for those potential matches identified as a result of the DMF match, within 90 days of the match to:

- Complete a good faith effort documented by the insurer to confirm the death of the insured or retained asset account holder against other available records and information; and
- Determine whether benefits are due in accordance with the applicable policy or contract and, if benefits are due, use good faith efforts documented by the insurer to locate the beneficiary or beneficiaries and provide the appropriate claim forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy contract.

Confirmation of death for group life insurance policy or certificate. The bill requires insurers, for group life insurance, to confirm the possible death of an insured when the insurers maintain at least the SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status of those covered under a policy or certificate.

Implementation of procedures. The bill requires insurers to implement procedures to account for common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names; compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names; transposition of the month and date portions of the date of birth; and incomplete SSNs.

Disclosure of personal information. The bill authorizes an insurer to disclose minimum, necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds, as permitted by law.

Prohibition on charging fees. The bill prohibits an insurer or its service provider from charging any beneficiary or other authorized representative for any fees or costs associated with a DMF search or verification of a DMF match under the bill.

Application of the Unclaimed Property Act; notification to State Treasurer. The bill requires the benefits from a policy, contract, or a retained asset account, plus any applicable accrued contractual interest, to first be payable to the designated beneficiaries or owners. The bill states, in the event the beneficiaries or owners cannot be found, these benefits and interest revert to the State as unclaimed property pursuant to the Uniform Unclaimed Property Act (KSA 58-3936), which provides general rules for taking custody of intangible unclaimed property. The bill specifies interest payable on life insurance proceeds under KSA 40-447 is not payable as unclaimed property.

The bill requires an insurer to notify the State Treasurer upon the expiration of the statutory time period for those benefits to revert to the State that a policy or contract beneficiary or retained asset account holder has not submitted a claim with the insurer, and the insurer has been unable, after good faith efforts, documented by the insurer, to contact the retained asset account holder, beneficiary, or beneficiaries. The insurer is required, upon such notice, to immediately submit the unclaimed policy or contract benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the State Treasurer.

Unfair or deceptive acts (comparison against a DMF). The bill states the failure to meet any requirement of this section with such frequency as to constitute a general business practice is considered an unfair or deceptive act or practice under the unfair trade practices law (KSA 40-2404) and subject to the penalties contained under the unfair trade practices law (KSA 40-2401 *et seq.*). The bill also specifies the bill should not be construed to create or imply a private cause of action for a violation of this section (provisions pertaining to comparison against a DMF).

Unfair Trade Practices Law—Life Insurance Coverage [Section 4]

The bill amends a provision in the unfair trade practices law to add the refusal to insure or limiting of life insurance coverage to an individual, solely because of that individual's status as a living organ donor, to the list of unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

The bill specifies this “unfair discrimination” to mean “refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for life insurance to an individual, or charging the individual a different rate for the same coverage, solely because of such individual's status as a living organ donor.”

The bill further provides, with respect to all other conditions, living organ donors shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as persons who are not organ donors.

Third Party Administrators and Fees [Sections 5-7]

The bill amends license and renewal application fees and establishes an annual report fee in the TPA Act.

The bill amends the initial license application fee for home state and non-resident TPAs from “as provided for by rules and regulations” to the specified amount of \$400 and requires an annual report fee of \$100 for both home state and non-resident TPAs. The bill establishes a \$200 renewal application fee for each non-resident administrator renewal application.

[*Note:* A TPA is any person who directly or indirectly underwrites, collects charges or premium from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health insurance coverage offered or provided by a payor.]

Expansion of AHPs; Exemption from Jurisdiction of the Commissioner [Sections 8-17]

The bill amends several health insurance provisions in the Insurance Code related to the regulation of AHPs and small employer plans. The bill amends the Insurance Code to exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner. The bill also designates certain statutes as the Small Employer Health Insurance Availability Act.

Group Insurance Policies—Fully-insured AHPs and Plan Membership [Section 8]

The bill removes a membership limitation placed on AHPs that requires the association have at least 25 members, employees, or employees of members to be offered group accident and health insurance coverage.

Designation of the Small Employer Health Insurance Availability Act; Stated Purpose and Intent; Definitions [Sections 9-10]

The bill designates KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Small Employer Health Insurance Availability Act. The bill states the purpose and intent of the Small Employer Health Insurance Availability Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing condition exclusions, to provide for development of ‘basic’ and ‘standard’ health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”

The bill modifies the definition of “small employer” to remove “association” for entities eligible for group sickness and accident insurance and separately require, when determining the number of eligible employees, employees participating in an AHP be counted in the aggregate at the association level.

The bill also creates two definitions:

- “Association health plan” or “AHP” to mean a coverage for the payment of expenses described in KSA 2018 Supp. 40-2222 offered by a qualified trade, merchant, retail or professional association or business league that complies with the provisions of KSA 2018 Supp. 40-2222a and 40-2222b; and
- “Qualified trade, merchant, retail or professional association or business league” to mean any bona fide trade merchant, retail or professional association or business league that:
 - Has been in existence for at least five calendar years;
 - Is composed of five or more employers; and
 - Is incorporated in Kansas, has a principal office located in Kansas, or has a principal office within a metropolitan area that has boundaries within Kansas.

AHPs—Exemption from Regulation under the Small Employer Health Insurance Availability Act [Section 11]

The bill exempts certain AHPs from regulation under the Small Employer Health Insurance Availability Act.

Exemptions from the Commissioner’s Jurisdiction; Computation of Premium Tax [Sections 12-17]

Exemption from Commissioner’s jurisdiction. The bill amends provisions pertaining to authorized multiple employer welfare arrangements exempted from the jurisdiction of the Commissioner. The bill amends the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust. The bill also amends an exemption granted to any other qualified trade, merchant, retail, or professional association or business league to remove a requirement the entity be incorporated in Kansas and instead specifies such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

[*Note:* The bill moves the definition assigned to a qualified trade, merchant, retail or professional association or business and also eliminates two requirements placed on these entities: the entity be in existence for at least five years and be composed of five or more employers to KSA 2018 Supp. 40-2209d.]

Exemption from Commissioner’s jurisdiction—Kansas Farm Bureau. The bill exempts a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931 (the Kansas Farm Bureau), or an affiliate thereof, that provides healthcare benefit coverage for the payment of expenses to or for the members of the organization and their dependents from the jurisdiction of the Commissioner.

The bill specifies the healthcare benefit coverage provided by the nonprofit agricultural membership organization is not considered insurance, notwithstanding any provision of law to the contrary. The bill permits the risk under such coverage to be reinsured by a company authorized to conduct reinsurance in Kansas.

The bill requires providers of this healthcare benefit coverage to file a signed, certified actuarial statement of plan reserves annually with the Commissioner.

Computation of premium tax. The bill also amends law providing for the payment of an annual premium tax by self-insured AHPs exempted from the jurisdiction of the Commissioner to provide a computation method for the premium tax applicable to the location of such association. [*Note:* Under current law, an exempted AHP is subject to a 1.0 percent annual tax on its annual Kansas gross premium and must be incorporated in Kansas.] The bill updates “association” to “person or entity” in the statute and provides, for persons or entities having a principal office within a metropolitan area that has boundaries in Kansas and any association having its principal office located within the borders of Kansas and offering policies to non-residents of Kansas, the tax owed shall be based upon the gross premium collected during the preceding year relating to health benefit plans issued to members that have a principal place of business in Kansas.

Cybersecurity Insurance [Section 18]

The bill amends law pertaining to the Committee on Surety Bonds and Insurance to permit KBOR to purchase cybersecurity insurance as KBOR deems necessary to protect student records, labor information, and other statutorily protected data KBOR maintains, independent of the Committee on Surety Bonds and Insurance, and without complying with the purchasing procedures of the Department of Administration.

The term “cybersecurity insurance” includes, but is not limited to, first-party coverage against losses such as data destruction, denial of service attacks, theft, hacking, and liability coverage guaranteeing compensation for damages from errors, such as the failure to safeguard data.

JUDICIARY

Judicial Branch Surcharges; Tribal Court Judgments; Bonding Requirements for Cruelty to Animals; SB 20

SB 20 extends judicial branch surcharges on various docket fees, creates law concerning tribal court judgments, and amends provisions regarding bonding in the statute governing the crime of cruelty to animals.

Judicial Branch Surcharges

The bill extends the judicial branch surcharge the Legislature reauthorized in 2017 HB 2041 to fund non-judicial personnel for six years, through June 30, 2025; the former sunset date was June 30, 2019.

Tribal Court Judgments

The bill creates law providing that district courts shall extend full faith and credit to orders, judgments, and other judicial acts of tribal courts of any federally recognized Indian tribe, pursuant to Kansas Supreme Court rules. Such recognition is extended only to judgments of those tribal courts that grant full faith and credit to judgments of Kansas state courts. The bill specifies any person who files a tribal court judgment is required to pay a docket fee as prescribed by continuing law in the Kansas Code of Civil Procedure, and any additional fees or charges not specifically covered by such docket fee are assessed as additional court costs in the same manner and extent as if the action had been originally filed in the court where the tribal court judgment is filed. The bill also states nothing in this section is construed to be a waiver of the sovereign immunity of the State of Kansas or of a federally recognized Indian tribe.

Bonding Requirements for Cruelty to Animals

The bill amends provisions regarding bonding in the statute governing the crime of cruelty to animals. Specifically, the bill provides the bond must be filed in the county where the animal was taken into custody, rather than in the county where the animal is being held. The bill also adds a requirement that the bond be maintained and renewed every 30 days as necessary to cover the cost of care and treatment of the animal until disposition of the animal by the court and a provision that any costs collected by the court or through the bond be transferred to the entity responsible for paying the cost of care, treatment, or boarding of the animal. The bill reorganizes continuing provisions to clarify the timing and applicability of the bonding requirement.

Residential Real Estate; Insurance; Assigning Rights or Benefits to Residential Contractors; Tenants; Domestic Violence; Housing Protections; SB 78

SB 78 creates law regarding assignment of certain rights or benefits under an insurance policy on residential real estate and protections related to housing for victims of domestic violence, sexual assault, human trafficking, or stalking, as follows.

Assignment of Rights or Benefits to a Residential Contractor under an Insurance Policy on Residential Real Estate

The bill creates law regarding a post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate (assignment). Specifically, the bill states an assignment may authorize a residential contractor (as defined by the bill to include certain persons involved in repair or replacement of roof systems, other exterior work or cleanup, or interior or exterior repair and cleanup on residential real estate) to be named as a co-payee for the payment of benefits under a property and casualty insurance policy insuring residential real estate. Such assignment must include a specified notice in capitalized, 14-point type. The residential contractor must provide a copy of the assignment to the insurer of the residential real estate within three business days of the signing of the assignment, and the assignment must provide, in addition to any other right to revoke, the named insured has the right to cancel the assignment within five business days after execution.

The bill states an assignment shall not, under certain circumstances, impair the interest of a mortgagee or prevent or inhibit an insurer from communicating with the named insured or mortgagee. An assignment is void if the residential contractor violates any of the provisions of the new section or is not in compliance with the requirements of the Kansas Roofing Registration Act.

The bill directs the Commissioner of Insurance to strictly enforce statutory provisions requiring insurers to promptly provide a named insured a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Any violation of the new section constitutes a deceptive act or practice under the Kansas Consumer Protection Act.

In addition to “assignment” and “residential contractor,” the bill defines “residential real estate” and “roof system” for this purpose.

Housing Protections for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking

The bill creates law prohibiting certain actions being taken against a tenant, lessee, or applicant for a lease because such person is a “protected person,” defined by the bill to be a person who, during the preceding 12 months, has been, is, or is in imminent danger of becoming a victim of domestic violence, sexual assault, human trafficking, or stalking.

Specifically, an applicant cannot be denied tenancy on the basis of or as a direct result of being a protected person, if the applicant otherwise qualifies for tenancy or occupancy.

A tenant or lessee cannot be evicted from the premises or found to be in violation of a rental or lease agreement on the basis of or as a direct result of being a protected person, if the tenant or lessee otherwise qualifies for tenancy or occupancy.

A tenant or lessee is not liable for rent for the period after vacating rented or leased premises if the tenant or lessee is a protected person and notifies the landlord or property owner in accordance with provisions set forth in the bill. In an action brought against a tenant or lessee under Kansas law seeking recovery of rent, the tenant or lessee will have an affirmative defense and no liability for rent for the period after vacating the premises if, by preponderance of the evidence, the court finds the tenant or lessee was a protected person on the date the tenant or lessee vacated the premises at issue and the tenant or lessee provided the required notice. The protections do not affect the tenant's or lessee's liability for late or unpaid rent or other amounts owed for the period prior to vacating the premises at issue.

An applicant, tenant, or lessee qualifies for the protections of the bill if the applicant, tenant, or lessee is a protected person and provides a statement regarding the qualifying circumstances to the landlord or property owner, who may request the applicant, tenant, or lessee provide additional documentation specified by the bill. Such documentation can include a document signed by the victim and any one of various specified licensed persons from whom the victim sought assistance, declaring under penalty of perjury the licensed person holds the opinion, in their professional judgment within their scope of practice, the qualifying incident occurred, or a court order granting relief to the protected person relating to the alleged qualifying circumstances. The submission of false information by an applicant, tenant, or lessee may be a basis for denial of tenancy, eviction, or violation of a rental or lease agreement.

A landlord or property owner may impose a reasonable termination fee, not to exceed one month's rent, on a tenant or lessee requesting termination pursuant to the bill before the expiration date of the lease, but only if such fee is contained in the terms of the rental or lease agreement.

The bill states the rights under this section shall not be waived (and a landlord or property owner shall not require a tenant or lessee to waive) in a rental or lease agreement, and a rental or lease agreement will continue for any remaining tenants or lessees upon termination of a protected person's agreement pursuant to the above provisions.

The bill allows a court to award statutory damages of \$1,000 and reasonable attorney fees and costs in an action against a landlord or property owner for a violation of the provisions created by the bill.

The bill states the definitions of "domestic violence," "human trafficking," "sexual assault," and "stalking" are the same as those provided by continuing statutes regarding substitute mailing addresses for victims of such offenses.

Kansas Probate Code—Inheritance Rights; Automatic Revocation; Divorce; HB 2038

HB 2038 creates law within the Kansas Probate Code providing for the automatic revocation of certain inheritance rights of a former spouse or former spouse's relatives upon divorce, as follows.

Automatic Revocation and Severance

The bill provides, on and after July 1, 2019, the divorce or annulment of a marriage revokes any revocable:

- Disposition or appointment of property made to an individual's former spouse or relative of such spouse in a governing instrument;
- Provision in a governing instrument conferring a general or nongeneral power of appointment on a former spouse or relative of such spouse; and
- Nomination in a governing instrument of a former spouse or relative of such spouse to serve in any fiduciary or representative capacity.

A divorce or annulment also severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms these interests into equal tenancies in common. Such severance will not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses, unless a written declaration of the severance has been noted, registered, filed, or recorded in a manner further specified by the bill.

Provisions of a governing instrument will be given effect as if the former spouse and relatives of such spouse disclaimed all automatically revoked provisions, or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and such spouse's relatives died immediately before the divorce or annulment.

An exception to the automatic revocation or severance will apply if provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment.

No change of circumstances other than those described in the bill and in a similar continuing section of the Probate Code applicable to wills will effect a revocation.

Liability of Payors or Third Parties

The bill states a payor or other third party is not liable for making a payment, transferring an item of property or any other benefit to a beneficiary designated by a document affected by the operation of the provisions of the bill, or taking any other action in good faith reliance on the validity of the governing instrument before receiving written notice of the claimed forfeiture or revocation. A payor or third party is liable for such payments or actions taken after receiving such notice. The bill provides specific requirements for the written notice required, including manner of service. Upon receiving such notice, the payor or third party may pay any amount owed or transfer or deposit any item of property held by the payor or third party to or with the court having jurisdiction of the relevant probate proceedings or, if no proceedings have commenced, with the court having jurisdiction of probate proceedings located in the county of the decedent's residence. This would discharge the payor or third party from all claims related to the amounts paid or property transferred to the court.

The court would then hold the funds or property and order disbursement or transfer in accordance with its determination.

Obligations of Those Purchasing or Receiving Payment or Items of Property; Effect of Federal Preemption

The bill states its provisions do not obligate a purchaser for value without notice, or a receiver of a payment or property in partial or full satisfaction of a legally enforceable obligation, to return the payment, property, or benefit, and the purchaser or receiver is not liable for the amount of payment or value of the property or benefit.

A former spouse, former spouse's relative, or other person who, not for value, receives a payment, property, or other benefit to which the person is not entitled under the provisions of the bill is obligated to return the same, or is personally liable for the payment or value of the property or benefit, to the person entitled to it. A similar provision applies where federal law preempts the bill's provisions.

The bill states, if its provisions are preempted by federal law with regard to any property item, the provisions of the bill will not apply to such preempted item, but will apply in all other circumstances.

Definitions

The bill defines "disposition or appointment of property," "divorce or annulment," "divorced individual," "governing instrument," "relative of the divorced individual's former spouse," and "revocable," and provides exclusions to the term "surviving spouse."

Limited Liability Companies; Registration of Animal Shelters; HB 2039

HB 2039 amends the Charitable Organizations and Solicitations Act to exempt from its registration requirement any charitable organization that is an animal shelter licensed pursuant to the Kansas Pet Animal Act.

The bill also creates and amends law related to limited liability companies (LLCs) in the Kansas Revised Limited Liability Company Act (RLLCA), Business Entity Standard Treatment (BEST) Act, and other statutes, as follows.

Series LLCs

The bill creates and amends law related to series LLCs, as follows. [*Note: Series LLCs were originally implemented in the RLLCA by 2012 Sub. for HB 2207.*]

Merger or Consolidation of Series LLCs [Section 3]

The bill creates law effective July 1, 2020, allowing merger or consolidation by one or more series with or into one or more other series of the same LLC with such series as the agreement provides being the surviving or resulting series.

