

**SUPPLEMENT TO  
PRELIMINARY SUMMARY OF LEGISLATION  
2017 KANSAS LEGISLATURE**



This updated version of the April 3, 2017 publication contains summaries of selected bills enacted by the Legislature from noon on March 31 to adjournment on April 7. Bills that have not yet been signed by the Governor are included.

The first Preliminary Summary containing summaries of major bills which were enacted through noon, March 31, 2017, was distributed on April 3, 2017. A final supplement will be mailed after the wrap-up session.

*Highlights*, a summary of major legislation in newsletter form, will be prepared and mailed to legislators as soon as possible after the Session. *The Summary of Legislation*, which accounts for all bills enacted by the 2017 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website: <http://kslegislature.org/kldr> (under "Publications").

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## ALCOHOL, DRUGS, AND GAMBLING

### **Sale of Beer by CMB Licensees; Sale of CMB and Other Products by Liquor Stores; Market Impact Study; House Sub. for SB 13**

**House Sub. for SB 13** amends the Kansas Liquor Control Act and the Kansas Cereal Malt Beverage Act pertaining to the sale of cereal malt beverage (CMB), beer, and other goods and services.

Starting on April 1, 2019, persons such as convenience stores, grocery stores, and drug stores who are licensed to sell CMB—which is defined by law to mean any fermented but undistilled liquor brewed from malt, malt substitute, flavored malt beverage, or combination thereof, with an alcohol weight of 3.2 percent or less—may sell beer containing not more than 6.0 percent alcohol by volume. Persons licensed to sell CMB will not be allowed to sell beer at a price less than cost, unless permitted by the Director of Alcohol Beverage Control (Director) when specific conditions are present, such as the discontinuance of an item or by court order.

Also starting on April 1, 2019, any person with a retailer's license to sell alcoholic liquor (beer, wine, and distilled spirits) may sell CMB. Liquor retailers may sell other goods or services, provided the amount of nonalcoholic sales—excluding the sales of lottery tickets, cigarettes, and other tobacco products—does not exceed 20.0 percent of the retailer's total gross sales. Liquor retailers continue to provide product for resale by bars, restaurants, clubs, and caterers. The bill repeals the prohibition placed on selling CMB next to alcoholic liquor.

In agreements between suppliers and distributors made prior to April 1, 2019, the terms “CMB” or “beer” have the meanings specified in law as of the effective date of the bill. Distributors may establish minimum quantities and dollar amounts for orders of CMB and alcoholic liquor.

The Director has oversight over the sale of beer by any person with a CMB license. The Director shall adopt rules and regulations by July 1, 2018, to administer the bill. Ten years after the bill's effective date of January 1, 2018, the Director shall conduct a market impact study on the sale of beer by persons holding CMB licenses. The study shall include changes to the number of CMB and alcohol liquor licenses issued, reasons for the changes, the effect the bill has had on state and local tax revenues, the impact on employment, and other factors the Director determines to be pertinent. The Director shall report the study findings to the Legislature during the 2029 Session.

## CHILDREN AND YOUTH

### **Child Care Facilities—Sleep Surface Requirements; Restrictions on Persons in Child Care Facilities; Senate Sub. for HB 2304**

**Senate Sub. for HB 2304** amends the statute governing standards and regulation of maternity centers and child care facilities and the statute concerning restrictions on persons interacting with child care facilities.

The bill requires child care facilities to ensure the following requirements are met for children under 12 months of age:

- A child may be placed to sleep only on a surface and in an area approved for use as such by the Secretary of Health and Environment (Secretary); and
- The sleep surface is required to be free from soft or loose bedding, including blankets, bumpers, and pillows, as well as toys, including mobiles and other types of play equipment or devices.

Child care facilities are required to ensure that children over 12 months of age are placed to sleep only on a surface and in an area approved for use as such by the Secretary.

The Secretary is allowed to make exceptions to the above requirements where special health needs exist.

The above requirements are in addition to any rules and regulations adopted under the statute for safe sleep practices.

The bill also amends the law concerning restrictions on persons maintaining, residing, working, or volunteering in a child care facility by expanding the list of existing prohibitions to comply with new federal requirements for background checks found in the federal Child Care and Development Block Grant Act of 2014, also referred to as the Child Care and Development Fund Reauthorization. The expanded list of prohibitions includes individuals who have been convicted of arson; individuals who have been convicted or adjudicated of a crime that requires registration as a sex offender under the Kansas Offender Registration Act, as a sex offender in any other state, or as a sex offender on the National Sex Offender Registry; and individuals who have committed an act of physical, mental, or emotional abuse or neglect, or sexual abuse and are listed in any child abuse and neglect registries maintained by another state or the federal government that are similar to the Kansas Child Abuse and Neglect Registry maintained by the Department for Children and Families.

## EDUCATION

### **Extending Sunsets of the Post-secondary Technical Education Authority and Fees Assessed under the Kansas Private and Out-of-State Postsecondary Educational Institution Act; HB 2213**

**HB 2213** amends laws concerning postsecondary education. Specifically, the bill extends the provisions establishing the Post-secondary Technical Education Authority from June 30, 2017, to June 30, 2019. Additionally, the bill amends the Kansas Private and Out-of-State Postsecondary Educational Institution Act to extend a June 30, 2017, sunset to June 30, 2018, for a statute authorizing the Kansas Board of Regents to fix, charge, and collect fees for such institutions.

## ELECTIONS AND ETHICS

### **Elections and Campaign Finance; Advance Ballots; Polling Place Change Notifications; Write-in Candidates; Campaign Contribution and Other Reports; E-mail Addresses; HB 2158**

**HB 2158** makes changes and additions to elections and campaign finance law.

#### ***Advance Voting Ballot Deadlines***

The bill revises deadlines regarding advance voting ballots, as follows:

- Adds a requirement that all advance voting ballots received at any polling place in the county not later than the hour for closing of the polls on any election date for all elections specified in KSA 25-1122(f) [all primary, general, and question submitted elections, special elections of officers, and presidential preference primaries] be delivered by the county election officer to the appropriate special election board. Current law requires only those advance ballots received in the county election office to be treated in this manner;
- Adds requirements for the receipt by mail of advance ballots, as follows:
  - Delivery to a special election board or the county board of canvassers, in a manner as consistent as possible with canvassing of other advance ballots, those received after the closing of the polls on the date of any election specified in KSA 25-1122(f), and which are postmarked before the close of the polls on the election date;
  - Establishes the deadline for receipt by mail of advance ballots by the county election officer as the last mail delivery by the U.S. Postal Service (USPS) on the third day following the election date, unless additional time is permitted by the Secretary of State; and
  - Requires the Secretary of State to adopt rules and regulations to implement these provisions;
- Authorizes a special election board to meet as provided by rules and regulations to be adopted by the Secretary of State, in addition to meeting as provided in current law, and to make technical and conforming changes. This includes requiring that procedures for canvassing and challenging advance ballots received by mail after polls close be set forth in rules and regulations adopted by the Secretary of State; and
- Revises the deadlines for transmittal by mail of applications for advance ballots, as follows:
  - For all elections occurring on the date of a primary or general election, from the last business day of the week preceding the election to the Tuesday of the week preceding the election; and

- For question submitted elections not held on the date of a primary or general election, from the last business day of the week preceding the election to the Tuesday of the week preceding the election (the same requirement as for those occurring on primary or general election dates), except if such an election is held on a day other than a Tuesday. In these instances, the change will be from not more than three business days before the election to one week before the election.