Unless otherwise provided by the operating agreement, the bill requires merger or consolidation to be approved by the vote of the members of each series that is to merge or consolidate who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all the members of the series.

The bill allows exchange or conversion of rights or securities of or interests in the constituent series, or allows them to be canceled or remain outstanding. An agreement of merger or consolidation can be terminated or amended pursuant to a provision for such in the agreement.

The bill requires the surviving or resulting series to file with the Secretary of State a certificate of merger or consolidation, executed by authorized persons, which must include:

- The name of the series to be merged or consolidated and the name of the LLC that formed the series;
- That a merger or consolidation agreement has been approved by each series that is to merge or consolidate;
- The name of the surviving or resulting series;
- Any amendment to the certificate of designation of the surviving or resulting series to change the name of the surviving series through the merger;
- The future effective date or time certain, if not effective upon filing;
- That the agreement is on file at a place of business of the surviving or resulting series or the LLC that formed the series, with the address; and
- That a copy of the agreement will be furnished upon request and without cost to any member of any merging or consolidating series.

Unless otherwise provided in the certificate, the merger or consolidation is effective upon the filing of the certificate with the Secretary of State.

A certificate of merger or consolidation acts as a certificate of cancellation of the certificate of designation of the series that is not the surviving or resulting series, and a certificate amending the name of the surviving or resulting series is deemed to be an amendment to the certificate of designation of the surviving or resulting series, with no further action required for such amendment. Any requirement in this section that a certificate of merger or consolidation be filed is deemed

satisfied by the filing of a merger or consolidation agreement containing the information required in a certificate of merger or consolidation.

A merger or consolidation agreement may amend the operating agreement of the constituent series, and any amendment relating solely to such series is effective at the effective time or date of the merger or consolidation. Such amendment or adoption is effective notwithstanding any provision in the operating agreement regarding amendment, other than such a provision applicable in connection with a merger or consolidation. These provisions may not be construed to limit the accomplishment of a merger or of any of the referenced matters by any other means provided by an operating agreement or other agreement, or otherwise by law.

The bill provides for various items upon a merger or consolidation becoming effective, including vesting of rights, privileges, powers, property, and debts and attachment and enforcement of rights of creditors, liens upon property, debts, liabilities, and duties.

Unless otherwise agreed, a merger or consolidation of a series that is not the surviving or resulting series does not require such series to wind up its affairs or pay its liabilities and distribute its assets, and the merger or consolidation does not constitute a dissolution of such series.

An operating agreement may provide that a series of the LLC shall not have the power to merge or consolidate.

Series Reinstatement [Section 4]

The bill creates law effective July 1, 2020, allowing a series whose certificate of designation has been canceled to be reinstated by filing with the Secretary of State a certificate of reinstatement, accompanied by payment of the required fee, annual report fee, and all penalties and interest due at the time of the cancellation. The bill requires the certificate to contain the name of the LLC at the time of cancellation and at the time of reinstatement, if changed; the name of the series at the time of cancellation and the name under which the series is to be reinstated, if the original name is not available; a statement that the certificate is filed by persons authorized to do so; and any other matters such persons include.

The certificate of reinstatement is deemed to be an amendment to the certificate of designation and, upon its filing, the series will be reinstated with the same force and effect as if the certificate of designation had not been canceled. The bill sets forth the effect of reinstatement on contracts; acts; matters and things made, done, and performed by the series, its members, managers, employees, and agents during cancellation; real and personal property; all rights and interests; and liability for all contracts, acts, matters, and things made, done, or performed in its name prior to reinstatement.

Restated Certificate of Designation [Section 21]

Effective July 1, 2020, the bill amends the RLLCA statute governing restated articles of organization to add provisions regarding restated certificates of designation. These provisions allow an LLC series to integrate into a single instrument all the provisions of its certificate of designation that are then in effect and operative as a result of certificates or other instruments previously filed with

the Secretary of State. The series may, at the same time, further amend its certificate of designation by adopting a restated certificate of designation.

A restated certificate of designation that restates and integrates, but does not further amend, is specifically designated a “restated certificate of designation” and is executed by an authorized person and filed with the Secretary of State as provided in the BEST Act. A restated certificate of designation that restates and integrates, and also further amends, is specifically designated an “amended and restated certificate of designation” and is executed and filed in the same manner as described above.

The bill requires a restated certificate of designation to state the name of the LLC, the present name of the series, the name under which the series was originally filed (if different), and the future effective date or time certain of the restated certificate (if not effective upon filing). The certificate also must state it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates, without further amendment, and there is no discrepancy in provisions, the bill requires the certificate also state this fact.

Upon filing of the restated certificate (or upon the future effective date or time, if provided), the initial certificate of designation is superseded, and the restated certificate is the certificate of designation of the series, but the original effective date of formation of the series remains unchanged.

Any amendment or change effected in connection with the restatement and integration of a certificate of designation is subject to any other provision of the RLLCA, not inconsistent with these provisions, which applies if a separate certificate of amendment was filed to effect such amendment or change.

Restructuring and Amendment of Series LLC Requirements [Section 39]

Effective July 1, 2020, the main statute governing series LLCs is extensively amended, restructured, and expanded, as follows.

The bill removes much of the current law regarding names, formation, limits on liability, certificates of designation, dissolution, standing, resident agents, management, applicability of law, and foreign LLCs.

Restructuring. Some provisions within the removed law are moved or reworded (without substantive changes) within the statute, including provisions regarding:

- Formation by filing of a certificate of designation with the Secretary of State;
- Notice of limitation on liabilities provided by the articles of organization on file with the Secretary of State;
- Providing for classes or groups of members or managers and voting in an operating agreement;

- Effect of events on a member or manager of a series with regard to any other series or the LLC; and
- Dissolution of a series without dissolving the LLC or affecting the limitation on liabilities.

Additions. The bill adds numerous provisions to law governing series LLCs, as follows.

The bill states a series may be formed by complying with this statute if an operating agreement provides for the establishment or formation of one or more series. A series is prohibited from merging, converting, or consolidating pursuant to any section of the RLLCA, the BEST Act, or any other statute, other than pursuant to the provisions included elsewhere in the bill.

The bill requires notice of the limitation on liabilities of a series be set forth in the articles of organization of the LLC, which is sufficient regardless of whether the LLC has formed any series when such notice is included in the articles of organization, without any specific series of the LLC being referenced in the notice.

The bill adds language stating current and amended language regarding limitation on liability does not restrict a series or LLC from agreeing that debts, liabilities, obligations, and expenses of the LLC may be enforceable against the assets of the series, or *vice versa*. The bill adds additional provisions regarding holding of assets associated with a series, accounting for the assets of a series, and references to assets, members, or managers of or associated with a series.

The bill provides a series may carry on any lawful business, purpose, or activity, whether or not for profit, except for granting insurance policies, assuming insurance risks, or banking. The bill states a series shall have the power and capacity to contract, hold title to assets, grant liens and security interests, and sue and be sued.

No member or manager of a series is obligated personally for any debt, obligation, or liability of the series, unless the member or manager otherwise agrees or as otherwise provided in the RLLCA.

The bill sets forth various voting provisions that may be included in an operating agreement and states voting may be on any basis, including several specifically listed.

Unless otherwise provided in an operating agreement, the bill vests management of a series in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, with the decision of members owning more than 50 percent of such percentage controlling. However, if an operating agreement provides for management by a manager, management is vested in the manager accordingly, and the bill gives effect to other operating agreement provisions regarding managers. A series may have more than one manager.

The bill adds provisions regarding distributions with respect to a series, including status and remedies of a member entitled to a distribution, establishment of a record date by an operating agreement, limitations on distributions related to certain liabilities and the fair market value of the

series assets, liability of a member for a distribution in certain circumstances, and the effect of these provisions on certain obligations or liabilities of members.

Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the rights and powers of a member of the series upon the assignment of all the member's LLC interest in the series.

The bill states a series is dissolved and its affairs shall be wound up upon dissolution of the LLC or upon the first of the following: at the time specified in the operating agreement; upon the happening of events specified in the operating agreement; unless otherwise provided by the operating agreement, upon the vote of series members who own two-thirds or more of the then-current percentage or other interest in the profits of such series of the LLC owned by all the members of the series; or the dissolution of the series under this statute.

Unless otherwise provided in the operating agreement, a series manager who has not wrongfully dissolved the series, or the series members or a person consented to or approved by the series members, by a vote of the members who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all of the series members, may wind up the affairs of the series. The district court, upon cause shown, may wind up the affairs of a series and appoint a liquidating trustee upon application by certain persons. The bill sets forth the authority and requirements of the persons winding up the affairs of the series, which do not affect the liability of members or impose liability on a liquidating trustee. On application by or for a member or manager associated with a series, the district court may decree dissolution of the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement. A series is an association for all purposes of Kansas law, regardless of the number of members or managers.

The bill sets forth required contents of a certificate of designation filed to form an LLC series, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020, is deemed to comply with these requirements. The bill requires the certificate of designation be executed and filed in accordance with the BEST Act and states a certificate of designation is not an amendment to the articles of organization of the LLC.

The bill permits amendment of a certificate of designation pursuant to requirements set forth in the bill for a certificate of amendment, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020, changing a previously filed certificate of designation is deemed to be a certificate of amendment.

The bill requires a manager or member of a series who becomes aware that any statement in a certificate of designation was false when made, or that any matter has changed making the certificate false in any material respect, to promptly amend the certificate of designation. A certificate of designation may be amended at any time for any other proper purpose.

Unless otherwise provided in the RLLCA or unless a later effective date or time certain is provided in the certificate of amendment, the certificate is effective at the time of filing.

The bill sets forth the circumstances under which a certificate of designation must be canceled, including by the filing of a certificate of cancellation pursuant to requirements set forth by the bill. A certificate of designation properly filed before July 1, 2020, dissolving a series is deemed a certificate of cancellation. The bill provides for correction of a certificate of cancellation and prohibits the Secretary of State from issuing a certificate of good standing for a series if the certificate of designation is canceled or if the LLC has ceased to be in good standing.

The bill specifies requirements for the name of the series to be set forth in the certificate of designation.

The bill modifies the required statements related to the series to be included in an application for registration as a foreign LLC.

Other Series LLC Amendments in RLLCA

The bill amends the RLLCA definitions statute to define “series” as a designated series of members, managers, LLC interests, or assets established in accordance with the RLLCA series statute.

Effective July 1, 2020, the bill amends RLLCA statutes regarding cancellation of articles of organization, notice by filing with the Secretary of State, fees for documents provided by the Secretary of State, and reinstatement of canceled or forfeited articles of organization to incorporate LLC series. [Sections 17, 19, 36, and 41]

Effective July 1, 2020, the bill amends the RLLCA statute regarding annual reports to include LLC series in its continuing requirements. Additionally, if applicable law does not prescribe a time for filing an annual Kansas income tax return for a series, the bill requires the annual report to be filed at, and its tax period deemed to be, the time prescribed by law for filing the annual Kansas income tax return for the LLC to which the series is associated. [Section 38]

Series LLC Amendments in Other Acts and Codes

The bill amends BEST Act statutes regarding service of process and resignation of resident agents to incorporate LLC series. [Sections 44 and 48]

Effective July 1, 2020, the bill amends BEST Act statutes regarding LLC filings, names of covered entities, reservation of entity names, and name requirements for foreign covered entities to incorporate LLC series, merger or consolidation of series LLCs, and series LLC certificates of designation, as appropriate. [Sections 43, 46, 47, and 49]

The bill amends the Code of Civil Procedure section governing service of process to provide that service on an LLC series may be made in the same manner as continuing methods of service on various corporate entities or resident agents. If service is made on the resident, managing, general, or other agent of the LLC upon which service may be made or the Secretary of State on behalf of any series, the bill requires the service to include the name of the LLC and the name of the series. [Section 50]

The bill amends the Uniform Commercial Code (UCC) general definitions statute (effective July 1, 2020) to include a series within the definition of “person” and amends the UCC Article 9 definitions statute to include a series of a registered organization within the definition of “registered organization,” if the series is formed or organized under the law of a single state and the statute of the state governing the series requires the public organic record of the series be filed with the state. [Sections 51 and 52]

Statutory Public Benefit LLCs [Sections 5-12, 18]

The bill creates (Sections 5-12) and amends (Section 18) law to create a type of LLC known as a “statutory public benefit limited liability company” (SPBLLC), as follows.

Applicability [Section 5]

Sections 5 through 12 of the bill apply to all SPBLLCs, and any SPBLLC is subject to all provisions of the RLLCA except to the extent Sections 5 through 12 impose different requirements, and such requirements may not be altered in an operating agreement.

Definitions and Name [Section 6]

The bill defines “statutory public benefit limited liability company” as a for-profit LLC formed under and subject to the requirements of the RLLCA that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner. An SPBLLC is managed in a manner balancing the members’ pecuniary interests, the best interests of those materially affected by the SPBLLC’s conduct, and the public benefit or benefits set forth in its articles of incorporation. Within its articles of organization, the SPBLLC is required to identify specific public benefit or benefits to be promoted and state it is an SPBLLC.

The bill defines “public benefit” to mean a positive effect, or reduction of negative effects, on one or more categories of persons, entities, communities, or interests (other than members in their capacities as members), including various exemplary effects listed in the bill.

The bill defines “public benefit provisions” to mean the provisions of the articles of organization, an operating agreement, or both, contemplated by Sections 5 through 12.

The bill requires, if the name of the SPBLLC does not contain the term “statutory public benefit limited liability company” or the abbreviation “S.P.B.L.L.C.” or designation “SPBLLC,” the SPBLLC must provide advance notice to any person to whom it is issuing any LLC interest that it is an SPBLLC, unless the issuance is being made pursuant to certain provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934.

Voting Requirements [Section 7]

Unless otherwise provided in the operating agreement, the consent or approval of members who own at least two-thirds of the then-current percentage or other interest in the profits of the LLC owned by all members is required to:

- Amend its articles of organization to delete or amend a provision required to comply with the above definition of SPBLLC;
- Merge, consolidate, or divide the LLC, if the resulting interests would not be in an SPBLLC with public benefit or benefits and other specified provisions comparable in all material respects to those set forth by the original LLC; or
- Cease to be an SPBLLC.

Duties [Section 8]

The members, managers, or other persons with authority to manage or direct the business and affairs of an SPBLLC (managing person) are required to manage or direct the business and affairs of the SPBLLC in a manner balancing the pecuniary interests of the members, the best interests of those materially affected by the SPBLLC's conduct, and the specific public benefits set forth in the articles of organization. Unless otherwise provided by the operating agreement, such managing person has no liability for monetary damages for the failure to manage or direct in the manner required above.

Such managing person has no duty, by virtue of the public benefit provisions, to any person due to such person's interest in the identified benefits or materially affected by the SPBLLC's conduct. Such managing person is deemed to satisfy fiduciary duties to members and the SPBLLC if the managing person's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

Statements [Section 9]

An SPBLLC is required to provide to members, at least annually and at the time of the filing of the SPBLLC's annual report, a statement regarding the LLC's promotion of the public benefits set forth in the articles of organization and of the best interests of those materially affected by the SPBLLC's conduct. The bill requires this statement to include objectives established and standards adopted, as well as objective factual information based on those standards regarding the SPBLLC's success in meeting the objectives and an assessment of the SPBLLC's success in meeting the objectives and promoting the public benefits and interests. The bill requires the statement be based on a third-party standard, as defined in this new section.

The bill requires an SPBLLC to post its most recent statement on the public portion of its website. If the SPBLLC does not have a website, it must provide a copy of the statement, without charge, to any person requesting a copy, except that compensation paid to any person and any other financial or proprietary information may be omitted from any statement publicly posted or distributed, other than a statement provided to a managing person.

The articles of organization or operating agreement may require the SPBLLC to obtain a periodic third-party certification addressing the SPBLLC's promotion of its public benefits or the best interests of those materially affected by the corporation's conduct, or both.

Derivative Lawsuit [Section 10]

Members or assignees of LLC interests in an SPBLLC may maintain a derivative lawsuit to enforce the managing and directing duties set forth in Section 8 of the bill if those members or assignees own (individually or collectively), as of the date of instituting such derivative suit, at least 2 percent of the then-current percentage or other interest in the profits of the LLC, or, for an LLC with LLC interests listed on a national securities exchange, the lesser of such percentage or LLC interests of at least \$2.0 million in market value, unless a different percentage or market value is provided by the operating agreement.

Other Provisions

Section 11 states Sections 5 through 12 shall not affect a statute or rule of law applicable to any LLC formed under the RLLCA that is not an SPBLLC. Section 12 states Sections 5 through 12 shall not be construed to limit the accomplishment by another means permitted by law of the formation or operation of an LLC formed or operated for a public benefit, including an LLC designated as a public benefit LLC, that is not an SPBLLC.

A provision of the RLLCA regarding notice provided by documents on file with the Secretary of State is amended to reference the content required to be included in an SPBLLC's articles of organization by Section 6 of the bill. [Sections 18]

Division of LLCs [Sections 2, 16, 20, 35, and 42]

The bill creates and amends law to provide for division of LLCs, as follows.

Dividing a Domestic LLC

The bill creates law (Section 2) allowing a domestic LLC to divide into two or more domestic LLCs, which are not deemed to affect liabilities of persons or obligations or liabilities of the dividing company prior to the division. Such obligations or liabilities are allocated to the division company or companies pursuant to the plan of division. Each resulting company must be formed in compliance with the RLLCA and the provisions created by the bill. The bill defines key terms related to division.