### ***Notices Regarding Polling Place Changes***

The bill prohibits a county election officer from changing a polling place prior to an election without providing mailed notice at least 30 days prior to the election. A waiver from this requirement is authorized if the county election officer declares an emergency.

The bill further states failure to receive notice of a change in the voting place shall not give rise to a cause of action challenging the election results. The bill requires the Secretary of State issue a press release and post a notice on the Secretary of State's website notifying the public whenever the online voter registration website is unavailable for a period of 24 hours or more.

### ***Streamlining of Filing Requirements for Last-minute Campaign Contribution Reports***

The bill eliminates the requirement that pre-primary and pre-general election last-minute contribution reports filed by treasurers for candidates for state office be filed in the office of the county election officer. Enactment of this legislation leaves a requirement that these reports be filed only in the Office of the Secretary of State.

### ***E-mail Addresses: Optional for Reports to Secretary of State***

The bill amends Campaign Finance Act reporting requirements for contact purposes. The bill makes optional the submission of e-mail addresses as follows:

- For every treasurer for a candidate (and chairperson for a candidate committee, if one is appointed) for state office, to the Secretary of State;
- For every treasurer for a candidate (and chairperson for a candidate committee, if one is appointed) for local office, to the relevant county election officer;
- For every chairperson and treasurer of a party or political committee who anticipates receiving contributions or making expenditures for a candidate for state office, to the Secretary of State; and
- For every chairperson and treasurer of a party or political committee who anticipates receiving contributions or making expenditures for a candidate for local office, to the relevant county election officer.

The bill requires the e-mail addresses be submitted not later than ten days after the appointment of the relevant officer, if the e-mail address is submitted.

***Write-in Candidates: Option to Have Name Removed from General Election Ballot***

The bill allows a write-in winning candidate of a primary election for national, state, county, township, or municipal office to notify the appropriate election entity in writing within ten days following the canvass the person does not want his or her name on the official general ballot. The bill requires the write-in candidate's name appear on the general election ballot if the notification is not received in the ten-day period.

The bill requires the above-mentioned notification be delivered to the Secretary of State for national or state office and to the county election office for all other offices.

## FEDERAL AND STATE AFFAIRS

### Public Safety—Kansas Amusement Ride Act; House Sub. for SB 70

**House Sub. for SB 70** enacts law and amends the Kansas Amusement Ride Act and the Amusement Ride Insurance Act by addressing or making changes related to permitting, registration, moneys collected, injury reporting, death of patrons, insurance, definitions, qualified inspectors, inspections, records, standards, testing, violations, and rule and regulation authority.

#### ***Permits***

The bill prohibits any ride from being operated without a valid annual permit issued by the Kansas Department of Labor (Department). Applications for permits are to be made to the Secretary of Labor (Secretary). The application is required to include the following:

- The name of the owner and operator;
- The location of the amusement ride, or the location where such ride is stored if not in use;
- Proof of insurance; and
- Certification the ride meets the applicable American Society for Testing and Materials (ASTM) International F24 Committee standards.

Additionally, an applicant is required to remit a permit fee for each ride to the Department. The fees are as follows:

- Class A permanent ride, \$75;
- Class B permanent ride, \$100;
- Temporary rides, \$30; and
- Rides owned by a municipality or non-profit entity, \$10.

#### ***Registration***

In addition to permitting requirements for each ride, owners are required to register with the Department and pay the following annual registration fees, determined by ride location, regardless of the number of rides owned:

- Rides at a permanent location, \$500;
- Rides at a temporary location, \$250; and

- Rides owned by a municipality or non-profit at a permanent or temporary location, \$50.

### ***Amusement Ride Safety Fund***

The bill creates the Amusement Ride Safety Fund (Fund) to be administered by the Department. All fees collected for permits, registrations, or violations under the Kansas Amusement Ride Act are to be deposited in the Fund. The bill requires all expenditures from the Fund to be used for administration and enforcement of the Kansas Amusement Ride Act.

### ***Injury Reporting***

The bill removes the injury reporting requirements in current law and, in a new section, requires patrons (or their guardians) who become injured while on a ride to report their injuries in writing to the park owner or operator before leaving the premises. Such required reports include:

- The name, address, and phone number of the patron;
- A full description of the incident including injuries and treatment;
- The cause of the injury (if known); and
- The names, addresses, and phone numbers of witnesses.

If a report cannot be filed immediately due to the nature of the injury, the bill requires the report be filed as soon as possible.

In addition, owners of rides are required to prominently place signage at the point of admission or ticket sale, and in at least two places near each ride. The bill requires such signs notify patrons of their duty to report injuries and give instructions on how to contact the owner's representatives if immediate assistance is needed and on how to make an injury report.

Ride owners are required to notify the Department within 72 hours of any serious injury, injury caused by malfunction or failure of an amusement ride, or injuries caused by either operator or patron error. If a serious injury occurs, the bill requires the equipment or conditions be preserved for Department investigation, and the ride is to be immediately removed from service until an investigation is completed or deemed unnecessary by the Secretary. Further, if an investigation is not commenced within 24 hours after the Department receives notification of injury, an investigation will be deemed unnecessary.

### ***Death of a Patron***

In the event of the death of a patron, the bill requires the owner to notify the Department as soon as possible by telephone and by written notification within 24 hours of the incident. If the death is related to a major malfunction of a ride, an investigation is required and must commence within 24 hours of initial notice of injury. No part of the ride may be moved or repaired without written approval of the Secretary. Such provisions are not to be construed to

hinder emergency response personnel from performing their duties or to prevent elimination of obvious safety hazards. Ride owners are required to provide complete access to the amusement ride and all related premises for the purposes of investigation and are also required to provide all information relating to the cause of injury to the Department.

### ***Liability Insurance***

Current law requires ride owners to carry liability insurance in order to operate rides, and requires such insurance policies be written by companies doing business in Kansas. The bill also allows ride owners to hold policies written by a surplus lines insurer.

Currently, these insurance policies must provide at least \$1.0 million of coverage. The bill requires coverage in an amount not less than \$1.0 million per occurrence and requires annual aggregate coverage of \$2.0 million. The State and any political subdivisions that own rides and self-insure or participate in a public-entity self-insurance pool meet the insurance requirement. The bill removes an insurance exemption for a not-for-profit organization organized under the laws of Kansas.