A manner of adopting a plan of division may be specified in an operating agreement. Otherwise, a plan of division may be adopted in the same manner as specified in the operating agreement for a merger or consolidation, if the operating agreement does not prohibit division. If the operating agreement does not provide for merger or consolidation and does not prohibit division, a plan for division may be authorized by the affirmative vote of members who own more than 50 percent of the then-current percentage or other interest in the profits of the dividing company owned by all members.

Unless provided otherwise in the division plan, division does not require an LLC to wind up its affairs or pay its liabilities and distribute its assets and does not constitute a dissolution of the LLC.

The bill allows exchange or conversion of rights or securities of, or interests in, the dividing company, or allows them to be canceled or remain outstanding.

A plan of division may amend the operating agreement of or adopt a new operating agreement for the dividing company if it survives the division and effects the adoption of a new operating agreement for each resulting company, which is effective at the effective time or date of the division. Such amendment or adoption is effective notwithstanding any provision in the operating agreement of the dividing company regarding amendment or adoption of a new operating agreement, other than such a provision applicable in connection with a division, merger, or consolidation.

The bill requires the plan of division to include the terms and conditions of the division, including those regarding conversion, exchange, or cancellation of LLC interests of the dividing company, or whether such shall remain outstanding; allocation of assets, property, rights, series, debts, liabilities, and duties of the dividing company among the division companies; names of the resulting and surviving companies; name and business address of a division contact, who serves for six years following the division and has custody of a copy of the plan of division, which the bill requires the contact to provide to creditors as specified in the bill; and any other matters the dividing company includes.

The bill requires the surviving company and any other division company to file a certificate of division with the Secretary of State for each resulting company. The bill specifies required contents of such certificate of division. The bill requires the articles of organization for each resulting company to be filed simultaneously with the certificate of division, with the same effective date or time if not effective upon filing. A certificate of division acts as a certificate of cancellation for a dividing company that is not a surviving company.

An operating agreement may provide that a domestic LLC shall not have the power to divide.

The bill provides for various items upon a division of a domestic LLC becoming effective, including the effect upon the resulting companies and the dividing company if it is not a surviving company; allocation and vesting of rights, privileges, powers, property, and debts; liability for allocated debts, liabilities, and duties of the dividing company; allocation and enforcement of debts, liabilities, and duties; liability for fraudulent transfer; liability for non-allocated debts and liabilities; reasonable identification of assets, property, rights, series, debts, liabilities, and duties; vesting of allocated rights, privileges, powers, and interests in property; and continuation of actions or pending proceedings against surviving or resulting companies.

The bill provides, in applying the provisions of the RLLCA on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution. The new division provisions are not be construed to limit the means of accomplishing a division by any other means provided for in an operating agreement or other agreement or as otherwise permitted by the RLLCA or other law.

The bill provides this section applies to all LLCs formed on and after July 1, 2019. Additionally, it applies to all LLCs formed prior to that date, except that any restriction, condition, or prohibition regarding merger or consolidation in any written contract, indenture, or agreement entered into prior to that date to which the dividing company is a party is deemed to apply to a division.

Amendments to Law

The bill amends the RLLCA statute governing cancellation to include cancellation upon the filing of a certificate of division if the LLC is a dividing company that is not a surviving company. [Section 16]

The RLLCA statute governing restated articles of organization is amended to include a reference to division. [Section 20]

A \$20 fee is added for filing of a certificate of division. [Section 35]

The BEST Act statute regarding LLC filings is amended to include certificates of division. [Section 42]

Power of Attorney [Sections 1 and 45]

The bill amends the power of attorney statute in the BEST Act to remove provisions related to formation, internal affairs, or termination of a covered entity or granted by persons in certain roles and focusing the statute on those documents filed with the Secretary of State pursuant to the BEST Act. The statute's applicability also is limited as otherwise provided in a covered entity's public organic document or organic rules.

The bill creates a new section in the RLLCA addressing power of attorney. This section provides that, unless otherwise provided in an operating agreement, a person may enter into an operating agreement or amendment by an agent, including an attorney-in-fact, and authorization to do so need not be in writing, sworn, verified, or acknowledged. The section also contains provisions regarding irrevocable powers of attorney and proxies substantially similar to those previously applicable under the BEST Act statute discussed above. The section states it shall not be construed to limit enforceability of a power of attorney or proxy that is part of an operating agreement.

Other RLLCA Provisions

Domestic and Foreign LLCs [Sections 14 and 37]

The definitions section and taxation section are amended to clarify language relating to domestic LLCs and foreign LLCs.

Time of Formation [Section 15]

The bill adds language providing that an LLC is formed at the time provided by the BEST Act statute governing effective date if there has been substantial compliance with RLLCA requirements regarding execution and filing of articles of organization.

Certain Effective Time or Date Limitations Removed [Sections 16, 20, and 22]

The bill removes limitations on the future effective date or time of certificates of cancellation, restated articles of organization, and certificates of merger or consolidation.

Merger or Consolidation [Section 22]

A provision allowing exchange or conversion of rights or securities of, or interests in, an LLC that is a constituent party to a merger or consolidation into rights or securities of, or interests in, an LLC that is not the surviving or resulting LLC in the merger or consolidation is amended to instead allow exchange or conversion into rights or securities of, or interests in, an entity as defined in the BEST Act that is not the surviving or resulting LLC. This provision also is amended to specify the rights or securities of or interests in the constituent party LLC may remain outstanding.

Voting [Sections 22, 32, and 33]

The bill changes certain default voting requirements for those LLCs formed after June 30, 2019. For votes on agreements of merger or consolidation or to dissolve and wind up an LLC, the required vote must be by the members owning more than the specified percentage of the then-current percentage or other interest in the profits of the LLC owned by all the members. Continuing voting requirements for those LLCs formed on or prior to June 30, 2019, are by each class or group of members, if the LLC has more than one class or group of members.

Access to Information; Records [Section 25]

A statute regarding LLC records and access to information is amended to permit an attorney or other agent for an LLC member to obtain certain information that may be obtained by the member under continuing law. Such demand on behalf of a member must be accompanied by a power of attorney or other writing authorizing the attorney or other agent to so act on the member's behalf.

This statute also is amended to require an LLC to maintain a current record identifying the name and last known business, residence, or mailing address of each member and manager, and to allow the use of electronic networks or databases, including distributed electronic networks or databases, to maintain records.

Delegation [Section 27]

The statute governing the delegation of rights and powers to manage is amended to allow the delegation of duties. The bill removes a phrase specifically allowing the delegation of the right or power to delegate. The bill adds that a delegation by a member or manager must be irrevocable if it states it is irrevocable, unless otherwise provided in the operating agreement. The bill also adds that no other provision of the RLLCA shall be construed to restrict the power and authority to delegate as provided in this section.

Limitation of Remedies [Section 30]

The RLLCA continues to provide the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or assignee may satisfy a judgment out of the judgment debtor's LLC interest. The bill adds to this provision that attachment, garnishment, foreclosure, or other legal or equitable remedies are not available to the judgment creditor, regardless of the number of members of the LLC.

Membership of Single Assignee [Section 31]

The bill adds a provision that, unless otherwise provided in the operating agreement by specific reference or in connection with the assignment, an assignee of an LLC interest becomes a member upon the voluntary assignment by the sole member of an LLC of all the LLC interests in the LLC to a single assignee. An assignment is voluntary if it is consented to or approved by the member at the time of the assignment and is not effected by foreclosure or similar legal process.

Fiduciary Duties [Section 34]

The bill specifies the rules of law and equity relating to fiduciary duties are among those rules of law and equity that are to apply where not otherwise provided in the RLLCA.

Revocation of Dissolution [Section 40]

The bill amends the statute preventing dissolution in certain circumstances to specify a dissolution may be revoked in a manner specified in an operating agreement or an operating agreement may prohibit revocation of dissolution. Provisions describing the default circumstances under which dissolution may be revoked are restructured and amended to allow revocation of:

- A dissolution effected by vote, consent, or approval, pursuant to the vote, consent, or approval and by approval of any others as required by the operating agreement;
- A dissolution at a specified time or upon a specified event, by vote, consent, or approval required to amend the provision of the operating agreement effecting the dissolution and by approval of any others as required by the operating agreement; and
- A dissolution effective upon the last remaining member ceasing to be a member, by vote, consent, or approval of the personal representative of the last remaining member of the LLC or the assignee of all the LLC interests in the LLC and by approval of any others required by the operating agreement.

This statute also is amended to include the assignee of all the LCC interests in the LLC in the procedure to be followed to admit a nominee or designee in certain circumstances, and to provide that the statute shall not be construed to limit the accomplishment of revocation of dissolution by other means permitted by law.

Consent and Approval

The bill adds provisions allowing a person to give consent or approval as a member or manager of any matter and make such consent or approval effective at a future time, including upon the happening of an event. Such consent or approval is effective as long as the person is a member or manager at the future time specified, unless otherwise provided in an operating agreement. [Sections 23 and 26]

Throughout the bill, requirements that consent or approval be in writing are removed. References to consent or to approval are standardized with references to both consent and approval.

Electronic Networks and Databases

Throughout the bill, provisions are added allowing the use of electronic networks or databases, including distributed electronic networks or databases, for certain electronic transmissions.

Non-substantive and Technical Amendments

The bill amends the RLLCA section governing resignation from an LLC to replace a reference to a previous version of the section with the actual language (with slight non-substantive revisions) of the previous version of the section. [Section 28]

Throughout the RLLCA, the bill replaces references to “this act” with “the Kansas revised limited liability company act.”

**Driving Under the Influence—Advisories; Preliminary Screening; Test Refusal;
HB 2104**

HB 2104 amends, within the statute governing tests related to driving under the influence (DUI), the oral and written notice a law enforcement officer must provide when requesting a person take such a test. Specifically, the bill clarifies in such notice that refusal to submit to and complete the test or tests will result in suspension of the person’s driving privileges for a period of one year, and test failure will result in suspension of the person’s driving privileges for a period of either 30 days or one year.

The bill also amends the statute governing preliminary screening tests related to DUI to remove provisions stating a person operating or attempting to operate a vehicle in Kansas is deemed to have given consent to such tests, setting forth the required notice when a person is requested to take such test, and stating refusal to take and complete such test is a traffic infraction. This statute also is amended to replace the word “saliva” with “oral fluid” and add a provision requiring any preliminary screening of a person’s oral fluid be conducted in accordance with any rules and regulations approved pursuant to the authority granted to the Director of the Kansas Bureau of Investigation in a separate statute, which also is amended to reflect the “oral fluid” phrasing and to ensure consistency in other statutory phrasing.

The bill repeals the statute (and removes the associated fine from the uniform fine schedule for traffic infractions) governing the offense of refusing to submit to a test to determine the presence of alcohol or drugs. [*Note:* This statute was repealed by 2018 House Sub. for SB 374, but due to another enactment, was not fully repealed.]

Search Warrants—Electronically Stored Information; Devices and Media Storing Such Information; HB 2191

HB 2191 amends law concerning the execution of search warrants. Specifically, the bill states warrants issued after July 1, 2019, for electronically stored information, electronic devices, or media capable of storing electronically stored information located in Kansas will authorize the transfer of such information, devices, or media for examination and review anywhere within the state or outside the state at any time after the seizure, unless otherwise specified by the warrant.

Driver’s License Reinstatement Fee—Waiver; HB 2211

HB 2211 amends law concerning driver’s license reinstatement fees to allow a person who is assessed a driver’s license reinstatement fee and surcharge as provided by continuing law to petition the court to waive payment of such fee and surcharge. The court may waive, in whole or in part, or modify the method of payment of such fee and surcharge if it finds payment of the assessed amount would impose manifest hardship on that person or that person’s immediate family.

Kansas Consumer Protection Act; Scrap Metal Theft Reduction Act; HB 2248

HB 2248 amends definitions in the Kansas Consumer Protection Act (KCPA) and amends the Scrap Metal Theft Reduction Act (Act), as follows.

Kansas Consumer Protection Act Definitions

The bill amends definitions in the KCPA. Specifically, it amends the definition of “supplier” by removing an exclusion for any bank, trust company, or lending institution that is subject to state or federal regulation with regard to disposition of repossessed collateral by such entity. The bill also amends the definition of “consumer transaction” to exclude the disposition of repossessed collateral by any supplier that is subject to and compliant with any state or federal law or rules and regulations with regard to disposition of such repossessed collateral.

Scrap Metal Theft Reduction Act Amendments

The bill creates a new section in the Act setting an expiration date of July 1, 2023, for all provisions of the Act.

The bill delays or makes unenforceable certain provisions of the Act until July 1, 2020 (prior law delayed these provisions until January 1, 2020). The following provisions are delayed by the bill:

- A requirement that the Attorney General establish a central database for the Act and certain actions required of scrap metal dealers related to registering for and forwarding information to the database [*Note:* These provisions are also substantively amended, effective July 1, 2020, as detailed below.];
- The ability of the Attorney General, upon a finding a scrap metal dealer has violated any provision of the Act, to impose a civil penalty not less than \$100 nor more than \$5,000;
- The requirements that a scrap metal dealer obtain a copy of an identification card of a seller of scrap metal and a photograph of the item or items being sold [*Note:* These provisions are also substantively amended, effective July 1, 2020, as detailed below.]; and
- A prohibition on certain actions related to purchasing and disposing of scrap metal [*Note:* Some of these provisions are also substantively amended, effective July 1, 2020, as detailed below.].

The amendments to the Act described below will be effective July 1, 2020.

The bill establishes the Scrap Metal Data Repository Fund (Fund) in the State Treasury, to be administered by the Director of the Kansas Bureau of Investigation (KBI). Expenditures from the Fund shall be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Director of the KBI or the Director of the KBI's designee. Moneys credited to the Fund may be expended for the administration of the duties, functions, and operating expenses incurred under the provisions of the Act. The Attorney General may transfer moneys from the Scrap Metal Theft Reduction Fee Fund to the Fund *via* procedures specified by the bill.

The bill replaces references to the Attorney General with references to the KBI in provisions regarding the scrap metal database, making the KBI responsible for establishing and maintaining the database. Language is added allowing information from the database to be provided to the Attorney General. The review deadline and sunset date for a Kansas Open Records Act exception for the information maintained in the database is extended for four years, until July 1, 2024. An outdated database report requirement is replaced with a requirement that the Attorney General submit annual reports on or before February 1, beginning in 2021, regarding the implementation, administration, and enforcement of the Act. The report must be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Senate and House Committees on Judiciary.

The bill adds language prohibiting any entity contracting with the Attorney General or the KBI to provide or maintain the database from requiring a scrap metal dealer (dealer) to contract with the entity for the authority to release proprietary or confidential data, including customer information. Such entities are prohibited from charging any fee to the dealer as a condition of providing information to the database required by the Act, including an electronic submission fee.

The bill states a dealer providing information to the database as required by the Act shall not be subject to civil liability for any claim arising from the negligence or omission by the State of Kansas or any contracting entity in the collection, storing, or release of information provided by the dealer to the database.

Requirements in a statute related to information a seller of regulated scrap metal must provide and the dealer's register of such information are amended to:

- Remove a requirement that a legible fingerprint be obtained from a seller if the seller uses an official governmental document for a country other than the United States to meet certain requirements;
- Allow a copy of a card or document already in a dealer's register to suffice for subsequent transactions;
- Remove civil penalties for failure to comply with these specific requirements that will become redundant once the general civil penalties for failure to comply with the Act take effect on July 1, 2020;
- Amend a photograph requirement of the item or lot of items to specify one such photograph is required and to also require one photograph of the vehicle in which the junk vehicle or other regulated scrap metal property is delivered; and
- Remove a provision making the requirement that the dealer forward the information to the database unenforceable from June 1, 2017, to July 1, 2020.

The provision requiring the dealer forward the information required by this statute to the database is amended to require such forwarding occur for each transaction within 72 hours of the transaction and require the information be provided in a manner prescribed by the KBI. The bill directs the KBI to promulgate rules and regulations to provide which information and photographs required by this statute will be entered into the database and the manner for submitting the information and photographs to the KBI.

In statutes regarding scrap metal dealer registration, the bill removes criminal history records check and fingerprinting requirements for persons filing for registration. Effective July 1, 2020, the bill sets the registration and registration renewal fees at "not more than \$500." Under prior law, the registration fee was set at "not less than \$500 nor more than \$1,500" and the renewal fee was set at "not more than \$1,500." The bill also removes language making some provisions of these statutes unenforceable from June 1, 2017, to July 1, 2020.

OPEN RECORDS

Peer Support Counseling Sessions; National Guard Members; HB 2365

HB 2365 amends law concerning the peer support counseling session communication privilege within the Code of Civil Procedure. The bill adds references to National Guard members (such members are defined by the bill as regularly enlisted, officer, or civilian members of the Kansas National Guard) throughout the section, to make notes, records, or reports arising out of peer support counseling sessions involving National Guard members confidential, exempt from the Kansas Open Records Act, and inadmissible and not subject to disclosure or discovery in judicial and other proceedings. The exemption for records from peer support counseling sessions does not expire.

POSTSECONDARY EDUCATION

Postsecondary Technical Education Authority; SB 71

SB 71 reauthorizes the Postsecondary Technical Education Authority (Authority) by repealing the statute specifying a sunset date of June 30, 2019. The bill also requires the Authority to make an annual report to the Legislature on the performance of its functions and duties.

Community College Taxpayer Transparency Act; HB 2144

HB 2144 amends law related to community college student fees and enacts the Community College Taxpayer Transparency Act.

The bill includes findings and conclusions generally noting the structure and financing of community colleges; the duty of transparency owed by community colleges to property taxpayers and students of community colleges; and reaffirming the students and taxpayers of community colleges as the priority in financial decisions, reporting processes, and transparency measures of community colleges.

The bill is effective on and after July 1, 2020.

Community College Student Fees

The bill requires any student fees to be charged have a specific purpose and that purpose to be specified on the community college's website. The bill requires any billing statements or other information provided to students regarding student fees to guide students to the community college's website address. The bill requires revenues from student fees be spent only for the specified purpose of the fee.

Community College Taxpayer Transparency Act

The bill requires community colleges to identify the courses that are fully transferable to four-year colleges governed by the Kansas Board of Regents (KBOR) and prominently specify those courses on the community college's website and on the KBOR's website.

The bill also requires community colleges to publish certain information to the community college's website under an easily identifiable link titled "taxpayer and student transparency data." Required information includes:

- Tuition rates for students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;

- Fees charged to students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- Total cost per credit hour for each semester, excluding housing and textbooks, for students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- The percentage of students attending each campus of the community college who are students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- The enrollment percentage of students residing inside and outside of the community college district;
- The enrollment percentage of students residing in the service area of the community college;
- The aggregate amount of property tax revenues and mills levied by the community college for each of the preceding five fiscal years and the annual percent change; and
- The aggregate amount disbursed for the two immediately preceding fiscal years for institutional scholarships, foundation scholarships, and federal Pell Grants, in terms of athletic and non-athletic scholarships, for students residing in the community college district and students residing outside the state. The bill specifies this aggregate information shall not be reported if such information could identify a student with reasonable certainty.

PUBLIC SAFETY

Emergency Medical Services; SB 53

SB 53 creates and amends law related to emergency medical services and licensure by the Emergency Medical Services Board (Board).

Inactive Certificate

The bill creates the designation of inactive certificate and authorizes the Board to issue an inactive certificate to persons currently certified by the Board who make a written application on a Board form and pay the corresponding fee.

The bill authorizes the Board to issue such inactive certificates only to persons who are not directly providing emergency medical services (EMS) in the state and are not holding themselves out to the public as providing EMS. The bill further states possession of an inactive certificate does not allow the holder to engage in the practice of EMS.

Inactive certificates may be renewed pursuant to Board procedure, and each certificate holder is subject to continuing laws regarding EMS, but inactive certificate holders are not required to complete any continuing education requirements set by the Board.

The bill allows an inactive certificate holder to apply for an active certificate by filing a written application on a form prepared by the Board and paying the corresponding fee. The Board has the authority to require additional testing, training, or education as deemed necessary to establish the inactive certificate holder's ability to engage in the provision of EMS with reasonable skill and safety.

Board Meetings

The bill reduces the number of required Board meetings from six to four each year.

Emergency Medical Service Providers

The bill defines "emergency medical service provider" to mean an emergency responder, advanced emergency medical technician, emergency medical technician, or paramedic certified by the Board.

The bill also establishes certain background check procedures for EMS provider certification applicants. The Board is allowed to require applicants to submit fingerprints and submit to a state and national criminal history record check. The Board may submit such fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for state and national criminal history record checks. The bill authorizes the Board to use information obtained from fingerprinting and background checks to verify the identity of the applicant and to determine the qualifications and fitness of the applicant to be issued or to maintain a certificate.

The bill requires local and state law enforcement to assist in taking fingerprints of applicants and the KBI to release to the Board all records of an applicant's adult convictions, non-convictions, or adjudications from any state.

Emergency Medical Services Criminal History and Fingerprinting Fund

The bill authorizes the Board to charge a fee equal to the cost of fingerprinting and state and federal background checks. The Board must remit such funds to the State Treasurer.

The bill creates the Emergency Medical Services Criminal History and Fingerprinting Fund (Fund), to be administered by the Board. The bill requires the State Treasurer to deposit the remitted funds into the Fund. The bill requires all moneys credited to the Fund be used only to pay the KBI for processing of fingerprints and criminal background checks. The bill requires expenditures from the Fund be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Board chairperson.

Technical Changes

The bill removes definitions for certain certification levels no longer certified by the Board, as well as corresponding statutory provisions related to those certification levels, and makes conforming technical changes to other statutory provisions.

REAL ESTATE

Real Estate Licensure; SB 60

SB 60 amends statutes related to licensing of real estate brokers and the Kansas Real Estate Commission (Commission).

For real estate broker's licenses, changes include:

- Reducing from five years to three years preceding the date of application for the license the time for which an applicant for a broker's license may satisfy the requirement of two years' experience as a resident salesperson or a licensee in another state. The Commission is authorized to adopt rules and regulations to implement this provision;
- Increasing the pre-license education course from 24 hours to 30 hours, and no more than 45 hours, and renaming the course the "Kansas Real Estate Fundamentals Course";
- Creating a new course titled "Kansas Real Estate Management Course," which is 30 hours to 45 hours in length and is required for original broker's license applicants beginning January 1, 2020;
- Eliminating alternative licensing criteria for any applicant living in a county with a population of less than 20,000 people;
- Eliminating the \$50 late fee for licenses renewed after the renewal date, but before the license expiration date;
- Increasing the late fee from \$50 to \$100 for a license renewed after the expiration date, but before the six-month grace period ends; and
- Eliminating outdated references to temporary licenses and certain fees that are no longer assessed by the Commission.

For the Commission, changes include:

- Clarifying statutory requirements for deactivated real estate licenses that have not been suspended or revoked for which reinstatement is being sought;
- Removing a requirement the Commission maintain all files, records, and property at its Topeka office;
- Updating and eliminating certain outdated terms;
- Consolidating provisions from various statutes and regulations; and
- Adding technical clarifying language related to fees, name changes, office locations, approved real estate courses of instruction, and Commission leadership elections.

RETIREMENT

State General Fund Transfer to the Kansas Public Employees Retirement System Trust Fund; SB 9

SB 9 transfers \$115.0 million from the State General Fund to the Kansas Public Employees Retirement System (KPERs) Trust Fund. The transfer is for repayment of reduced KPERs-School group employer contributions from participating employers in prior fiscal years.

Retirement—KP&F Service-connected Benefits; Working After Retirement; KPERs Membership Eligibility; Administration of the Retirement System; HB 2031

HB 2031 makes several revisions to the Kansas Public Employees Retirement System (KPERs or the Retirement System) pertaining to the Kansas Police and Firemen's Retirement System Plan (KP&F), provisions relating to working after retirement, membership eligibility, and the administration of the Retirement System.

KP&F

The bill allows agents of the Kansas Bureau of Investigation (KBI) to participate in the Kansas Deferred Retirement Option Program (DROP) of the KP&F, which was authorized previously for troopers, examiners, and officers of the Kansas Highway Patrol (KHP). The sunset date for the program is extended from January 1, 2020, to January 1, 2025.

The bill also revises the definition for "service-connected," as that term is used to determine death and disability benefits in KP&F. Under prior law, service-connected causes for death and disability benefits included heart disease, lung or respiratory disease, and cancer. The bill adds bloodborne pathogens, which include any disease present in human blood and designated as infectious or contagious by the Secretary of Health and Environment through rules and regulations. With regard to cancer, the bill includes, but is not limited to, cancer of the brain, skin, digestive system, hematological system, or genitourinary system. Clear and precise evidence must be shown to KPERs demonstrating the bloodborne pathogen was caused by an act of duty as a policeman or fireman. Previously, this provision applied to disease of the lung or respiratory tract or cancer.

Working After Retirement

The bill revises the working-after-retirement provisions of KPERs by adding a new category of positions exempt from the law and reimbursing certain suspended benefits for a specific period of time. The bill adds individuals employed by the Kansas academies of the U.S. Department of Defense STARBASE Program to the list of exemptions. The participating employer is not required to enroll retirees into KPERs or report compensation to the Retirement System. The participating employer will not make contributions to KPERs. However, retirees must continue to serve their 60- or 180-day waiting period, as applicable, before returning to covered employment, provided there is no prearranged agreement for employment. In addition to the new exemption, eight categories of retirees may work after retirement:

- Nurses or practical nurses employed at certain state institutions;
- Certain school district positions defined by KSA 74-4937 (3), (4), and (5);
- Law enforcement officers employed by the Law Enforcement Training Center;
- Members of the KP&F;
- Substitute teachers or certain legislative employees;
- Poll workers;
- Persons employed prior to May 1, 2015; and
- State or local elected officials.

In instances prior to July 1, 2019, where benefits have been suspended due to either the employer or the individual, who retired during the period of July 1, 2016, through July 1, 2019, violating working-after-retirement law, the bill authorizes KPERS to reimburse a retiree's benefits, provided the retiree had stopped working when notified of the violation. Starting on July 1, 2019, the Executive Director of KPERS may waive working-after-retirement penalties if one of the following conditions is satisfied:

- The retiree's period of reemployment is less than 21 days;
- The retiree's compensation during the period of reemployment is less than 10.0 percent of the retiree's KPERS benefit that is suspended as provided by law; or
- Other facts and circumstances indicate the retiree would not have been reemployed but for an error on the part of the KPERS-participating employer or the Retirement System in verifying that person's retirement status and the retiree immediately terminated employment upon notice of the violation.

Generally, if a retiree violates working-after-retirement law, KPERS benefits cease until six months after the retiree stops working.

KPERS Membership Eligibility

The bill delays KPERS membership eligibility by two years for employees employed in direct-support positions in community development disability organizations. Under the bill, an employee becomes a member of KPERS on the first day of the payroll period coinciding with or following completion of a two-year training period. Generally, individuals become KPERS members when they start employment.

Administration of the Retirement System

The KPERS Board of Trustees (Board) may develop policies and procedures to procure goods and services based upon sound business practices and in accordance with the Professional Services Sunshine Act. The bill authorizes in- and out-of-state travel by KPERS employees and Board trustees in accordance with continuing laws dictating mileage allowance rates for private vehicles. The Board has the authority to procure its contracts for professional and consultant services, including actuarial consulting, investment management and consulting, and legal services.

Starting with the 2020 Regular Session, the Executive Director of KPERS will report information annually to the Joint Committee on Pensions, Investments and Benefits, the Senate Committee on Financial Institutions and Insurance, and the House Committee on Financial Institutions and Pensions pertaining to the number of working-after-retirement waivers issued.

STATE AND LOCAL GOVERNMENT

Eudora Library District; SB 59

SB 59 creates the Eudora Community Library District Act, which allows the city of Eudora to continue being a part of a library district previously established by the City of Eudora and the Eudora Township.

The bill defines the following terms:

- “Eudora community library district” (District) to mean all territory located within the boundaries of the city of Eudora and the Eudora township; and
- “Board” to mean the board of the District appointed pursuant to the provisions of this act.

Under the bill, the District is created *via* the adoption of a joint resolution by the governing body of the City of Eudora and the Eudora Township board. The bill requires the joint resolution include the following provisions:

- The District board is appointed as provided in the joint resolution;
- The District board replaces the Eudora Township Library Board; and
- The District maintains the Eudora Township public library at the discretion of the District board.

The bill requires all contracts previously entered into by the Eudora Township Library District be continued by the District and all outstanding bonds, debts, and other obligations of the Eudora Township Library District become the responsibility of the District.

The bill requires the District to be governed by a library district board (board). The board will consist of five directors, who must be qualified electors of the District. The terms of office for the directors are to be established in the joint resolution. The board members appointed by the Eudora Township Library Board will continue to serve in their offices as directors of the board until their respective terms expire and their successors are appointed by the City of Eudora and the Eudora Township, as provided in the joint resolution. Directors will not receive compensation, but they will be reimbursed for actual and necessary expenses required for attending meetings and in carrying out their duties.

The bill requires the directors of the board to organize an election of a chairperson, secretary, treasurer, and other such officers as the board may deem necessary by a majority vote. The board is required to establish the date and place for regular meetings. Special meetings could be called by the chairperson or a majority vote of the board. The bill requires written notice of the timing,

place, and purpose of any special meeting to be given to each director at least two days prior to the meeting, and no business other than what is stated in the notice could occur. The bill allows the board to adopt bylaws as the board deems appropriate. The bill requires the treasurer of the District to provide a bond, in an amount determined by the board, and to file such bond with the Douglas County Clerk. The Douglas County Treasurer is required to pay over all funds collected for the maintenance of the library or libraries in the District to the treasurer.

Under the bill, the District has the power to:

- Enter into contracts;
- Sue and be sued;
- Acquire, hold, and convey real and personal property;
- Make and adopt rules and regulations for the administration of the District;
- Lease a site or sites and lease a building or buildings for library purposes;
- Acquire material and equipment deemed necessary by the board for the maintenance and extension of modern library service;
- Employ librarians and such other employees as the board deems necessary;
- Establish and maintain a library and traveling library service within the District or within any other municipality with which service contract arrangements have been made;
- Contract with other libraries or the governing body of a municipality for the furnishing of library services to the residents of the municipality and contract with any school board to furnish library service to any school library or to use the library facilities of the public school to supplement the facilities of the public library;
- Receive, accept, and administer any moneys appropriated or granted to the District by the state or federal government;
- Receive and accept any gift or donation to the District and administer the same; and
- Make annual reports to the State Librarian, on or before January 31 each year, concerning receipts and disbursements from all funds and statistical information related to library materials acquired or on hand, number of library users, library services available, and other information the governing body requires.

The bill requires library facilities to be free to use by District residents, subject to reasonable rules and regulations as the board may adopt. The bill authorizes the board to bar any individual who willfully violates the rules. The board is allowed to establish a fee for nonresidents to use library facilities. The board could also exchange books with any other library by such terms as the board prescribes.

The bill authorizes the board to issue general obligation bonds for the purpose of paying the cost of constructing, reconstructing, repairing, remodeling, furnishing, and equipping any library building or additions. General obligation bonds are the responsibility of the District and not of the City of Eudora or the Eudora Township. The bill requires the question of issuing general obligation bonds be submitted to qualified electors of the District.

The board is required to prepare and publish an annual budget.

The board is authorized to levy a tax, not to exceed five mills on all tangible property in the District, to fund the District budget. The tax levy will not be considered a tax levy of the City of Eudora or the Eudora Township. The board has the authority to increase the mill levy for the acquisition, maintenance, and support of a free public library by adoption of a resolution. The bill requires this resolution to be published once a week for two weeks in a county newspaper. The bill requires an election to approve the increase of the mill levy if, within 30 days after the last publication of the resolution, a petition signed by at least 5.0 percent of qualified electors in the District is filed in the office of the county election officer requesting an election on the mill levy increase.

Start Dates for Terms of Certain Local Offices; SB 105

SB 105 authorizes a city to determine the start date of a regular term of office for a city officer by resolution of the city. In law regarding city elections, the bill requires the start date be on or after December 1 following certification of the election and no later than the second Monday in January following certification of the election. If the city does not establish an alternative date, the bill specifies such term will begin on the second Monday in January.

In law regarding terms of office, the bill adds a municipal officer to all state, district, county, and township officers as those whose regular terms of office shall begin on the second Monday in January except as otherwise provided by law.

Transfer of Responsibility for the White Clay Watershed District; Property Tax Lid Exemption; HB 2188

HB 2188 makes the City of Atchison (City) responsible for the maintenance and repair of all watershed lakes, dams, and other projects of the White Clay Watershed District No. 26 (District), on and after January 1, 2020. The bill dissolves the District on January 1, 2020, and makes the City the District's successor.

Successorship

Upon the dissolution of the District, the bill transfers to the City all property of the District subject to any valid leases or agreements. The bill makes the City responsible for payment or retirement of any District debts or obligations, and invests all District property, funds, and assets with the City.

The bill makes the City the successor in every way to the powers, duties, and functions of the dissolved District.

When the term “watershed district” or words of like effect are referred to by a document in regard to any of the powers, duties, and functions transferred to the City, the reference or designation applies to the City as the context requires. Additionally, the City will have legal custody of all records, memoranda, writings, entries, prints, representations, electronic data, or combination of any act, transaction, occurrence, or event of the dissolved District.

The bill states no suit, action, or other proceeding that has commenced, or could have commenced, by or against the District or any of its officers in such officer’s official capacity before dissolution of the District will abate by reason of the governmental reorganization under the bill. The bill authorizes the court to allow such suit, action, or other proceeding to be maintained by or against the City or any officer affected.

Property Tax Lid Exemption

The bill makes a tax levy increase resulting from the dissolution of one taxing entity and a transfer of its responsibilities to another city or the county exempt from the provisions of the property tax lid, requiring approval from a majority of a city’s or the county’s qualified electors for certain increases in the appropriation or budget from property tax revenues, provided any such levy increase does not exceed the prior levy of the dissolved entity.

Attorney General; Crime Victims Compensation Division; Youth Suicide Prevention; VINE Coordinators; KOMA; KORA; Background Checks; Criminal Justice Reform Commission; Closed Case Task Force; HB 2290

HB 2290 creates and amends law related to various public agencies, as follows.

Office of the Attorney General

Crime Victims Compensation Division

The bill creates in the Office of the Attorney General a Crime Victims Compensation Division (Division) to administer and support the operations of the Crime Victims Compensation Board (CVCB). The Division will receive compensation applications and supporting papers and will, if requested by the CVCB, investigate the claim, appear in related proceedings, and present evidence opposing or in support of an award.

The bill directs the Attorney General to establish and maintain a principal office for the Division and other necessary offices, appoint employees and agents, and prescribe the duties and compensation for such employees and agents, subject to appropriations. The Division will be headed by a director appointed by the Attorney General in consultation with the CVCB.

The bill directs the Division to prescribe application forms for compensation, request investigations and data from various sources to enable the CVCB to determine qualification for compensation, make available specified documents of the CVCB pursuant to the Kansas Open Records Act (KORA), publicize the availability of compensation and information regarding the filing of claims, and perform any other duties assigned by the Attorney General to carry out the above provisions.

The bill amends the statute setting forth powers and duties of the CVCB to remove duties related to offices, employees, forms, KORA, and publicity, and the power to request investigations and data. [Note: These duties and powers are essentially transferred to the Division, as outlined above.] A confidentiality provision regarding a claimant's or victim's juvenile court records is moved to the new section. The term "duties" as it relates to the CVCB regarding rules and regulations is changed to "powers."