### ***Definitions***

The definition for “amusement ride” is amended to include all rides and devices specified in the ASTM International F24 Committee standards, specifically including boat rides, water slides, inflatable devices, trampoline courts, and go-karts. In addition, Class A rides are defined as rides intended for patrons age 12 and younger, and Class B rides are defined as any ride not classified as a Class A ride.

The definition for “home-owned amusement ride” is amended to include only rides owned by an individual and operated solely within a single county for strictly private use.

The definition for “nondestructive testing” is amended to require testing be conducted in accordance with ASTM F747 standards.

The definition for “operator” is amended to include a person supervising the operations of a ride, in addition to those persons engaged in or directly controlling the operations of a ride, as described in current law.

A definition for “water slide” is added and includes slides that are at least 15 feet in height and use water to propel the patron through the ride.

### ***Qualified Inspectors***

The bill also amends the definition “qualified inspector.” In order to be considered “qualified,” the inspector must:

- Be a licensed professional engineer with at least two years of experience in the amusement ride field, including:

- At least one year of ride inspection experience under a qualified inspector for a manufacturer, government agency, amusement park, carnival, or insurance company; and
- At least one year practicing any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation;
- Provide satisfactory evidence of five years of experience in the amusement ride field, a minimum of which must be:
  - Two years of ride inspection under a qualified inspector for a manufacturer, government agency, amusement park, carnival, or insurance underwriter; and
  - Remaining experience consisting of any combination of amusement ride inspection, design, fabrication, installation, maintenance, testing, repair, or operation; and
- Have received qualified training from a third party, such as:
  - Attainment of level II certification from the National Association of Amusement Ride Safety Officials (NAARSO);
  - Attainment of level II certification from the Amusement Industry Manufacturers and Suppliers International;
  - Attainment of a qualified inspector certification from the Association for Challenge Course Technology;
  - Pennsylvania Department of Agriculture—general qualified inspector status; or
  - Other similar qualification from another nationally recognized organization.

## ***Inspections***

### ***Initial Inspections***

Rides are required to have a valid certificate of inspection, signed and dated by the inspector prior to operation. The certificate of inspection is required to be available to any person contracting with a ride owner for the operation of the ride.

### ***Annual Inspections***

The bill requires amusement rides be inspected by a qualified inspector every 12 months. Inspection decals issued by the Department must be posted in plain view on or near each ride. The bill requires inspections be paid for by the owner of a ride, or the state agency or political subdivision.

### *Daily Inspections*

Further, the bill requires daily inspections to be conducted and recorded by the operator. The bill requires such daily inspections include inspection of any equipment identified for daily inspection by applicable codes or manufacturer recommendations. The Secretary must conduct unannounced inspections of rides at both temporary and permanent locations. A warning citation will be issued to an owner or operator for a first violation.

The bill directs the Secretary to develop an inspection checklist that will be posted on the Department website.

The bill removes references to self-inspection, as the bill requires qualified inspectors to be employed by third parties.

### **Records**

The bill requires park owners to maintain records related to construction, repair, and maintenance of operations, and includes safety training records, inspection records, maintenance records, and ride operator training activities. Such records are required to be available to the Department at reasonable times, including at the request of the Department during inspections. Further, the bill requires the records be available at the location where the ride or device is operated and be maintained for a period of at least three years.

### **Standards for Construction, Maintenance, Operation, and Repair of Rides**

The bill requires rides be constructed, maintained, operated, and repaired in accordance with ASTM standards adopted by the ASTM International F24 Committee, as published in the ASTM International Standards Volume 15.07.

### **Nondestructive Testing**

The bill continues requirements for nondestructive testing of rides in accordance with either the manufacturer recommendations or in conformance with standards at least equivalent to ASTM standards and specifies the ASTM standards adopted by the ASTM International F24 Committee, as published in the ASTM International Standards Volume 15.07, whichever is applicable.

### **Violations of the Kansas Amusement Ride Act**

Under the provisions of the bill, it is a Class B misdemeanor to operate a ride without a valid permit issued by the Secretary.

The Department is allowed to issue a notice of violation if a ride is out of compliance with the Kansas Amusement Ride Act. Such notice may include an order to cease and desist operation of a ride until the violations are corrected. Additionally, within ten business days after a notice of a violation is issued, the person issued the notice could request, in writing, an informal conference with the Department. If no request for an informal conference is made, the provisions of the notice become final. If the notice of violation is not resolved in the specified

time frame, the Department is allowed to seek judicial enforcement of the notice of violation, or a judicial enforcement order may be issued.

The bill authorizes the Secretary to impose a fine of up to \$1,000 for any violation of the law. All proceedings regarding violations of the Kansas Amusement Ride Act are subject to the Kansas Administrative Procedure Act. Fines will be deposited in the Fund.

### ***Rule and Regulation Authority and ASTM Standards***

The bill requires the Secretary to adopt rules and regulations specifying nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides, and to determine required education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017.

Additionally, the bill specifies that all references to the ASTM standards shall be to those standards adopted by the ASTM International F24 Committee, as published in ASTM International Standards Volume 15.07, or any later version adopted by the Secretary in rules and regulations.

### **Compact between the Kickapoo Tribe in Kansas and the State of Kansas; Compact between the Sac and Fox Nation of Missouri in Kansas and Nebraska and the State of Kansas; SB 202**

**SB 202** approves and adopts by reference as state law the compact relating to cigarette and tobacco sales, taxation, and escrow collection between the Kickapoo Tribe in Kansas and the State of Kansas. In addition, the bill approves and adopts by reference as state law the compact relating to cigarette sales, taxation, and escrow collection between the Sac and Fox Nation of Missouri in Kansas and Nebraska and the State of Kansas. The bill requires the Secretary of State to publish the compacts in the *Kansas Register*.

The bill takes effect upon publication in the *Kansas Register*.

### **Interstate Compacts—Great Plains Interstate Fire Compact; HB 2140**

**HB 2140** adopts the Great Plains Interstate Fire Compact (Compact) and immediately authorizes the Governor of Kansas to enter into an interstate compact to promote effective prevention and control of forest fires in the Great Plains region of the United States. Although the Compact does not specifically define “forest fires,” it is understood among members that the Compact terms are not limited to forest fires, and means any type of fire, including wild fires and structural fires.

The bill establishes nine articles of the Compact.

### ***Article I***

Article I provides that the purpose of the Compact is to promote effective prevention and control of forest fires in the Great Plains region by the maintenance of adequate forest fire fighting services by member states and by providing for reciprocal aid in fighting forest fires.

The following states and province are also part of the Compact: Colorado, Nebraska, New Mexico, North Dakota, Saskatchewan, South Dakota, and Wyoming.

### **Article II**

Article II states the Compact is operative immediately between two or more states who have ratified it.