The statute governing applications for compensation is amended to change references to the CVCB in provisions regarding form and filing of applications to refer to the Division instead.

A provision regarding confidentiality of records and information given to the CVCB is amended to include records and information given to the Division.

The statute establishing the Crime Victims Compensation Fund is amended to add operations of the Division to the acceptable uses of moneys from that fund.

Kansas Youth Suicide Prevention Coordinator

The bill requires the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator and additional support staff (as appropriations allow) to identify, create, and coordinate and support youth suicide awareness and prevention efforts throughout the state. The coordinator may:

- Lead the development, implementation, and marketing of a website, online application, and mobile phone application to facilitate communication with youth for the purpose of promoting youth safety and well-being;
- Develop and promote multidisciplinary and interagency strategies to help communities, schools, mental health professionals, medical professionals, law enforcement, and others work together and coordinate efforts to prevent and address youth suicide;
- Organize events that bring together youth, educators, and community members from across the state to share information and receive training to prevent and address youth suicide in their communities;
- Gather, disseminate, and promote information focused on suicide reduction; and

- Perform any other duty assigned by the Attorney General to carry out the provisions of the bill.

Kansas VINE Coordinator

The bill requires the Attorney General to appoint a Kansas Victim and Notification Everyday (VINE) Coordinator and additional support staff (as appropriations allow), to work with interested parties including, but not limited to, sheriffs throughout the state to oversee the statewide implementation of the VINE system. The Attorney General is authorized to appoint an advisory board, consisting of up to five members, including one who must be a victim advocate and one who must be a representative of the Kansas Sheriffs' Association, to make recommendations for the implementation and operation of the VINE program. The bill prohibits any member from receiving any compensation, subsistence, mileage, or other allowance for serving on the advisory board, and the Attorney General is required to promulgate rules and regulations as necessary to implement the provisions of the bill.

Payment for Defense of KORA and KOMA Violations

The bill provides that when payment is made from the Tort Claims Fund on behalf of a state agency or employee for defense or indemnification in an action, proceeding, or investigation involving an alleged violation of KORA or the Kansas Open Meetings Act (KOMA), the agency that requests such defense or indemnification (or employs the employee making the request) is required to transfer to the Tort Claims Fund an amount equal to the payment made by the Tort Claims Fund on behalf of the agency for such defense or indemnification.

KBI—Background Checks

The bill authorizes qualified entities, as defined by the bill, to require state and national criminal history record checks of providers, both employees and volunteers, who have supervised and unsupervised access to children, the elderly, or individuals with disabilities to determine whether that individual has the qualifications and fitness to be permitted to serve as a provider. The bill allows qualified entities to request the Kansas Bureau of Investigation (KBI) conduct the state and national criminal history record checks. The bill outlines the information required to be provided with a request for a state and national criminal history check. The bill requires local and state law enforcement officers and agencies to assist a qualified entity in taking and processing a person's fingerprints for such criminal history record checks.

The bill requires the KBI to release all records of a person's adult convictions and diversions to the qualified entity that submitted the request for the criminal history record checks. The bill also requires a qualified entity to be solely responsible for making any determination that a person's criminal history record shows the person has been convicted of a crime that bears upon the person's fitness to serve as a provider. The bill clarifies the KBI is not required to make such a determination of fitness on behalf of any qualified entity.

Definitions

The bill defines the following terms:

- “Provider” to mean a person who:
 - Is employed by any qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care;
 - Is a volunteer of a qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care; or
 - Owns, operates, or seeks to own or operate a qualified entity; and
- “Qualified entity” to mean a business or organization that provides care to children, the elderly, or individuals with disabilities that is private, for profit, not-for-profit, or voluntary, except such businesses or organizations that are subject to the provisions of KSA 2018 Supp. 39-970 [adult care homes, which includes any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disabilities, assisted living facility, residential health care facility, home plus, boarding care home, or adult day care facility], 39-2009 [center, facility, hospital, or provider of services] or 75-53,105 [employment or participation in any program administered by the Secretary for Children and Families or the Secretary for Aging and Disability Services for the placement, safety, protection, or treatment of vulnerable children or adults], or KSA 65-516 [child care facilities] or 65-5117 [home health agencies].

Documentation Required for Submission with Request for Criminal History Record Check

The bill requires a qualified entity to submit the following when requesting a state and national criminal history record check:

- The person’s fingerprints; and
- A copy of a completed and signed statement furnished by the qualified entity that includes:
 - A waiver allowing the qualified entity to request and receive a criminal history record check to be used in determining the person’s qualification and fitness to serve as a provider;
 - The name, address, and date of birth of the person as it appears on a valid identification document;
 - A disclosure of whether the person has ever been convicted of or is the subject of pending charges for a criminal offense and, if convicted, a description of the crime and the result of the conviction; and

- A notice to the person that he or she is entitled to obtain a copy of the criminal history record check to challenge the accuracy and completeness of any information contained in such report before any final determination is made by the qualified entity.

KORA Exceptions

The bill continues in existence the following exceptions to KORA:

- KSA 9-513c, concerning information or reports obtained and prepared by the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business (the bill also removes an expiration provision in KSA 9-513c);
- KSA 40-3407, concerning Health Care Stabilization Fund payments for certain fees and costs related to claims (the bill also removes an expiration provision in KSA 40-3407);
- KSA 21-2511(h)(2), concerning biological sample profile records maintained by the KBI;
- KSA 21-5905(a)(7), concerning interference with the judicial process by making available personal information about a judge or a judge's immediate family member;
- KSA 22-2302(b) and (c), concerning affidavits or sworn testimony supporting an arrest warrant;
- KSA 22-2502(d) and (e), concerning affidavits or sworn testimony supporting a search warrant;
- KSA 40-222(k)(7), concerning materials related to the Commissioner of Insurance's financial examination of insurance companies;
- KSA 44-714(e), concerning employment security appeals records and decisions and information;
- KSA 45-221(a)(55), concerning information or reports obtained and prepared by the Office of the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business;
- KSA 46-1106(g) regarding 46-1106(i), concerning confidentiality related to audits of the Kansas Lottery and the Kansas Public Employees Retirement System conducted by the Legislative Post Auditor or firm under the Legislative Post Audit Act;

- KSA 65-2836(i), concerning impairment of a licensee under the Kansas Healing Arts Act;
- KSA 65-2839a(c), concerning criminal and background investigation information received by the State Board of Healing Arts;
- KSA 65-2842(d), concerning records of the State Board of Healing Arts in investigation or disciplinary proceedings related to impairment;
- KSA 65-28a05(n), concerning information related to impairment of physician assistants;
- Article 6(d) of KSA 65-6230, concerning information and data collected under the Health Care Compact related to the health information of any individual;
- KSA 72-6314(a), concerning student data submitted to and maintained by a statewide longitudinal data system; and
- KSA 74-7047(b), concerning various records submitted to or generated by peer review related to technical professions.

Kansas Criminal Justice Reform Commission

The bill creates the Kansas Criminal Justice Reform Commission (Commission).

Commission Members

The Commission will be composed of the following voting members:

- One member of the Kansas Senate, appointed by the President of the Senate;
- One member of the Kansas Senate, appointed by the Minority Leader of the Senate;
- One member of the Kansas House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the Kansas House of Representatives, appointed by the Minority Leader of the Kansas House of Representatives;
- One member of the Judicial Branch Court Services, appointed by the Chief Justice of the Supreme Court;
- One criminal defense attorney or public defender, appointed by the Governor;

State and Local Government

Attorney General; Crime Victims Compensation Division; Youth Suicide Prevention; VINE Coordinators; KOMA; KORA; Background Checks; Criminal Justice Reform Commission; Closed Case Task Force; HB 2290

- One county or district attorney from an urban area and one county attorney from a rural area, appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the Legislative Coordinating Council (LCC);
- One mental health professional, appointed by the Kansas Community Mental Health Association; and
- One member representative of community corrections, appointed by the Secretary of Corrections.

The Commission will also include the following non-voting members:

- The Attorney General, or the Attorney General's designee;
- The Secretary of Corrections, or the Secretary's designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Executive Director's designee.

The bill requires appointment of members of the Commission to be completed by August 1, 2019. The appointing authorities are required to provide notice of such appointments to the Office of Revisor of Statutes and the Legislative Research Department (KLRD). The members of the Commission are required to elect officers from among its members as necessary to discharge its duties.

Commission Duties

The bill requires the Commission to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and make recommendations for legislation that will ensure sentences are appropriate;
- Review the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses;
- Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision;
- Study specialty courts and make recommendations for the use of specialty courts throughout the state;
- Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming;
- Study the policies of the Kansas Department of Corrections (KDOC) for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities;
- Evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process; and
- Study other matters as the Commission determines are appropriate and necessary to complete a thorough review of the criminal justice system.

The bill authorizes the Commission to organize and appoint task forces or subcommittees as necessary to discharge its duties, and the Commission may appoint ex officio, non-voting members to such task forces or subcommittees.

Sentencing Proportionality

The bill directs the Commission to work with the Kansas Judicial Council, the KDOC, and the Kansas Sentencing Commission to review studies and findings of the Sentencing Commission concerning proportionality of sentencing.

Testimony and Meetings

The bill directs the Commission to receive testimony from interested parties at public hearings to be held in various geographic areas of the state.

Reports to the Legislature

The bill requires the Commission to prepare and submit its interim report to the Legislature on or before December 1, 2019. The bill requires a final report and recommendations to be submitted to the Legislature on or before December 1, 2020.

Support Services and Compensation

The bill requires the Governor to appoint a facilitator to provide administrative assistance to develop a project plan and to assist the Commission in carrying out the duties of the Commission. The facilitator will work in collaboration with the Commission chairperson and staff of the Office of Revisor of Statutes and KLRD. The facilitator shall not be a member of the Commission.

Staff of the Office of Revisor of Statutes and KLRD are required to provide assistance as requested by the Commission, subject to approval by the LCC.

The facilitator, in coordination with the Office of Revisor of Statutes and KLRD, is required to call the first meeting of the Commission to take place during August 2019.

If approved by the LCC, legislative members of the Commission attending meetings authorized by the Commission will be paid amounts for expenses, mileage, and subsistence pursuant to KSA 75-3223(e).

Kansas Closed Case Task Force

The bill creates the Kansas Closed Case Task Force (Task Force).

Task Force Members

The Task Force will be composed of the following 15 voting members:

- The chairpersons of the Senate and House Committees on Judiciary, who will serve as co-chairpersons of the Task Force;
- The ranking minority members of the Senate and House Committees on Judiciary;
- The Governor, or the Governor's designee;
- The Attorney General, or the Attorney General's designee;

- The Director of the KBI, or the Director's designee;
- The state combined DNA index system (CODIS) administrator, as designated by the Director of the KBI Forensic Science Laboratory;
- One sheriff designated by the Kansas Sheriffs' Association;
- One chief of police designated by the Kansas Association of Chiefs of Police;
- One prosecutor designated by the Kansas County and District Attorneys Association;
- The Executive Director of the State Board of Indigents' Defense Services, or the Executive Director's designee;
- The President of the Kansas Bar Association, or the President's designee;
- The Director of Victims Services of the KDOC, or the Director's designee; and
- One representative of an organization that litigates claims of innocence, designated by the Governor.

The bill requires the above appointments to be made on or before September 1, 2019.

Task Force Meetings

The bill requires the Task Force to hold its initial meeting on or before October 1, 2019. The Task Force may meet in an open meeting at any time and place within Kansas upon the call of either co-chairperson. A majority of voting members will constitute a quorum, and any action shall be by motion adopted by a majority of the voting members present when there is a quorum.

Task Force Duties

The bill requires the Task Force, in consultation with practitioners and experts, to develop a plan to ensure uniform statewide policies and procedures that address, at a minimum:

- Timely receipt of data relating to hits to CODIS from the forensic laboratory;
- Directly connecting the data relating to hits to CODIS to the relevant case file;
- Proper policies and procedures to ensure all hits are accounted for and followed up;
- Procedures addressing how the key parties can conduct a reasonable and timely investigation into the significance of the hit; and

- Sharing the hits in data from solved and unsolved cases with other key parties, including the relevant prosecutors' offices, the original defense attorney and the last known attorney of record, crime victims and surviving relatives, and a local organization that litigates claims of innocence.

Plan, Report, and Expiration

The bill requires the Task Force to complete a plan for implementation of a protocol relating to hits to closed cases by October 1, 2020, including a mechanism to ensure uniform compliance at the local law enforcement agency level. The bill requires a report containing a plan for uniform statewide implementation of the protocol, including articulated benchmarks to facilitate and measure adoption, to be submitted to the Governor, Speaker of the House of Representatives, and President of the Senate, as well as posted on a public KBI website, on or before December 1, 2020.

The provisions of the bill related to the Task Force will expire on December 30, 2020.

Support Services and Compensation

Legislative members attending meetings authorized by the Task Force will be paid as specified in KSA 75-3223(e). Non-legislative members may be reimbursed by their appointing authority.

State of Disaster Emergency Declaration; HCR 5015

HCR 5015 ratifies the Governor's May 9, 2019, State of Disaster Emergency declaration and extends this period of declaration from May 9, 2019, until January 13, 2020, subject to extension by the State Finance Council. [Note: Without ratification or extension, the declaration would be in effect for no more than 15 days.]

These 56 counties are identified in the resolution: Allen, Anderson, Barber, Barton, Butler, Chase, Chautauqua, Cherokee, Clark, Clay, Cloud, Coffey, Comanche, Cowley, Crawford, Dickinson, Doniphan, Douglas, Elk, Ellsworth, Franklin, Geary, Greenwood, Harper, Harvey, Hodgeman, Jefferson, Kingman, Leavenworth, Lincoln, Linn, Lyon, Marion, Marshall, McPherson, Meade, Montgomery, Morris, Neosho, Osage, Ottawa, Pawnee, Phillips, Pottawatomie, Pratt, Reno, Rice, Riley, Rush, Russell, Saline, Sumner, Wabaunsee, Washington, Wilson, and Woodson. The resolution further provides the Governor may designate additional counties in accordance with continuing law.

STATE FINANCES

State Budget—Appropriations; House Sub. for SB 25

House Sub. for SB 25 includes adjusted funding for fiscal year (FY) 2019, FY 2020, and FY 2021 for select state agencies, and FY 2019 and FY 2020 capital improvement expenditures for a number of state agencies. An overview of the Governor's amended budget recommendations for FY 2019 and FY 2020 and the Conference Committee's adjustments to the Governor's amended recommendations are reflected below.

FY 2019

The approved FY 2019 budget includes expenditures of \$17.2 billion, with \$7.1 billion from the State General Fund (SGF). The budget increases total expenditures by \$9.2 million, including \$7.1 million from the SGF, above the Governor's recommendation. The bill also deletes 80.0 full-time equivalent (FTE) positions. The FY 2019 appropriations for claims against the State is included.

Major adjustments to the FY 2019 approved budget include the following:

- Department of Administration: One-time payment to the federal government for the debt setoff settlement agreement (\$9.3 million);
- Department for Children and Families:
 - Kansas Eligibility Enforcement System (KEES) upgrade (\$1.6 million);
 - Family First Prevention Services Act (FFPSA) (\$452,516); and
 - Child welfare positions (\$415,526);
- Human services non-caseload decreases, primarily Medicaid waiver programs (\$43.7 million);
- Kansas Department of Health and Environment: Add \$2.2 million for the KanCare Clearinghouse;
- Kansas Department for Aging and Disability Services: Add \$3.9 million, including \$2.6 million from the SGF, for community mental health centers providing crisis center services, Clubhouse Model programs, the Client Assessment Referral and Evaluation program, and other technical adjustments;
- State hospital revenue shortfall (\$5.9 million);

- Adjutant General's Department: Capital improvements for life, health, and safety projects at armories (\$1.4 million);
- Pooled Money Investment Board (PMIB): Delete the transfer of \$264.3 million from the SGF to the Pooled Money Investment Portfolio to complete the repayment of the entirety of the PMIB bridge loan in FY 2019. This leaves \$52.9 million for the FY 2019 scheduled transfer; and
- Transfer to the State Highway Fund: Transfer of up to \$50.0 million from the SGF to the State Highway Fund at the end of FY 2019. The amount to be transferred is the amount that revenue receipts during FY 2019 exceed FY 2019 Consensus Revenue Estimates, up to \$50.0 million. Expenditure of these funds would require a 25.0 percent local match.

The bill removes transfers of 10.0 percent of the SGF ending balance to the Budget Stabilization Fund in FY 2021 and delays currently allowed expenditures from the Budget Stabilization Fund until FY 2025.

The bill amends law regarding transfers and expenditures from the Budget Stabilization Fund and replaces them with the following directives:

- When state tax receipts exceed the previous fiscal year's receipts, the first 3.0 percent are retained in the SGF;
- The next 1.0 percent are deposited into the Budget Stabilization Fund;
- The next 0.5 percent are deposited in the newly created Debt Prepayment Fund;
- Any amount above 4.5 percent of the previous year's receipts remains in the SGF;
- No deposits are required once the Budget Stabilization Fund balance exceeds 15.0 percent of the preceding fiscal year's state tax receipts; and
- No deposits are required once the Debt Prepayment Fund balance exceeds 15.0 percent of the preceding fiscal year's amount of principal of bond debt service.

The bill also includes various restrictions on when budget stabilization moneys and debt prepayment could be withdrawn.

FY 2020

The approved FY 2020 budget totals \$18.4 billion, including \$7.7 billion from the SGF. The budget is an all funds decrease of \$239.5 million and an SGF increase of \$178.2 million from the FY 2020 Governor's recommendation. The bill also deletes 85.0 FTE positions.