### **Article III**

Article III provides for administration of the Compact. The Compact administrator in member states is the state forester or other state officer holding an equivalent position who is responsible for forest fire control. Administrators can implement coordination among fellow member states for forest fire prevention and control. Each member state can formulate and put into effect a forest fire plan for that state.

### **Article IV**

Article IV states that a member must render all possible aid in combating, controlling, and preventing forest fires to a requesting member state while still maintaining such protections in the home state.

### **Article V**

Article V provides protections for firefighters providing assistance in another member state under the Compact. First, such personnel are granted the same powers, duties, rights, privileges (except for arrest powers), and immunities that are afforded similar personnel in the member state where aid is being provided. Second, all liability for the acts of any personnel providing assistance in a member state is assumed by the member state requesting the assistance. Third, any member state providing assistance under the Compact will be reimbursed for losses of, damages to, and expense incurred by the use of equipment and costs of materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in providing such assistance. However, nothing prevents the member state providing assistance from donating such services or from assuming such loss, damage, or expense and not seeking reimbursement. Finally, workers compensation benefits will extend to all personnel providing assistance in a member state.

For purposes of the Compact, the term “employee” includes volunteers or auxiliaries legally included in the forest fire fighting forces of the aiding state.

Compact administrators may create procedures for any claims or reimbursement under the Compact.

### **Article VI**

Article VI provides that ratification of the Compact will not authorize any member state to curtail or diminish its forest fire fighting forces, equipment, services, or facilities. Each member

state is required to maintain adequate forces and equipment for fire fighting within its borders as if the Compact was not operative.

The Compact specifies it will not limit the ability of the member states to provide for the prevention, control, and extinguishment of forest fires or prohibiting enactment or enforcement of state laws, rules, or regulations intended to aid in such endeavors. The Compact will not affect existing or future arrangements between the U.S. Forest Service and member states.

### **Article VII**

Article VII provides that members of the U.S. Forest Service may attend meetings of Compact administrators.

### **Article VIII**

Article VIII provides that reciprocal aid between member states can also be extended to member states of other regional compacts, provided that the legislature of a state in another regional compact has assented to the mutual aid provisions of the Compact.

### **Article IX**

Article IX provides that the Compact will remain in force and binding on each member state until its legislature or governor takes action to withdraw. Notice must be given to all other member states, and withdrawal cannot take effect until six months after notice. This article further provides that volunteer firefighters entitled to workers compensation who are engaged by the State of Kansas under the Compact shall be deemed employees of the State of Kansas for purposes of the Workers Compensation Act.

The bill takes effect upon publication in the *Kansas Register*.

## FINANCIAL INSTITUTIONS AND INSURANCE

### **Amendments to the Kansas Banking Code, Kansas Money Transmitter Act, Kansas Mortgage Business Act, and Kansas Credit Services Organization Act; SB 20**

**SB 20** makes amendments to the Kansas Banking Code and amendments to three acts subject to the oversight of the State Bank Commissioner—the Kansas Money Transmitter Act, the Kansas Mortgage Business Act, and the Kansas Credit Services Organization Act.

#### ***Kansas Banking Code—Amendments (Sections 1-4)***

The bill makes several amendments to the Kansas Banking Code. The bill updates language concerning a bank's investment in foreign bonds to clarify the amount cannot exceed 1 percent of the bank's capital stock and surplus; amends language relating to lending limits to provide an exemption for segregated deposits; and makes other clarifying language updates technical in nature. Additionally, the bill requires any bank or trust company owning tangible property to insure that property against loss. Further, the bill requires banks and trust companies to record minutes of annual stockholders' meetings and detail any action taken by the stockholders, including the election of directors.

The bill also amends the Kansas Banking Code to allow state-chartered banks to purchase tax credits for certain historic structure rehabilitation expenditures provided for in the Kansas Income Tax Act. The bill limits the amount of tax credits a state-chartered bank can hold at a given time to no more than 25 percent of the total sum of the bank's capital stock, surplus, undivided profits, 100 percent of the allowance for loan and lease loss, capital notes and debentures, and reserve for contingencies.

#### ***Kansas Money Transmitter Act—Amendments (Sections 5-7)***

The bill amends provisions of the Kansas Money Transmitter Act (KMTA). The bill adds a definition of "service provider" to mean any person providing services specified in continuing law (those that have a written agreement with banks, building and loan associations, savings and loan associations, savings banks, or credit unions to provide for receipt and delivery of funds, network access, processing, clearance, or settlement services in support of money transmission activities) used by an exempt entity or its agent to provide money transmission services to the exempt entity's customers. The definition specifies a service provider does not contract with the customers of an exempt entity on its own or on behalf of an exempt entity or agent.

Additionally, the bill requires a late fee for renewal applications received between December 1 and 31 of each year; requires a late fee for incomplete applications as of December 1 of each year; changes a date relating to the reinstatement of expired licenses to the last day of February; and eliminates language basing the licensing fee on the number of agent locations.

Further, the bill authorizes the State Bank Commissioner (Commissioner) to determine the completeness of any application submitted under the KMTA. The Commissioner is required to take into consideration compliance with all application requirements and any other facts and circumstances deemed appropriate by the Commissioner. The bill specifies an application will be considered abandoned and the application fee will not be returned if the applicant fails to complete the application for a new license or for a change of control of a license within 60 days

after the Commissioner provides written notice of an incomplete application. The license expires on December 31 if the applicant fails to file a complete renewal application on or before December 31 of that year. An abandoned application will not preclude an applicant from reapplying for licensure.

### ***Kansas Mortgage Business Act—Amendments (Sections 8-12)***

The bill amends provisions of the Kansas Mortgage Business Act (KMBA). The bill clarifies no other license, other than a KMBA license, is required to conduct mortgage business in Kansas.

The bill requires the Commissioner to deem an application for mortgage company or loan origination licensure or registration to be abandoned if the applicant fails to complete the application within 60 days after the Commissioner provides notice to the applicant of an incomplete application. If the Commissioner deems the application to be abandoned, the applicant is permitted to reapply for licensure or registration and pay a nonrefundable fee of not less than \$50, or the applicant may make a written request for a hearing pursuant to the Kansas Administrative Procedure Act (KAPA).

Additionally, the bill permits applicants and licensees to use an alternative accounting system, other than the generally accepted accounting principles (GAAP), to provide evidence of a minimum net worth of \$50,000. The applicant or licensee is required to demonstrate the alternative accounting system meets or exceeds GAAP.

Further, the bill requires information contained in the annual reports submitted by each KMBA licensee to remain confidential; however, publication of composite information is permitted. This provision will sunset on July 1, 2022.

### ***Kansas Credit Services Organization Act—Amendments (Sections 13-25)***

The bill enacts and amends law relating to the Kansas Credit Services Organization Act (KCSOA).

#### ***Definitions***

The bill adds and amends definitions to be used in the KCSOA. The bill amends the definition of “Commissioner” to specify the Commissioner is the State Bank Commissioner or designee. The designee is the Deputy Commissioner of the Consumer and Mortgage Lending Division of the Office of the State Bank Commissioner (OSBC). Additionally, the bill updates the definitions for “debt management service” and “trust account,” and deletes the definitions for “related interest” and “registrant.”

The bill establishes definitions for the following terms:

- “Licensee” means a person who is licensed by the Commissioner as a Credit Service Organization (CSO). [Note: The bill replaces all references of registrant in the KCSOA with licensee, in addition to replacing “registration” with “licensing,”

“license,” or “licensure,” and “registered” with “licensed” to reflect this definition change.]; and

- “Nationwide Mortgage Licensing System and Registry” [also known as NMLSR] means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other financial service providers.

### *Licensee Requirements*

**Application for licensing fee.** The bill removes the \$100 nonrefundable application fee for licensing CSOs and authorizes the Commissioner to set the licensing fee through the adoption of rules and regulations.

**License expiration.** The bill specifies CSO licenses issued under the KCSOA expire on April 30 of each year.

**Surety bond requirements.** The bill amends the requirements for a licensee to file a surety bond with the Commissioner. The bill expands the requirement that a surety bond may not be terminated without 30 days prior written notice to the Commissioner by specifying such termination will not affect the surety’s liability for violations of the KCSOA occurring prior to the effective date of cancellation. Additionally, principal and surety is required to be and remain liable for a period of two years from the date of any action or inaction of the principal giving rise to a claim under the surety bond.

### *Duties of the Licensee Relating to Debt Management Services*

The bill amends provisions relating to the duties of a licensee relating to debt management services. The bill amends the KCSOA to state no person required to be licensed by the Act shall engage in debt management services, unless the person has met all criteria. The bill amends the criteria by requiring a licensee to include all outstanding debt obligations, as listed on the consumer’s credit report, as well as any debt obligations identified by the consumer, for the purpose of the initial budget plan. The bill updates reference to the plan between the consumer and licensee to refer to a debt management services agreement. Additionally, the bill updates the requirements for the written debt management services agreement to include the full legal name and doing business as “dba” name of the licensee.

The bill requires the name and license number of the licensee on record with the Commissioner on all solicitations and published advertisements concerning a CSO directed at Kansas residents, including those solicitations and published advertisements on the Internet or by other electronic means. Each licensee is required to maintain a record of all solicitations or advertisements for 36 months. The bill specifies “advertising” does not include business cards or promotional items. Solicitations and advertisements are prohibited from containing false, misleading, or deceptive information. Further, the bill prohibits a licensee conducting CSO business in Kansas from using any name other than the name stated on the license.

### *Prohibited Acts*

The bill updates the prohibition on using false or misleading representation in the offer or sale of services of a debt management services agreement or CSO business by removing a specific reference to erasing bad credit. The bill also prohibits a licensee giving a reward, bonus, premium, commission, or any other consideration for the referral of a consumer to the licensee's CSO business and charge the consumer for the amount.

### *Disbursement of Certain Funds*

The bill increases the amount of time the CSO has to disburse consumer funds to the consumer's creditors from 10 to 20 calendar days, or the latest date before the consumer incurs any fee, charge, or penalty due to delay in payment.

### *Reporting Requirements*

**Reports to the consumer.** The bill amends the requirements for licensee reports provided to a consumer. The bill specifies the report provided to the consumer must contain information about the total payoff amount or an estimated balance due to each creditor on any debt owed by the consumer, and the amount held in the trust account on behalf of the consumer, or statement that no amount is currently held.

**Annual report to the Commissioner.** The bill amends the annual reporting requirement by changing the date, from March 1 to April 1, for the annual report filed with the Commissioner each year relating to CSO business conducted by the licensee during the preceding calendar year. The bill also specifies information contained in the annual report is confidential and may only be published in composite form. The confidentiality provision will sunset on July 1, 2022.

**Reporting requirement based on certain events.** The bill adds 2 events that require a licensee to file a written report with the Commissioner within 15 days after the event occurs. These 2 events are a change in the licensee's name or legal entity status, and the addition or loss of any owner, officer, partner, or director.

### *Fees Charged to the Consumer*

The bill amends and enacts new law relating to fees charged by CSOs to consumers. The bill increases the fee, from not exceeding \$50 to not exceeding \$75, that the licensee could charge a consumer for a one-time consultation. The bill also increases the total maintenance fee a licensee may charge a consumer from \$20 to \$40 per month, or \$5 per month for each creditor of a consumer that is listed in the debt management services agreement between the licensee and the consumer, whichever is less.

The bill replaces a specific fee charged to a consumer with language stating the licensee may charge the consumer with a reasonable fee for providing reverse mortgage counseling, bankruptcy counseling, student loan counseling, and other counseling services authorized by the Commissioner.

Additionally, the bill permits the CSO to charge a consumer up to \$30 one time for each insufficient payment, and up to \$5 to process a payment by the consumer to the CSO through electronic means, if authorized by the consumer. The bill specifies no charge will be assessed when the consumer has agreed to make all scheduled payments by electronic means.

The CSO is allowed to waive any fees if the CSO determines the consumer is unable to pay the fees.

*Powers, Duties, and Action of the Commissioner*

The bill amends and enacts new language relating to the Commissioner's powers and duties under the KCSCOA.

**Investigation and examination; costs; confidentiality.** The bill removes language relating to the specific reasons for when the Commissioner is permitted to investigate and examine the CSO's operations, books, and records.

The bill also updates language relating to the costs the Commissioner may charge to an applicant or licensee. The Commissioner is permitted to charge reasonable costs of investigation, examination, and administration of the KCSCOA to the applicant or licensee, in an amount the Commissioner is permitted to determine is sufficient to meet the budget requirements of the Commissioner for each fiscal year.

The bill requires the examination reports and correspondence regarding the reports made by the Commissioner or the Commissioner's designees to be confidential. The confidential materials subsection will sunset on July 1, 2022.

**Nationwide Mortgage Licensing System and Registry.** The bill authorizes the Commissioner to utilize the NMLSR as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any government agency, in order to reduce the points of contact the Federal Bureau of Investigation has with individual states.

The Commissioner is permitted to use the NMLSR as a channeling agent for requesting and distributing information regarding CSO licensing to and from any source directed by the Commissioner.

Additionally, the Commissioner is authorized to establish relationships or contacts with the NMLSR or other entities to collect and maintain records and process transaction fees or other fees related to applicants, licensees, or other persons under the KCSCOA, and to take other actions as may be reasonably necessary to participate in the NMLSR.

**Informal agreements.** The Commissioner is authorized to enter into a plan of action, known as an informal agreement, with any person to address violations of the KCSCOA. An informal agreement is not subject to provisions of KAPA or the Kansas Judicial Review Act and will not be considered an order or other agency action. The informal agreement is confidential and privileged; not subject to the Kansas Open Records Act, subpoena, and discovery; and not admissible in evidence in any private civil action. This subsection will sunset on July 1, 2022.