Major adjustments to the FY 2020 approved budget include the following:

- Kansas Department of Health and Environment—Health Care Finance:
 - Add \$4.9 million and 313.00 FTE positions for the KanCare Clearinghouse;
 - Add \$12.4 million for the Children’s Health Insurance Program;
 - Add \$3.0 million, including \$1.3 million from the SGF, to increase Medicaid dental reimbursement rates for FY 2020; and
 - Add \$14.2 million, all from the SGF, for the Health Care Assessment Improvement Program and require the agency to submit a request to increase the hospital assessment rate to 3.0 percent;
- State hospital revenue shortfall (\$5.8 million);
- Kansas Department for Aging and Disability Services:
 - Add \$10.1 million, including \$4.2 million from the SGF, to provide a 1.5 percent increase in the reimbursement rates for providers of Home and Community Based Services (HCBS) waiver services for FY 2020;
 - Add \$6.8 million, including \$3.1 million from the SGF, to rebase the reimbursement rates for the Program of All-Inclusive Care for the Elderly (PACE) for FY 2020;
 - Add \$6.0 million, including \$2.5 million from the SGF, to reduce the wait lists for Medicaid HCBS waivers for individuals with intellectual/developmental disabilities (\$5.0 million all funds) and individuals with physical disabilities (\$1.0 million all funds) for FY 2020;
 - Add \$6.8 million, including \$2.8 million from the SGF, to provide a 1.0 percent increase in the reimbursement rates for nursing facilities for FY 2020;
 - Add \$5.0 million, all from the SGF, for community mental health center grants for FY 2020; and
 - Add \$12.4 million, including \$5.3 million from the SGF, to increase the protected income level for HCBS waiver services recipients and individuals in the PACE to \$1,177 per month for FY 2020;
- Department for Children and Families:

- Add \$2.6 million from the SGF to add 16.0 FTE additional child welfare staff positions, for a total of 42.0 FTE positions over two years;
- Add \$9.3 million, including \$6.9 million from the SGF, for FFPSA; and
- Add \$7.1 million, including \$3.0 million from the SGF, for KEES upgrades;
- Department of Corrections and correctional facilities: Add \$41.0 million, all from the SGF, for shrinkage, hiring, compensation, contract beds, hepatitis C treatment, housing adult female offenders (\$3.0 million), and the medical contract;
- Docking State Office Building: Add language directing the Department of Administration to provide a survey of potential options for the deconstruction, repair, or renovation of the Docking State Office Building, to be reported to the Legislature on or before January 13, 2020;
- Board of Regents: Add \$33.0 million, all from the SGF, to restore Kansas State University global food system research, performance- or merit-based awards, non-tiered course credit, postsecondary tiered technical education state aid, municipal university operating grants, and comprehensive grants;
- Department of Education: Add \$5.0 million, all from the SGF, to provide funding for safety and security grants;
- Kansas Bureau of Investigation: Add \$1.0 million, all from the SGF, and 8.0 FTE positions for cyber and financial crimes investigative capacity;
- Kansas Department of Transportation: Add \$6.4 million, all from the State Highway Fund, for the acceleration of delayed Transportation Works for Kansas projects for FY 2020. Funding for this acceleration would come from reducing transfers from the State Highway Fund to the SGF for FY 2020; and
- State employee pay: Provide for a 2.5 percent salary increase for all state employees, including those in the Judicial Branch, who are not otherwise receiving an increase in FY 2020. Statewide elected officials and legislators are excluded.

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES
House Sub. for SB 25 Conference Profile
(Dollars in Millions)

	FY 2018	Rec. FY 2019	Rec. FY 2020
Beginning Balance	\$ 108.5	\$ 761.7	\$ 866.2
Receipts (April 2019 Consensus)	7,302.3	7,236.6	7,327.0
Governor's Revenue Adjustments	0.0	(5.4)	242.7
PMIB Bridge Funding in Gov. Rec.	0.0	(264.3)	52.9
Legislative Receipt Adjustments	0.0	264.2	(191.2)
Adjusted Receipts	7,302.3	7,231.2	7,431.4
Total Available	\$ 7,410.8	\$ 7,989.5	\$ 8,299.6
Less Expenditures	6,649.1	7,123.3	7,604.2
KPERS Reammortization Deletion	0.0	0.0	145.3
<i>Expenditures Subtotal</i>	\$ 6,649.1	\$ 7,123.3	\$ 7,749.6
ENDING BALANCE	\$ 761.7	\$ 869.6	\$ 551.5
Ending Balance as a % of Expenditures	11.5%	12.2%	7.1%

TAXATION

Center for Entrepreneurship Tax Credit; SB 90

SB 90 allows financial institutions to claim the Center for Entrepreneurship tax credit beginning in tax year 2019, which may be applied to the privilege tax owed. The maximum amount of tax credits that any taxpayer could claim increases from \$50,000 to \$100,000. The total amount of tax credits that may be claimed for all taxpayers remains capped at \$2.0 million per fiscal year.

Tax Credit for Purchases from Businesses that Employ Individuals with Disabilities; HB 2044

HB 2044 authorizes a new income tax credit for tax years 2019 through 2023 equivalent to 15.0 percent of expenditures on goods and services purchased from “qualified vendors” or nonprofit “certified businesses,” as those terms are defined by the bill, that provide a certain level of health insurance benefits and have at least 30.0 percent of their employees be resident Kansans with disabilities. The amount of the credit is capped at \$500,000 per each qualified vendor each tax year. The cumulative amount of credits allowed is capped at \$5.0 million. The tax credits are nonrefundable, and unused credits may carry forward for up to four years and apply against the liability of future tax years.

The Secretary of Commerce must annually certify the qualified expenditures eligible for the tax credit and provide the amount to the Secretary of Revenue. The Secretary of Revenue must make an annual report to the standing taxation committees on the implementation and effectiveness of the tax credit program. The Secretary of Commerce is authorized to promulgate rules and regulations for evaluating whether purchases by taxpayers from a qualified vendor should be certified.

Local County Sales Tax Authorizations; New Sales Tax Exemption for Coins and Bullion; HB 2140

HB 2140 makes multiple changes in local sales tax authorization statutes and creates a sales tax exemption for certain coins and bullion.

County Sales Tax Provisions

Relative to multiple changes in local sales tax authorization statutes, the bill increases the maximum local sales tax rate that could be imposed by Thomas County from 1.50 percent to 1.75 percent, provided all taxes levied in excess of 1.00 percent remain earmarked for financing a courthouse, jail, law enforcement center, or other county administrative facility. Any specially earmarked tax imposed by the bill sunsets when the project costs have been fully paid. An election is required for an increase in the current Thomas County sales tax, which is 1.50 percent.

The bill also extends from five years to ten years the sunset on any 0.5 percent tax imposed by Russell County for economic development initiatives or public infrastructure projects.

The bill renews sales tax authority for Jackson County to impose, subject to voter approval, a countywide sales tax of 0.4 percent to finance public infrastructure projects. Under continuing law, any such tax that is imposed will sunset after seven years.

The bill allows Dickinson County to impose, subject to voter approval, a countywide sales tax of 0.5 percent to finance roadway construction and improvement. This authorization requires any such tax imposed to sunset after ten years, instead of after five years as in prior law.

The bill extends the authority of Wabaunsee County to impose a 0.5 percent retail sales tax for an additional period not to exceed 15 years, subject to voter approval.

Additionally, the bill retroactively ratifies the results of a 2017 election in Finney County that increased that county's tax by 0.3 percent. The tax imposed by the election would be for purposes of an interlocal agreement between the county and Garden City regarding certain infrastructure upgrades and will sunset after 15 years.

The bill requires the Director of Taxation (Director) to confirm all provisions of law applicable to the authorization of local sales taxes have been followed prior to causing collections to commence. Should the Director discover a city or county did not comply with the authorization law after collections have commenced, collections must cease until the error has been remedied.

Additional Sales Tax Exemption

The bill provides a sales tax exemption for all sales of gold or silver coins and gold, silver, platinum, or palladium bullion.

TELECOMMUNICATIONS

Wireless Siting Franchise Fees, Prohibitions; SB 68

SB 68 amends law relating to valid contract franchise ordinances and their application to wireless service providers and wireless infrastructure providers.

Franchises for Wireless Services and Infrastructure Providers

The bill prohibits a city from requiring a wireless services provider or wireless infrastructure provider to enter into a franchise, franchise agreement, franchise ordinance, contract franchise, or contract franchise ordinance for the provision of wireless services.

The bill also clarifies nothing in the bill is to be construed as prohibiting a city from requiring a telecommunications local exchange service provider to enter into a valid contract franchise ordinance as provided by KSA 2018 Supp. 12-2001.

Right-of-Way

The bill allows a city to govern wireless services providers' or wireless infrastructure providers' use of the public right-of-way by requiring a small cell facility deployment agreement or a master license agreement, or through permitting requirements, municipal ordinances or codes, or any combination of such mechanisms in a manner consistent with federal and state law.

Fees

The bill allows a city to assess a wireless services provider or a wireless infrastructure provider a fixed right-of-way access fee for each small cell facility a provider deploys that requires the use of the city's right-of-way. The fee cannot be based on such a provider's gross receipts derived from services provided within a city's corporate limits.

Exceptions

The bill specifies the above provisions apply only to a wireless infrastructure provider in its deployment of small cell facilities in a city's right-of-way, used for the provision of wireless services. The bill further clarifies nothing is construed to apply to such a provider's other operations and services as a utility or have any effect on any franchise related to other operations and services.

Definitions

The terms "authority," "public right-of-way," "small cell facility," "utility pole," "wireless infrastructure provider," "wireless services," and "wireless services provider" have the same definitions as provided in the Wireless Siting Act.

The bill also defines “small cell facility deployment agreement” as an agreement between a wireless services provider or wireless infrastructure provider and an authority for the deployment of small cell facilities on or adjacent to existing, modified, replacement, or new utility poles within the public right-of-way pursuant to state and federal law. A small cell facility deployment agreement is not considered a franchise, franchise agreement, franchise ordinance, contract franchise, or contract franchise ordinance.

Amending the Kansas 911 Act; HB 2084

HB 2084 revises the Kansas 911 Act (Act) and repeals three outdated statutes not included in the Act. The bill makes changes to definitions, the membership of the 911 Coordinating Council (Council), administration of funds by the Council, the Council’s rules and regulations authority, Local Collection Point Administrator (LCPA) expenses, public safety answering point (PSAP) geographic information service (GIS) data requirements, PSAP annual report requirements, 911 fee funds, 911 fees, PSAP distributions, PSAP expenditures, liability provisions, audit expenses, and county restrictions.

Definitions

The bill adds the following definitions to the Act:

- “GIS” to mean a geographic information system for capturing, storing, displaying, analyzing, and managing data and associated attributes that are spatially referenced;
- “GIS data” to mean the geometry and associated attributes packaged in a geodatabase that defines the roads, address points, and boundaries within a PSAP’s jurisdiction; and
- “Non-traditional PSAP” to mean a PSAP not operated by a city or county, including, but not limited to, PSAPs operated by universities, tribal governments, or the state [or] federal government.

The bill amends two definitions in the Act. The law defines “Local Collection Point Administrator” to mean the person designated by the Council to collect and distribute 911 fees and 911 state grant fund moneys. The bill creates the 911 Operations Fund and requires the LCPA also collect and distribute 911 Operations Fund moneys. The law defines “Next Generation 911” (NG911) to mean a 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet protocol-based technologies and applications that may include text messaging, image, video, and data information from callers. The bill adds to the definition that NG911 service conforms with National Emergency Number Association i3 standards.

911 Coordinating Council

Membership

The Council has 13 voting members; the bill eliminates the member representing PSAPs without regard to size and adds a member representing the Kansas chapter of the Association of Public Safety Communications Officials.

The bill adds two members representing non-traditional PSAPs, one of whom shall be a representative of tribal government, to the non-voting membership of the Council. These members are appointed by the Governor.

Expenses

Prior law required the Council-related expenses to be reimbursed from the 911 State Grant Fund. The bill requires the expenses to be reimbursed from the 911 Operations Fund, which is created by the bill. The bill limits payments for administration expenses of the Council to 2.0 percent of the total receipts from providers and the Kansas Department of Revenue (KDOR) received by the LCPA. The Council is authorized to reimburse state agencies or independent contractors for expenses incurred effectuating the Act, from the 911 Operations Fund.

Rules and Regulations

The Council's authority to adopt rules and regulations necessary to effectuate the provisions of the Act is expanded to include establishing training standards and programs related to the technology and operations of the NG911 hosted solution; establishing data standards, maintenance policies, and data reporting requirements for GIS data; and assessing civil penalties upon a finding that a provider has violated any provision of the Act.

The bill prohibits the Council from adopting rules and regulations or imposing any requirements that create a mandatory certification program of PSAP operations or PSAP emergency communications personnel.

Local Collection Point Administrator

Expenses

Prior law required the LCPA-related expenses be reimbursed from the 911 State Grant Fund. The bill requires the expenses to be reimbursed from the 911 Operations Fund.

Selection

The bill requires the Council to receive approval from the Legislative Coordinating Council (LCC) in selecting the LCPA. Prior law stated the Council shall receive advice and consent from the LCC in selecting the LCPA.

GIS Data Oversight

The bill sets forth a process for the Council to ensure the GIS data for PSAPs remains up to date. If a PSAP does not provide certification of up-to-date GIS data or update its GIS data, the Council is allowed to contract with a third party to update the GIS data and is required to assess the governing body of the PSAP for any costs incurred in updating the GIS data.

Public Safety Answering Points' Annual Reports

The bill requires the Council to provide notice to the governing body of a PSAP that failed to file and finalize an annual report, as required by the Act. If after 60 days the report is not filed or finalized, 10.0 percent of each subsequent distribution of 911 fees will be withheld from such PSAP until such report has been submitted.

911 Operations Fund

The bill requires the LCPA, upon approval of the Council, to establish the 911 Operations Fund for administrative costs of the Council and deployment and maintenance of the Statewide NG911 system outside of the State Treasury.

911 Fees

Subscriber Accounts

The law imposes a 911 fee per month, per subscriber account of any exchange telecommunications service, wireless telecommunications service, voice over Internet protocol service, or other service capable of contacting a PSAP. The bill increases the 911 fee from \$0.53 to \$0.90 per month, per subscriber account. The Council has the authority, through rules and regulations, to lower the fee. The law requires service providers collect the 911 fees and remit such fees to the LCPA for distribution to the PSAPs pursuant to the Act.

Prepaid Purchases

The law imposes a prepaid wireless 911 fee per retail transaction to be collected by the seller and remitted to KDOR. KDOR remits the fees to the LCPA for distribution as provided in the Act. The bill increases the fee from 1.20 percent to 2.06 percent per transaction. The bill requires the Council, through rules and regulations, to lower the prepaid wireless fee proportionally to any reduction in the 911 subscriber fee. Prior law required the Council to adjust the 911 subscriber fee and required the prepaid 911 fee to be adjusted proportionately, either up or down, upon adjustment of the 911 subscriber fee.

Distribution to PSAPs

The law states 911 fees will be distributed to PSAPs in each county based upon the amount of 911 fees collected from service users located in that county, based on place of primary use information provided by the providers, by using the distribution method set forth in statute. The bill

does not change the distribution method; however, the bill increases the minimum county distribution from \$50,000 to \$60,000.

The bill requires, prior to the distribution of 911 fees to the PSAPs, the LCPA withhold \$0.23 from every 911 fee remitted by service providers and deposit such amount in the 911 Operations Fund for deployment and maintenance of the statewide NG911 system and standardized functionality upgrade to that system. The bill states if these funds withheld from PSAP distribution exceed 15.0 percent of the total receipts received by the LCPA from providers and KDOR over the prior three years, the bill requires such funds in excess of the 15.0 percent total to be deposited in the 911 State Grant Fund and used for PSAP grants based on demonstrated need.

The bill requires the LCPA withhold \$0.01 from every 911 subscriber fee remitted to the LCPA prior to PSAP distribution, if the balance in the 911 State Grant Fund is less than \$2.0 million, and deposit such amount in the 911 State Grant Fund. Additionally, if the balance in the 911 State Grant Fund exceeds \$2.0 million, the LCPA is not required to withhold such amount.

The bill requires all moneys remaining after distribution, moneys withheld to deploy and maintain the statewide NG911 system, and any money that cannot be attributed to a specific PSAP be transferred to the 911 Operations Fund.

The bill requires all moneys in the 911 State Fund collected from the prepaid wireless 911 fee be deposited in the 911 Operations Fund unless \$3.0 million of such moneys have been deposited in any given year, then all remaining moneys will be distributed to the counties in an amount proportional to each county's population as a percentage share of the population of the state.

PSAP Expenditures

The bill requires the Council, pursuant to rules and regulations, to establish a process for a PSAP, at the discretion of the PSAP, to seek pre-approval of an expenditure. The Council is required to respond in writing to any pre-approval request within 30 days and inform the PSAP whether the requested expenditure is approved or disapproved. The bill requires, if the expenditure is disapproved, the written notification state the reason for the disapproval and such PSAP can, within 15 days after service of the notification, make a written request to the Council to appeal the decision and for a hearing to be conducted in accordance with the Kansas Administrative Procedure Act.

The bill requires the Council annually to review expenditures of 911 funds reported on the annual report for each PSAP and to appoint a committee to review such expenditures. The bill states if the committee determines a reported expenditure was not authorized by the Act, the committee is required to request the expenditure be refunded by the PSAP to the PSAP's 911 account. The PSAP is allowed to request a review of the decision of the committee before the Council. Upon a finding that an unauthorized expenditure was made intentionally, the Council is allowed to assess a fine to the PSAP. Any final action of the Council is subject to review in accordance with the Kansas Judicial Review Act.

The law prohibits PSAPs from using 911 fees to purchase subscriber radio equipment. The bill further prohibits the use of 911 fees for the procurement, maintenance, or upgrade of such equipment. The bill also prohibits the use of 911 fees to pay salaries for training of personnel.

Liability

The bill provides, except for action or inaction that constitutes gross negligence or willful and wanton misconduct, the LCPA, PSAPs, and each provider and seller, and their respective employees, agents, suppliers, and subcontractors, shall not be liable for payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service.

Audit Expenses

Audits authorized by the Act shall be paid or reimbursed from the 911 Operations Fund.

Restrictions on Counties

Counties are not allowed to exempt from or effect changes in the Act.

Outdated Statutes

The bill repeals three outdated statutes regarding enhanced wireless 911 provisions. These statutes are not included in the Act.

TRANSPORTATION AND MOTOR VEHICLES

Class M License Required for Motorcycle Operation; SB 17

SB 17 removes an exception for a motorcycle operated with a temporary registration permit (also known as a “temporary tag”) from a requirement for each operator of a motor vehicle in Kansas to hold a license classified for the operation of the motor vehicle being operated. Under prior law, a holder of any class of driver’s license could operate a motorcycle with a temporary registration permit.

Manufacturer Compensation to Vehicle Dealers for Warranty Services; SB 39

SB 39 amends the Vehicle Dealers and Manufacturers Licensing Act (Act) regarding compensation of new vehicle dealers for warranty services.

The bill requires a first or second stage manufacturer (manufacturer) or distributor to specify, in writing to each of the manufacturer’s or distributor’s dealers, the dealer’s obligations for preparation, delivery, and warranty services related to the manufacturer’s or distributor’s products. It requires the manufacturer or distributor to compensate the dealer for the warranty services the manufacturer or distributor requires the dealer to provide, including warranty and recall obligations related to repairing and servicing vehicles of the manufacturer or distributor and all parts and components authorized by the manufacturer for installation in the vehicles. [Note: Continuing law requires a manufacturer or distributor to pay reasonable compensation to an authorized new vehicle dealer who performs work to rectify warranty defects on the manufacturer’s or distributor’s product.]

The bill requires the manufacturer or distributor to provide to the dealer a schedule of compensation for warranty services, including for parts, labor, and diagnostics. The bill specifies how components of the schedule of compensation may be calculated for parts (including dealer cost and using dealer average markup) and labor (using the dealer’s retail labor rate).

The bill specifies how the dealer may establish its average percentage markup for parts or its labor rate by submitting to the manufacturer or distributor copies of 100 sequential retail service orders paid by the dealer’s customers, or all of the dealer’s retail service orders paid by the dealer’s customers in a 90-day period, whichever is less, for services provided within the previous 180-day period. The bill prohibits the manufacturer or distributor from considering retail services orders attributable to routine vehicle maintenance. The bill authorizes the manufacturer or distributor to choose to audit the submitted orders, within 30 days of receiving the dealer’s submission. The manufacturer or distributor will then approve or deny the establishment of the dealer’s average percentage markup or labor rate.

If the manufacturer or distributor approves the average percentage markup or labor rate, the bill requires the percentage markup or rate go into effect 45 days after the manufacturer’s or distributor’s approval.

If the manufacturer or distributor denies the establishment of the dealer's average percentage markup or labor rate, the bill authorizes the dealer to file a complaint with the Director of Vehicles (Director) and require a hearing be held following procedures in continuing law for hearings on violations of any provision of the Act. The bill requires the burden of proof to be on the manufacturer or distributor to establish the denial of the dealer's average percentage markup or labor rate was reasonable. If the Director finds the denial was not reasonable, the bill requires the Director to determine the dealer's average percentage markup or labor rate for purposes of calculating a reasonable schedule of compensation.

The bill prohibits a manufacturer or distributor from requiring a dealer to establish an average percentage markup or labor rate by a methodology, or by requiring submission of information, that is unduly burdensome or time-consuming to the dealer, including, but not limited to, requiring part-by-part or transaction-by-transaction calculations.

The bill prohibits a dealer from requesting a change in the dealer's average percentage markup or labor rate more than once in any one-year period.

The bill prohibits the compensation to the dealer for warranty parts and labor from being less than rates charged by the dealer for like parts and services to retail customers, provided the rates are reasonable.

[*Note:* In continuing law, "new vehicle dealer" is defined as a vehicle dealer who is a party to an agreement with a first or second stage manufacturer or distributor to sell vehicles or parts sold by that manufacturer or distributor and obligates the vehicle dealer to fulfill warranty commitments of the manufacturer or distributor; "first stage manufacturer" is defined as a person who manufactures, assembles, and sells new vehicles to a dealer for resale; "second stage manufacturer" is defined as a person who assembles, installs, or permanently affixes a body, cab, or special equipment to a chassis supplied by a first stage manufacturer and sells the vehicle to new vehicle dealers for resale; and "distributor" is defined as a person who sells or distributes for resale new vehicles to new vehicle dealers or who maintains distributor representatives in Kansas.]

Clarifying Warning Period for Violation Related to Approaching an Emergency Vehicle; SB 40

SB 40 removes language requiring a law enforcement officer to issue a warning citation from and after the effective date of the act and prior to July 1, 2001, from provisions requiring a driver to move into a nonadjacent lane or, if changing lanes is not possible or is unsafe, proceed with due caution upon approaching an authorized emergency vehicle or police vehicle using flashing or hazard warning lights.

Clarifying a Seat Belt Violation Is a Traffic Infraction; SB 41

SB 41 amends the Uniform Act Regulating Traffic on Highways to specify violation of law requiring seat belt use by occupants ages 14 and older in passenger cars or motorcycles is a traffic infraction.

Vehicle Lights; Stopping for On-track Equipment; Sun Screening Material; Operation of All-terrain Vehicles; Regulation of E-scooters; SB 63

SB 63 amends the Uniform Act Regulating Traffic on Highways (Uniform Act) regarding use of certain lights by transportation network company drivers, driver responsibilities when on-track equipment is nearby, sun screening material on vehicle windows, operation of all-terrain vehicles (ATVs) and work-site utility vehicles, and regulation of electric-assisted scooters (e-scooters).

Transportation Network Company Lights

The bill adds to the Uniform Act authorization for the governing body of a city to adopt an ordinance to allow a driver for a transportation network company, when the driver is logged on to the transportation network company's digital network, to equip the vehicle with a device capable of displaying light visible from directly in front of the center of the vehicle. The bill specifies the lighting device could display steady light and light of any color except red. Terms used in the bill have the meanings provided in the Kansas Transportation Network Company Services Act.

The bill amends provisions prohibiting lights visible from the center front on vehicles to authorize lights meeting the provisions added by the bill (as described above).

Stopping When On-track Equipment Is Nearby

The bill requires a driver to stop a vehicle at least 15 feet, but not more than 50 feet, before crossing a railroad track under certain circumstances if other on-track equipment, in addition to a railroad train as in continuing law, is nearby. The circumstances under which such a stop is required are the same as those for which a stop is required for a railroad train:

- A clearly visible electric or mechanical signal device gives warning of the approach of the train or other on-track equipment;
- A crossing gate is lowered or a human flagman gives a signal that a train or on-track equipment is approaching or passing;
- The railroad train or on-track equipment approaching within approximately 1,500 feet emits a signal audible from such distance and is, by reason of speed or proximity, an immediate hazard; or
- The approaching railroad train or on-track equipment is plainly visible and is in hazardous proximity to such crossing.

Sun Screening Material on Vehicle Windows

The bill authorizes the installation of a clear, colorless, and transparent material on a vehicle's windshield, side wings, side windows, or rear windows if the following conditions are met:

- The material has a minimum visible light transmittance of 78 percent;

- The window glazing with the applied material meets federal motor vehicle safety standards regarding window glazing materials;
- The material is designed and manufactured to block the sun's ultraviolet A or B rays by enhancing the vehicle's existing window glass;
- The driver or occupant of the vehicle possesses a signed statement from a licensed physician or optometrist that:
 - Identifies the driver or occupant; and
 - States the installation of the material on the vehicle windows is, in the physician's or optometrist's professional opinion, necessary for the safety or health of the driver or occupant; and
- The material is removed or replaced if it tears, bubbles, or otherwise prohibits clear vision through the window.

The bill states any driver who is issued a citation for failure to possess a signed statement from a licensed physician or a licensed optometrist (as outlined above) has 60 days to either produce such a signed statement in court or remove the material. If the driver does either of those things within 60 days, the bill requires the court to dismiss the citation.

The bill also amends an exclusion for a law enforcement motor vehicle from a requirement that light transmission through vehicle windows not be less than 35 percent to remove a requirement the law enforcement vehicle be clearly identified as such on the outside of the vehicle.

Operation of All-terrain Vehicles and Work-site Utility Vehicles

The bill authorizes operation of ATVs and work-site utility vehicles to cross a federal highway or a state highway.

The bill also authorizes a person engaged in agricultural purposes to operate an ATV or work-site utility vehicle on a federal highway or state highway outside the corporate limits of any city under the following conditions:

- The operator must be a licensed driver operating within the restrictions of the operator's license;
- The posted speed limit on the federal highway or state highway must be 65 miles per hour or less; and
- The vehicle must be operated as near to the right side of the roadway as practicable, except when making or preparing to make a left turn.

Regulation of Electric-assisted Scooters

The bill regulates the use of e-scooters, which are defined by the bill as every self-propelled vehicle having at least two wheels in contact with the ground, an electric motor, handlebars, a brake, and a deck designed to be stood upon while riding.

The bill amends the Uniform Act to prohibit any person from operating an e-scooter on any interstate highway, federal highway, or state highway. The bill permits the governing body of a city or county to adopt an ordinance or resolution further restricting or prohibiting the use of e-scooters on public highways, streets, or sidewalks within such cities or counties. The bill applies traffic regulations applicable to bicycles to e-scooters. The bill does not prohibit e-scooters from crossing a federal or state highway.

The bill adds a fine of \$45 for unlawful operation of an e-scooter.

The bill also includes the new definition of e-scooter in vehicle registration statutes. The bill excludes e-scooters from registration.

Driver Training; SB 94

SB 94 requires a motor vehicle accident avoidance course (course) associated with a required reduction in motor vehicle insurance premium charges to be at least four hours in duration. The bill requires the course utilize a nationally recognized driver training curriculum or a curriculum approved by a state or federal agency, replacing approval of a course by the National Safety Council or a “governmental agency such as the State Board of Education.” The bill also updates terms, including replacing “discount” with “premium reduction,” and specifies the insured participant is the principal operator of the covered vehicle.

Registration of Certain Rental Vehicle Fleets; SB 97

SB 97 authorizes registration of certain rental vehicles in fleets and issuance of permanent license plates to reflect that registration. To qualify for this type of registration, the person must register more than 250 motor vehicles subject to an excise tax on the gross receipts received from rental or lease for a period of time not exceeding 28 days (rental vehicle excise tax).

The bill requires such registration to be submitted electronically. The bill requires the Division of Vehicles (Division), Department of Revenue, to register and issue a license plate for any qualifying vehicle upon payment of all applicable registration fees. The bill requires the Division to issue permanent license plates designed to remain with a motor vehicle as long as the vehicle remains part of the qualifying fleet. The bill requires the license plate to be distinct from other license plates and no year or date be listed on the license plate. The bill requires the Division to issue a registration receipt for the vehicle, valid while the rental vehicle excise tax applies to the vehicle.

The bill authorizes transfer of a license plate and any unused registration fees to any other motor vehicle subject to the rental vehicle excise tax and owned by the same person.

The bill authorizes the Division to impose an additional fee not exceeding \$1.00 for each such registration. Those fees will be remitted to the State Treasurer for credit to the Fleet Rental Vehicle Administration Fund created by the bill, for purposes of funding the administrative costs for registering and tagging fleet rental vehicles.

The bill takes effect January 1, 2020.

Tolled Highway Projects; Senate Sub. for HB 2007

Senate Sub. for HB 2007 amends requirements for tolled projects of the Kansas Turnpike Authority (KTA) and the Secretary of Transportation (Secretary).

KTA Requirements

The bill removes from the definition of “project” that such project be constructed by the KTA.

The bill authorizes the KTA to issue revenue bonds payable solely or partly from revenues to finance turnpike projects. The bill requires the KTA, before undertaking a toll road project, to find construction of a toll expressway can be financed solely or partly through the investment of private funds in toll road revenue bonds and that such project and any indebtedness incurred for it can be financed solely or partly through tolls and other project-related income, rather than such project and indebtedness be entirely self-liquidating.

The KTA is authorized to issue turnpike revenue bonds payable solely or partly from the tolls and revenues pledged for bond repayment. Bonds and expenses will be payable solely or partly from funds provided under the authority of statutes governing the KTA. [*Note: Under continuing law, such bonds and expenses are not obligations of the State.*]

The bill amends the authority of the KTA to fix and collect tolls over each turnpike project to remove the requirement that such project be constructed by the KTA.

Secretary of Transportation Requirements

The bill authorizes the Secretary to study the feasibility of constructing new toll or turnpike projects and removes authority to designate existing highways or any portion of such highways as a toll or turnpike project. The bill requires a study by the Secretary of a project for its feasibility as a toll or turnpike project to determine, after consulting with local officials, that traffic volume, local contribution, or other relevant reasons make such tolling project feasible. The bill requires at least one local public meeting to review the project during the feasibility study process. The bill requires any toll or turnpike project be constructed only to add capacity to existing highways or bridges or as a new facility where such did not exist.

The bill requires, prior to constructing a toll project or turnpike project, the Secretary and local units of government to prepare and present a joint proposal for construction of a toll or turnpike project to the KTA and the State Finance Council. The bill requires the Secretary and local units of government to receive resolutions approving the construction from the KTA and the State Finance

Council. The bill defines “local unit or units of government” and “approving” for this purpose. The bill characterizes the approvals by the State Finance Council as matters of legislative delegation.

The bill requires tolls be charged only on users of the additional capacity of the highway or bridge constructed and on all users of any new project, regardless of class, size, or kind of traffic. The bill requires the Secretary to use toll revenue to pay for the cost of the project for which the toll was collected and forbids the Secretary from using toll revenue for payment of costs not associated with the project for which the toll was collected.

The bill removes a requirement the Secretary recommend to the Legislature the construction of a new toll project or turnpike project or designation of an existing highway or portion thereof and authorizes the Secretary to construct such toll road after meeting the proposal and approval requirements described above. The bill states the Secretary must determine such new or added capacity is feasible.

John Armstrong Memorial Highway; SGT Kevin A. Gilbertson Memorial Bridge; HB 2070

HB 2070 designates the portion of US-75 from the junction of US-75 and NW 46th Street in Shawnee County to the junction of US-75 and I-70 as the John Armstrong Memorial Highway and removes this portion of US-75 from designation as the Purple Heart/Combat Wounded Veterans Highway. (The designation of US-75 as the Purple Heart/Combat Wounded Veterans Highway generally extends from the Nebraska state line to the Oklahoma state line, with several exceptions in law.) According to testimony, Mr. Armstrong was an abolitionist who was active with the Underground Railroad and used a route that closely followed the route of the highway to be so designated.

The bill also designates bridge No. 018-011 on US-77 in Cowley County as the SGT Kevin A. Gilbertson Memorial Bridge. According to testimony, Sergeant Gilbertson served in the U.S. Army’s 1st Infantry Division and died August 31, 2007, while serving in Iraq. The bridge to be so designated crosses the Arkansas River near the Oklahoma state line.

The Secretary of Transportation (Secretary) is required to place suitable signs to indicate the designations. Under continuing law, the Secretary is precluded from placing these signs until the Secretary has received sufficient moneys from gifts and donations to reimburse the Secretary for the cost of placing such signs, plus an additional 50 percent of the initial cost to defray future maintenance or replacement of the signs. The Secretary may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Definition of “School Bus” for Motor-fuel Tax Purposes; HB 2087

HB 2087 amends the definition of “school bus” in the Motor-fuel Tax Law to remove a requirement the vehicle be designed for carrying more than ten passengers and to remove use for the transportation of school personnel. The bill retains in the definition that a school bus be any motor vehicle used by a school district or nonpublic school to transport pupils or students to or from school or to or from school-related functions or activities; the vehicle may be owned and operated by the school district or privately owned and contracted for, leased, or hired by a school district or

nonpublic school. Under continuing law (KSA 79-3453), any person who uses motor-vehicle fuels for which tax has been paid for school buses (or any purpose other than operating motor vehicles on the public highways) is entitled to a refund of motor-fuel tax if certain requirements are met.

Deliver Driver's License to Officer; HB 2125

HB 2125 requires the holder of a driver's license who is operating a motor vehicle to promptly deliver, rather than display, the driver's license upon demand of any officer of a court of competent jurisdiction, any peace officer, or any examiner or officer of the Division of Vehicles, Department of Revenue. The requirement applies when the driver's license is in the licensee's immediate possession at the time of the demand.

Release of State Motor Vehicle Records; HB 2126

HB 2126 amends law restricting access to motor vehicle records. The bill removes from state law certain purposes for which state motor vehicle records may be released, but also authorizes release for any purpose not listed in Kansas law that is permissible under the federal Driver's Privacy Protection Act as it existed on January 1, 2018.

The bill makes corresponding changes to provisions directing \$1.00 from fees for each record requested to the Highway Patrol Training Center Fund.

[*Note:* The federal Driver's Privacy Protection Act (in 18 USC 2721(b)) includes various permissible uses, including these: to carry out a governmental function, by any government agency or private person or entity working on its behalf; in connection with matters of motor vehicle or driver safety and theft, emissions, product recalls or advisories, motor vehicle market research, and updating manufacturer owner records; for use by insurers, in connection with claims investigation or antifraud activities, rating, or underwriting; to give notice to owners of towed or impounded vehicles; for response to requests for individual records if the State has obtained express consent of the person to whom such personal information pertains; and for any other use specifically authorized under state law if the use is related to the operation of a motor vehicle or public safety.]