**Kansas Administrative Procedure Act.** The Commissioner is authorized to issue, amend, and revoke written administrative guidance documents in accordance with the applicable provisions of the KAPA.

**Commissioner action following notice.** If the Commissioner determines, after notice and opportunity for a hearing pursuant to the KAPA, a person has engaged, is engaging, or is about to engage in an act in violation of the KCSOA, rule and regulation, or order, the Commissioner may require, by order, the following new penalties:

- If such violation is committed against elder or disabled persons as defined in KSA 2016 Supp. 50-676 (persons who are 60 years of age or older; persons who have physical or mental impairment, or both, which substantially limits one or more of such person's major life activities), the Commissioner may impose an additional penalty, not to exceed \$10,000 for each violation, in addition to any civil penalty provided by law; or
- Issue an order requiring the person to pay restitution for any loss arising from the violation, or requiring the person to disgorge any profits arising from the violation. The order may include the assessment of interest, not to exceed 8 percent per annum from the date of the violation.

### **Disposition of Alcoholic Liquors Pledged as Collateral; SB 65**

**SB 65** amends law relating to the disposition of alcoholic liquors pledged as collateral for a loan. The bill allows a creditor lawfully entitled to alcoholic liquors pledged as collateral for a loan, notwithstanding provisions of the Kansas Liquor Control Act, and with prior written authorization from the Director of Alcoholic Beverage Control to take possession of the alcoholic liquors and conduct a sale of that collateral to a licensee possessing a valid license issued either pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act in order to satisfy any debt owed to the creditor. The bill authorizes the Director to require a detailed inventory, or any other necessary information, to ensure the safe storage, handling, and transfer of the alcoholic liquor. Finally, the bill requires the proceeds from any sale, including a sheriff's sale under continuing law, to go to the creditor in satisfaction of any debt owed, with the remaining proceeds returned to the debtor.

### **Examination Requirements; HB 2043**

**HB 2043** eliminates provisions directing the Insurance Commissioner to conduct an examination of the affairs and financial condition of municipal group-funded liability pools and group-funded workers compensation pools every five years. Instead, under the bill, the Commissioner is permitted to conduct these examinations as the Commissioner deems necessary. The bill also modifies the examination period associated with the Kansas Insurance Guaranty Association to be consistent with the examination period specified for the Kansas Life and Health Insurance Guaranty Association.

The bill takes effect upon publication in the *Kansas Register*.

## HEALTH

### **State Board of Pharmacy; Scheduling of Controlled Substance Analogs; House Sub. for SB 51**

**House Sub. for SB 51** amends the definition of “controlled substance analog” and “marijuana,” expands the authority of the State Board of Pharmacy (Board) to allow greater flexibility in the emergency scheduling of controlled substance analogs and new drugs, and amends the duration of temporary scheduling by the Board. The bill also adds several drugs and modifies drug classes to the schedules of controlled substances under the Uniform Controlled Substances Act (Act). Specifically, the bill makes the following changes to the Act: adds several synthetic opioids to Schedule I; updates existing synthetic cannabinoid class definitions; adds thiafentanil to Schedule II; adds cannabidiol, when comprising the sole active ingredient of a drug product approved by the federal Food and Drug Administration (FDA), to Schedule IV; and adds brivaracetam to Schedule V.

#### ***Definitions***

The bill clarifies the definition of “controlled substance analog” as defined in KSA 2016 Supp. 21-5701 and 65-4101 to mean a substance that is intended for human consumption and at least one of the following:

- The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto;
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto; or
- With respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in KSA 2016 Supp. 65-4105 or 65-4107, and amendments thereto.

The bill also clarifies that the definition of “marijuana” as defined in KSA 2016 Supp. 21-5701 and 65-4101 shall not include any substance listed in Schedules II through V of the Act.

#### ***Reports***

In addition to the current required report on substances proposed by the Board for scheduling, rescheduling, or deletion by the Legislature, the bill requires the Board to submit to the Speaker of the House of Representatives and the President of the Senate a report of any substances scheduled on an emergency basis during the preceding year, along with the reasons for the proposal and the scheduling.

### ***Emergency Scheduling Authority***

The bill expands the Board's authority to allow the initiation of scheduling of controlled substance analogs on an emergency basis upon the Board's finding of an imminent hazard to the public safety. The bill also allows the Board to schedule, on an emergency basis, new drugs, the language of which is incorporated in the bill to replace the statutory citation to the Kansas Food, Drug and Cosmetic Act, as follows:

- Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
- Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

A new drug, as defined with regard to emergency scheduling, shall not include amygdalin (laetrile).

The bill changes the expiration of the temporary emergency scheduling of a substance from one year to July 1 of the following calendar year after the adoption of the scheduling rule, and clarifies a rule and regulation adopted with regard to emergency scheduling expires on July 1 of the calendar year following the year of its adoption.

The bill takes effect upon publication in the *Kansas Register*.

### **Board of Nursing—Assistant Attorney General; Amendments to the Mental Health Technician's Licensure Act and Kansas Nurse Practice Act; HB 2025**

**HB 2025** makes several changes to law regarding the Board of Nursing (Board).

#### ***Assistant Attorney General***

The bill allows appointment by the Attorney General of more than one assistant attorney general to represent the Board. Current law provides for the appointment of an assistant attorney general, whose salary is paid from the Board of Nursing Fee Fund (Fund), to represent the Board in proceedings arising in the discharge of its duties and to perform duties of a legal nature as directed by the Board. The bill allows for the salaries of more than one appointed assistant attorney general to be paid from the Fund.

### ***Mental Health Technician’s Licensure Act***

The bill amends the Mental Health Technician’s Licensure Act by removing the requirement the Board conduct mental health technician examinations and by deleting the corresponding fees set forth in the statutory fee schedule. The bill requires fees for an examination prescribed by the Board for a licensed mental health technician be paid directly to the examination service by the individual taking the examination or reexamination.

Additionally, the bill changes the description of services included in the definition of “practice of mental health technology” by deleting “responsible nursing for patients with mental illness or intellectual disability” and inserting “participation and provision of input into the development of person-centered treatment plans for individuals or groups of individuals specified in paragraph (b)” (those specified in paragraph (b) are “the mentally ill, emotionally disturbed, or people with intellectual disability”) and by including facilitating habilitation of individuals. The bill also replaces the term “patient” with “individual.”

### ***Kansas Nurse Practice Act***

The bill amends the Kansas Nurse Practice Act to authorize the Board to revoke a license for three years and establishes an application fee not to exceed \$1,000 for the reinstatement of a revoked license.

The bill allows a person whose license has been revoked to apply for reinstatement after three years from the effective date of the revocation. Application for reinstatement needs to be made on a form approved by the Board and be accompanied by the associated application fee. A denial of license reinstatement by the Board makes the person ineligible to reapply for reinstatement for three years from the effective date of denial. The bill authorizes the Board, on its own motion, to stay the effectiveness of an order of revocation of a license.

On or before January 8, 2018, and on or before the first day of the regular session of the Kansas Legislature each year thereafter, the bill also requires the Board to submit a written report containing the following information to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services:

- An itemized, anonymous list of the number of individuals who applied for reinstatement of a revoked license during the immediately preceding calendar year;
- The amount of moneys charged to each applicant for reinstatement of a revoked license;
- The number of reinstatement applications granted and denied; and
- The basis given for denials.

**Kansas Healing Arts Act—Anatomic Pathology Billing; Institutional Licenses;  
Immunity from Civil Liability; Senate Sub. for HB 2027**

**Senate Sub. for HB 2027** makes several amendments to the Kansas Healing Arts Act.

The bill allows a physician providing services to a patient pursuant to a medical retainer agreement to bill for anatomic pathology services when the patient's bill meets certain specifications. The patient's bill for such services must identify the laboratory or physician that performed the services, disclose in writing to the patient the actual amount charged by the physician or laboratory that performed the service, and be consistent with rules and regulations adopted by the State Board of Healing Arts for appropriate billing standards applicable to such services when furnished under the agreement.

The bill also amends a statute governing institutional licenses and restrictions placed on practice privileges of these license holders. The bill reinserts language removed in 2014 to allow for reinstatement of an institutional license of an individual who was issued an institutional license prior to May 9, 1997, and who is providing mental health services under a written protocol with a person who holds a Kansas license to practice medicine and surgery other than an institutional license.

Finally, the bill amends the law regarding immunity from liability in civil actions for persons reporting, communicating, and investigating (reporting) certain information concerning alleged malpractice incidents. The bill provides immunity to a person reporting an alleged malpractice incident from civil liability that may otherwise be incurred in an action resulting from reporting such information and requires a court to allow the person reporting, whom the court finds to have reported in good faith, a reasonable amount for attorney's fees and expenses incurred in defending a civil action.

**Kansas Pharmacy Act—Minimum Age for Vaccination; Reporting Requirement;  
Opt Out; HB 2030**

**HB 2030** amends the Kansas Pharmacy Act to change, from 18 to 12 years of age, the minimum age for a person to whom a pharmacist or a pharmacy student or intern working under the direct supervision and control of a pharmacist is authorized to administer a vaccine, other than the influenza vaccine, pursuant to a vaccination protocol and with the requisite training. Continuing law requires immunizations provided under the authorization of the Kansas Pharmacy Act be reported to appropriate county or state immunization registries. The bill allows the person vaccinated or, if the person is a minor, the parent or guardian of the minor to opt out of the registry reporting requirement.

The bill also requires that, on and after July 1, 2020, physicians and other persons authorized in Kansas to administer vaccines to a person report the administration of a vaccine in the state to the state registry maintained for this purpose by the Secretary of Health and Environment (Secretary). However, the bill allows the person vaccinated or, if the person is a minor, the parent or guardian of the minor to opt out of the registry reporting requirement. The manner and form of the reporting is determined by the Secretary. For this purpose, the bill defines "physician" as a person licensed to practice medicine and surgery.

**Medicaid Expansion—KanCare Bridge to a Healthy Kansas Program;  
Reimbursement for Clubhouse Rehabilitation Services; HB 2044**

**HB 2044** establishes the KanCare Bridge to a Healthy Kansas Program (Program). The Kansas Department of Health and Environment (KDHE) is required to administer and promote the Program and provide information to potential eligible individuals who live in medically underserved areas of the state. The bill modifies the eligibility requirements for the Kansas Medical Assistance Program, on or after January 1, 2018, to include any non-pregnant adult under 65 years of age who is a U.S. citizen or legal resident and who has been a resident of Kansas for at least 12 months, whose income does not exceed 133 percent of the federal poverty level (FPL), to the extent allowed under the federal Social Security Act as it exists on the effective date of the bill, and subject to the requirements of the Program. The bill requires referral to workforce training programs, creates a Program Drug Rebate Fund and a Program Privilege Fee Fund, creates a health insurance coverage premium assistance program, addresses federal denial and approval of financial participation, requires submission of a waiver request to the federal government, requires various Program reports to the Legislature, and creates a Program Working Group.

Additionally, the bill requires the Secretary of Health and Environment (Secretary) to include reimbursement for clubhouse rehabilitation services within the Medicaid program on and after the effective date of the bill, subject to the limits of appropriations. The bill authorizes the Secretary to enter into contracts with certified clubhouse providers and requires the contracts be entered into by July 1, 2017, with an expiration date of July 1, 2020. The bill limits reimbursement under the contracts to \$1.0 million for any one fiscal year. The bill defines “clubhouse” and requires a report be made to select legislative committees.

The bill takes effect upon publication in the *Kansas Register*.

***KanCare Bridge to a Healthy Kansas Program***

***Workforce Training Program Referral***

The bill includes provisions for the referral of certain non-disabled adults to the state’s existing workforce training programs and work search resources, as outlined in the bill. The bill provides exemptions from the referral for:

- Full-time students for each year they are enrolled in a postsecondary education institution or technical school; and
- At the discretion of KDHE, for parents with minor children in the home.

***Program Application***

The bill requires the Program application to screen applicants for education status and employment status, and requires applicants to acknowledge KDHE referrals to workforce training programs and work search resources.

### *Health Insurance Coverage Premium Assistance Program*

The bill allows KDHE to establish a health insurance coverage premium assistance program for individuals with an annual household income of not more than 133 percent of FPL or for individuals eligible for health insurance coverage through an employer but who cannot afford the premiums.

A premium assistance program must contain eligibility requirements similar to those for the Program and provide that an individual's payment for a health insurance coverage premium cannot exceed 2 percent of the individual's annual income.

### *Federal Denial of Approval and Financial Participation*

If a denial of federal approval and federal financial participation that applies to any part of the Program occurs, KDHE is not prohibited from implementing any other part of the program that is federally approved for federal financial participation or does not require federal approval or federal financial participation—except, if at any point the federal match for non-pregnant adults under 65 years of age and with income not exceeding 133 percent of FPL is less than the enhanced federal match rate under the federal Health Care and Education Reconciliation Act of 2010, as it exists on the effective date of this bill, KDHE is required to terminate the Program over a 12-month period, beginning on the first day the federal medical assistance percentage falls below such amount.

KDHE is allowed to make changes to the Program if required by the U.S. Department of Health and Human Services (HHS) or federal statute or regulation.

### *Waiver Request*

KDHE is required to produce and submit a waiver request to HHS to implement the Program with services to begin on or before January 1, 2018.

### *Program Drug Rebate Fund*

The bill creates the KanCare Bridge to a Healthy Kansas Program Drug Rebate Fund (Rebate Fund) as a reappropriating fund. All moneys collected or received by the Secretary from drug rebates connected to Program beneficiaries must be deposited in the Rebate Fund and such funds must be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill requires the Rebate Fund remain intact and inviolate and not subject to transfers and allotments. The bill provides for the monthly transfer of interest earnings, as outlined in the bill, from the State General Fund (SGF) to the Rebate Fund.