Commercial Vehicle Markings; HB 2127

HB 2127 removes statutory requirements for lettering to be painted or otherwise durably marked on the sides of a truck or truck tractor with a registered weight of more than 12,000 pounds to identify the owner or lessee. It also removes requirements for findings by the Division of Vehicles, Department of Revenue, regarding insignia or trademarks on such a vehicle and associated permits.

[*Note:* Federal regulations require any commercial motor vehicle used in interstate commerce to be marked with identification including the legal name or single trade name of the motor carrier and the identification number issued by the Federal Motor Carrier Safety Administration; a state rule and regulation includes nearly identical requirements for intrastate motor carrier vehicles weighing at least 26,000 pounds. Lettering required by state and federal regulations must be readily legible,

during daylight hours, from a distance of 50 feet while the vehicle is stationary; the marking may be painted on the vehicle or be on a removable device.]

Registration Fees for Electric and Hybrid Vehicles; Senate Sub. for HB 2214

Senate Sub. for HB 2214 adds passenger vehicle registration categories and establishes fees for those categories: \$100 for all-electric vehicles and \$50 for motor vehicles that are electric hybrid or plug-in electric hybrid vehicles. The new fees will be effective on and after January 1, 2020.

Permit Fees for Oversize or Overweight Vehicles; Escort Vehicle Companies; Senate Sub. for HB 2225

Senate Sub. for HB 2225 increases fees for certain permits authorizing oversize or overweight vehicles to operate on designated routes and requires registration of escort vehicle companies.

Permit Fees

The bill increases these permit fees as of January 1, 2020:

- For each single-trip permit, from \$20 to \$40;
- For each single-trip permit for a large structure, from \$30 to \$200;
- For each single-trip permit for a superload, from \$50 to \$200; and
- For each annual permit, from \$150 to \$200.

Escort Vehicle Companies

The bill requires, on and after January 1, 2020, each company that operates an escort service in the state to register annually with the Secretary of Transportation (Secretary) in accordance with rules and regulations adopted by the Secretary.

The bill requires each application for registration be accompanied by the name and address of the agent for service of process; proof of insurance, self-insurance, or other financial security for each vehicle operated; proof that each driver of an escort vehicle has a valid operator's license issued by a U.S. state or territory; proof each driver has successfully completed an escort vehicle training course approved by the Secretary; and other information the Secretary may require.

The bill authorizes the Secretary to revoke, suspend, or refuse to issue a registration for violation of these provisions.

UTILITIES

Electric Rate Study; Sub. for SB 69

Sub. for SB 69 directs the Legislative Coordinating Council (LCC) to authorize a study of retail rates of Kansas electric public utilities.

Purpose and Scope

The bill specifies the purpose of the study is to provide information that may assist future legislative and regulatory efforts in developing electric policy that includes regionally competitive rates and reliable electric service. The utilities subject to the study include electric public utilities, as defined in Chapter 66 of the *Kansas Statutes Annotated*; electric cooperative public utilities exempt from Kansas Corporation Commission (KCC) jurisdiction; and the three largest municipally owned or operated electric utilities by customer count.

Selection, Rights, and Duties of Study Organizations

The bill requires the LCC to select, by an affirmative vote of at least five members (including at least one vote from a minority party member), one or more independent organizations that have experience evaluating electric utilities. The study also requires input from residential, commercial, and industrial customers, electric utilities, and other stakeholders.

Any organization selected by the LCC to conduct the study is authorized to request data for any electric utility as defined above; the utility has at least 14 days to respond. To ensure nondisclosure of confidential business information, the organization is required to enter into a confidentiality agreement with the utility prior to making a request for information.

Duties of the KCC

The bill requires the KCC to assist any organization selected to conduct the study by sharing any subject matter knowledge regarding electric utilities in Kansas or by facilitating the procurement of any necessary information requested by the organization for the study. Such information is subject to the Kansas Open Records Act, the Judicial Review Act, the Kansas Administrative Procedure Act, and any other applicable law or regulations applicable to the KCC.

Disputes regarding the provision of information are decided by the KCC. The KCC also is responsible for establishing reasonable protections for the treatment of confidential information.

The KCC is responsible for paying the costs of the study through assessments upon utilities that are subject to the study.

Issues to Be Studied

The bill requires the study to be completed in two parts. The first portion of the study, which the bill requires to be completed by January 8, 2020, and submitted to the House and Senate utilities committees by January 14, 2020, will examine the following issues:

- The effectiveness of current Kansas ratemaking practices, including whether:
 - Current ratemaking adequately attracts needed utility capital investments and adequately discourages unnecessary capital investments in Kansas;
 - Current ratemaking appropriately balances utility profits with the public interest objectives of achieving competitive rates over time while providing the best practicable combination of price, quality, and service;
 - Kansas electric public utilities are currently recovering from Kansas retail electric ratepayers the full or partial cost, including a return on investment, of any investments no longer fully used or required to be used in service to the public within Kansas, including, but not limited to, generation capacity investments;
 - The investments Kansas electric public utilities have made in electric transmission and renewable generation resources have contributed, and to what extent, to the obsolescence of all the other generation facility investments of such utilities;
 - Allowing Kansas investor-owned electric public utilities to recover costs through surcharges and riders, without a comprehensive ratemaking process, has unnecessarily contributed to rising wholesale and retail electricity prices;
 - Current ratemaking processes for Kansas electric cooperatives and municipal utilities are in the public interest; and
 - Electricity providers in surrounding states are subject to state laws, regulations, and oversight similar to such requirements in Kansas; and
- Options available to the KCC and the Kansas Legislature to affect Kansas retail electricity prices to become regionally competitive while providing the best practicable combination of price, quality, and service, including whether:
 - Capital expenditures and operating expenses of Kansas electric public utilities can be managed to achieve and sustain competitive retail rates while maintaining adequate and reliable service;

- Any performance-based regulation, economic development initiatives, price-cap regulation, or other non-traditional ratemaking methods should be considered to reduce retail electric rates or the level of increase of any rates;
- Competitive markets for retail electricity could benefit all Kansas consumers;
- Further investments in energy efficiency and renewable energy, including revenue decoupling and renewable energy incentives, could benefit all Kansas consumers;
- Securitized ratepayer-backed bonds could benefit utilities and ratepayers by reducing investment risk, facilitating the recovery of certain stranded costs from under-utilized or otherwise obsolete generating and other facilities and lowering retail electric rates, and assisting in the transition to new technologies, including a review of whether securitized bonds could be effectively utilized by Kansas utilities;
- Kansas sales tax, property taxes, assessment rates, and other fees and taxes on utilities are comparable to those of other states in the region and how such taxes and fees impact the competitiveness of utility rates;
- Kansas electric utilities and the KCC may reduce the cost impacts of decisions of the Southwest Power Pool (SPP) by advocating for certain positions through the SPP's stakeholder and regional state committee processes, including an identification of current and future issues most likely to impact Kansas retail electric rates;
- Any other regulatory actions are available to the KCC to manage or reduce retail electric rates; and
- Legislative enactments could address retail electric rate escalation in Kansas.

The second part of the study, which the bill requires to be completed by July 1, 2020, and submitted to the House and Senate utilities committees by January 12, 2021, will examine other consequential energy issues materially affecting Kansas electric rates, including:

- Whether any costs incurred by Kansas electric public utilities to build and operate electric vehicle charging stations, including any necessary upgrades to distribution infrastructure, are recovered from ratepayers not using electric vehicle charging services;
- How rates for electric vehicle charging services should be designed to ensure such rates are just and reasonable and not subsidized by other utility customers;

- The potential effects of deregulating electric vehicle charging services in Kansas, including whether deregulation would ensure electric vehicle charging services are not subsidized by public utility ratepayers not using electric vehicle charging services;
- Whether Kansas consumers could benefit from improved access to advanced energy solutions, including micro grids, electric vehicles, charging stations, customer generation, battery storage, and transactive energy;
- The extent to which transmission investments by Kansas electric public utilities have impacted retail rates, including any incremental regional transmission costs incurred by Kansas ratepayers for transmission investments in other states, and whether such costs have been fully offset by financial benefits such as improved access to low cost renewable energy and wholesale energy markets;
- The costs and benefits incurred by Kansas ratepayers for transmission investments in Kansas used to export energy out of Kansas;
- How rate increases or the associated rising costs of Kansas investor-owned electric public utilities impact the retail electric rates of Kansas electric cooperatives and municipal utilities;
- Whether retail electric rates in Kansas are a material barrier to economic development in Kansas;
- The impact of contract rates with commercial and industrial customers and economic development rates on other customer classes, including whether expanded utilization of such approaches could benefit all customers over time;
- Whether Kansas electric public utilities recover their costs of serving customers from each customer class on the basis of cost causation;
- How cyber and physical security and grid stabilization efforts have affected, or are projected to affect, electric public utility rates;
- The value of a utility integrated resource planning process that requires state regulatory approval; and
- Economic analysis of the price fluctuations of generation fuels on the cost of electricity.

The bill requires the first and second parts of the study to be made available on the KCC's website by January 8, 2020, and July 1, 2020, respectively.

Marking of Underground Facilities; HB 2178

HB 2178 amends law concerning the duty of an operator to mark the tolerance zone (the area not less than 24 inches of the outside dimensions in all horizontal directions) around an underground facility within the Kansas Underground Utility Damage Prevention Act (KUUDPA).

Specifically, the bill amends the definition of “operator” to specify an electric public utility is not considered an operator of any portion of an underground facility that is on another person’s side of the point where ownership of the facility changes from the electric public utility to another person as determined by the electric public utility’s rules and regulations, tariffs, service or membership agreements, or other similar documents. The bill provides, if the operator of a facility used for transporting, gathering, storing, conveying, transmitting, or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products, or hazardous liquids is also a provider of electricity, the duty of the operator to mark the tolerance zone does not extend to another person’s side of the point where ownership of the facility changes from the operator to another person as determined by the operator’s rules and regulations, tariffs, service or membership agreements, or similar documents. The bill makes a clarifying amendment to the definition of “operator” to include any person who leases (rather than operates) an underground Tier 1 or Tier 2 facility.

The bill also amends law to require the notification center established by the KUUDPA, on and after July 1, 2019, to notify any person or excavator requesting identification of the location of underground facilities that utilities are only required to identify the location of utility-owned facilities and not the location of privately owned facilities.

The bill adds the definition of “electric public utility,” as defined by statutes governing the powers of the Kansas Corporation Commission, to the KUUDPA.

VETERANS AND MILITARY

Kansas National Guard Assistance Act Eligibility; HB 2123

HB 2123 removes the requirement that an eligible Kansas National Guard member have at least one year remaining on such member's enlistment contract at the beginning of any semester for which the member receives assistance under the Kansas National Guard Educational Assistance Program to participate in the Program.

WATER

Rural Water Districts; Public Water Supply Systems Loan Repayment Period; HB 2085

HB 2085 clarifies, if a rural water district has available capacity, the board of such district must adhere to the benefit unit reinstatement requirements in continuing law. Also, the bill increases the maximum repayment period from 20 years to 40 years for loans provided by the Secretary of Health and Environment to municipalities for the payment of all or part of a project associated with a public water supply system.

Addressing Water Quality Issues in the Arkansas River Basin; HR 6018 and SR 1729

HR 6018 and **SR 1729** make several findings concerning contamination of the Arkansas River Basin (Basin) by naturally occurring radiation-emitting radionuclides. Among the findings of the resolutions are the following:

- In each of the last two years, approximately ten tons of uranium have been delivered in downstream river flows from Colorado to groundwater in southwest Kansas. The affected region in Kansas includes Hamilton, Kearny, and Finney counties;
- Affected communities in Colorado and Kansas require assistance to remedy decades of poor water quality, which continues to worsen;
- Federal standards on safe drinking water are intended to protect the health and safety of the public. Accordingly, it is within the interest of the federal government to partner with state and local water providers to develop remedies for the Basin;
- Without additional funding, Kansas' affected communities cannot develop water management practices and necessary infrastructure to address the water quality concerns;
- The U.S. Bureau of Reclamation (Bureau) has an established interest in providing alternative fresh water sources to portions of the affected Basin in Colorado. Currently, efforts are under way to accomplish this goal; and
- The Bureau completed an Upper Arkansas River Basin Public Water Supply Alternatives Viability Analysis of Water Supply Alternatives for Hamilton, Kearny, and Finney counties in Kansas. The analysis addressed water quality and availability in the Basin and identified alternatives, including the regionalization of supply pipeline alternatives. However, such supply pipeline alternatives are largely unaffordable due to participants' inability to cover construction costs.

The resolutions request the Kansas congressional delegation work with the U.S. Congress to provide the Bureau with the funding and direction necessary to implement the measures identified in the Bureau studies. These include, but are not limited to:

- Further compiling information on existing, usable sources and project demands;
- Developing Basin tools, including scientifically defensible hydrologic and economic modeling tools;
- Completing system reliability and impact analyses to assess the current and future capability of existing natural and man-made infrastructure and operations to meet demands and useable water supply challenges;
- Identifying adaptation strategies to improve operations and infrastructure and to address current and future water availability and quality challenges in the Basin; and
- Developing recommendations to address the water quality challenges and to provide reliable, clean sources of drinking water in the affected areas of the Basin.

The resolutions further request the Kansas Water Office, the Southwest Kansas Groundwater Management District No. 3, and other state and local partners in Kansas and Colorado work with the Bureau to complete these tasks and to address the concerns regarding the contamination of the Basin.

The resolutions also direct the Chief Clerk of the Kansas House of Representatives to send enrolled copies to the following: Kansas Governor Laura Kelly, each member of Kansas' congressional delegation, the Kansas Water Office, Southwest Kansas Groundwater Management District No. 3, the Arkansas River Compact Administration, the Bureau, and the current U.S. Secretary of the Interior.

APPROPRIATIONS BILLS

House Sub. for SB 25 includes adjusted funding for FY 2019, FY 2020, and FY 2021 for select state agencies, and FY 2019 and FY 2020 capital improvement expenditures for a number of state agencies. The FY 2019 appropriations for claims against the State is included. The approved FY 2019 budget includes expenditures of \$17.2 billion, with \$7.1 billion from the State General Fund (SGF). The budget increases total expenditures by \$9.2 million, including \$7.1 million from the SGF, above the Governor's recommendation. The approved FY 2020 budget totals \$18.4 billion, including \$7.7 billion from the SGF. The budget is an all funds decrease of \$239.5 million and an SGF increase of \$178.2 million from the FY 2020 Governor's recommendation.

TECHNICAL BILLS

- HB 2201** This bill transfers the powers, duties, and functions of the Tuberculosis Control Program from the Kansas Department for Aging and Disability Services to the Kansas Department of Health and Environment by updating statutory references necessitated by 2012 Executive Reorganization Order No. 41.
- HB 2203** This bill reconciles amendments to statutes that were amended more than once during the current and prior legislative sessions. For such statutes, the bill repeals one version and, if necessary, amends the continuing version with non-contradictory amendments, creating a single version of the statute containing all amendments.

BILLS VETOED BY THE GOVERNOR

- SB 22** This bill would have made several changes to Kansas income tax provisions in response to federal income tax changes enacted in late 2017, reduced the state sales tax rate by 1.0 percent on certain purchases of food, and enacted a number of provisions in response to a U.S. Supreme Court decision authorizing states and local units to collect sales and compensating use taxes on certain transactions made through out-of-state retailers and marketplace facilitators that have an economic presence (nexus) in Kansas.
- SB 67** This bill would have required certain notifications be posted in facilities where medication abortions that use mifepristone are provided and be given by physicians providing such abortions. The bill also would have provided relevant definitions and created civil and criminal penalties for violating the notification requirements. Such notice would have been required to read: NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources.
- HB 2033** This bill would have clarified the Finney County sales tax authority and the role of the Kansas Department of Revenue (KDOR) in implementing local sales taxes, implemented two changes relating to expensing deductions for income tax purposes, made several changes to Kansas income tax provisions in response to federal income tax changes enacted late in 2017, reduced the state sales tax rate under certain circumstances based on growth in compensating use tax receipts, and enacted a number of provisions in response to a U.S. Supreme Court decision authorizing states and local units to collect sales and compensating use taxes on certain transactions made through out-of-state retailers and marketplace facilitators who have an economic presence (nexus) in Kansas. [Note: Provisions relating to Finney County were separately enacted in HB 2140.]

BILLS VETOED BY THE GOVERNOR, BUT OVERRIDDEN

House Sub. for SB 25	This bill includes adjusted funding for FY 2019, FY 2020, and FY 2021 for select state agencies, and FY 2019 and FY 2020 capital improvement expenditures for a number of state agencies.
State Board of Pharmacy	(Line Item) K-TRACS Transfer – Section 27(a) and (b) transfers \$705,000 from the Medical Programs Fee Fund for K-TRACS for FY 2020 and FY 2021.
Kansas Public Employees Retirement System	(Line Item) State General Fund Transfer – Section 56(e) transfers \$51 million from the State General Fund to the Kansas Public Employee Retirement Fund for FY 2020.
Kansas Department for Aging and Disability Services	(Line Item) Community Mental Health Centers (CMHCs), CARE program – Section 84(a) appropriates \$1,885,000 for CMHCs supplemental funding and community aid and also appropriates \$38,646 for the Client Assessment and Referral and Evaluation (CARE) program in FY 2019.
Department of Education	(Line Item) Reading Program, Technical Education Incentives, Teach for America – Section 90(a) appropriates \$1,200,000 for evidence-based or research-based reading programs, \$80,000 for technical education incentives, and \$261,000 for Teach for America for FY 2020.

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