### *Rebate Fund Report to Legislature*

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing all expenditures from the Rebate Fund, Rebate Fund revenues, and recommendations regarding the adequacy of the Rebate Fund to support necessary Program expenditures.

### *Program Privilege Fee Fund*

The bill creates the KanCare Bridge to a Healthy Kansas Program Privilege Fee Fund (Privilege Fee Fund) as a reappropriating fund. All moneys collected or received by the Secretary from privilege fees connected to Program beneficiaries must be deposited in the Privilege Fee Fund and such funds must be expended for the sole purpose of Medicaid medical assistance payments for Program beneficiaries. The bill requires the Privilege Fee Fund remain intact and inviolate and not subject to transfers and allotments. The bill provides for the monthly transfer of interest earnings, as outlined in the bill, from the SGF to the Privilege Fee Fund.

### *Privilege Fee Fund Report to Legislature*

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing all expenditures from the Privilege Fee Fund, Privilege Fee Fund revenues, and recommendations regarding the adequacy of the Privilege Fee Fund to support necessary Program expenditures.

### *Program Cost Savings Report to the Legislature*

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary is required to prepare and deliver a report to the Legislature summarizing the cost savings achieved by the State from the movement of beneficiaries from the KanCare program to the Program, including, but not limited to, the MediKan program, the medically needy spend-down program, and the breast and cervical cancer program. The bill provides the method for calculating the cost savings.

### *Inmate Inpatient Hospitalization Cost Savings Report to the Legislature*

On or before January 8, 2018, and on or before the first day of the regular legislative session each year thereafter, the Secretary of Corrections is required to prepare and deliver a report to the Legislature identifying the cost savings achieved by the State from the use of the Program to cover inmate inpatient hospitalization.

### *KDHE Annual Report to Legislative Committees*

On or before February 15 of each year, the Secretary is required to present a report to the House Committee on Appropriations and the Senate Committee on Ways and Means summarizing the costs for the Program and the cost savings and additional savings identified in previously mentioned annual reports to the Legislature on the Drug Rebate Fund and the Privilege Fee Fund and the report on Program cost savings.

### *Program Working Group*

The bill establishes the KanCare Bridge to a Healthy Kansas Working Group (Program Working Group) that is charged with identifying non-SGF sources to fund any Program shortfall identified by the Secretary in the annual report to the Legislative Committees.

The Program Working Group has the following membership:

- Two House members appointed by the Speaker of the House of Representatives;
- One House member appointed by the Minority Leader of the House of Representatives;
- Two Senate members appointed by the President of the Senate;
- One Senate member appointed by the Minority Leader of the Senate;
- One representative from each of the following:
  - Kansas Hospital Association;
  - Kansas Medical Society;
  - Kansas Association for the Medically Underserved;
  - Kansas Academy of Family Physicians;
  - Association of Community Mental Health Centers of Kansas;
  - Kansas Dental Association;
  - Kansas Emergency Medical Services Association;
  - Kansas Optometric Association; and
  - Kansas Pharmacists Association; and
- One representative of Program consumers from Alliance for a Healthy Kansas.

The members of the Program Working Group are to elect the chairperson from members of the Program Working Group who are members of the House of Representatives in even-numbered years and from members of the Program Working Group who are members of the Senate in odd-numbered years.

Kansas Legislative Research Department staff is required to provide assistance as requested by the Program Working Group.

Legislative members of the Program Working Group are to receive compensation and travel expenses and subsistence expenses or allowances, as provided by KSA 75-3212, for attending a meeting of the Program Working Group or a subcommittee meeting thereof. Non-legislative members do not receive compensation, subsistence allowance, mileage, or associated expenses from the State for attending a meeting or subcommittee meeting of the Program Working Group.

The Program Working Group is required to meet no less than two times in a calendar year. Nine members constitute a quorum, of which the bill requires at least four to be legislative members of the Program Working Group. Additionally, on or before March 15 of each year, the Program Working Group is required to report to the Legislature recommendations for funding the Program, as necessary.

### ***Clubhouse Rehabilitation Services***

The bill defines “clubhouse” to mean a community-based psychosocial rehabilitation program in which a member, with staff assistance, is engaged in operating all aspects of the clubhouse, including food service, clerical, reception, janitorial, and other member services, such as employment training, housing assistance, and educational support. A clubhouse program is designed to alleviate emotional and behavior problems with the goal of transitioning to a less restrictive level of care, reintegrating the member into the community, and increasing social connectedness beyond a clinical or employment setting.

On or before January 1, 2020, the Secretary is required to report to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services information, findings, and recommendations related to the clubhouse rehabilitation services provided under the bill.

The provisions of the bill related to clubhouse rehabilitation services sunset on July 1, 2020.

### **Kansas Pharmacy Act Amendments; Filling and Refilling Prescriptions; Biological Products; Senate Sub. for HB 2055**

**Senate Sub. for HB 2055** makes several amendments to the Kansas Pharmacy Act (Act).

The bill deletes, adds, and modifies definitions to be consistent with federal standards; modifies the requirements for processing prescription orders to prohibit pharmacists from exercising brand exchange for a biological product; inserts provisions to bring the Act into compliance with the federal Drug Supply Chain Security Act (DSCSA) [Title II of the Drug Quality and Security Act, P.L. 113-54]; modifies requirements for wholesale distributors; inserts requirements for an automated dispensing system, a third-party logistics provider, and an outsourcing facility; changes requirements for pharmacy technicians; sets caps on registration fees for third-party logistics providers, outsourcing facilities, repackagers, and automated dispensing systems; and expands the rules and regulations authority for the Board of Pharmacy (Board) in several areas.

The bill consolidates provisions of KSA 2016 Supp. 65-1637b into KSA 2016 Supp. 65-1637 and repeals KSA 2016 Supp. 65-1637b. The bill repeals an outdated statute requiring study results to be presented to the 2007 Legislature.

The bill also amends the Act to allow a pharmacist to exercise brand exchange (substitution) of biological products without prior approval from the prescriber, unless certain conditions exist. The bill requires pharmacists to notify the patient and prescriber of the substitution of a biological product after the exchange has occurred and establishes recording requirements for biological product substitutions. The bill defines “biological product” and “interchangeable biological product” and clarifies the definition of a “brand exchange” to distinguish between a brand exchange for a prescribed drug product and a prescribed biological product, provides for emergency refill of biological products, and addresses allowable charges for brand exchange of biological products.

## Definitions

The bill deletes definitions from the Act for “authorized distributor of record,” “chain pharmacy warehouse,” and “normal distribution channel.”

The bill adds definitions to the Act, including:

- “Automated dispensing system” means a robotic or mechanical system controlled by a computer that:
  - Performs operations or activities, other than compounding or administration, relative to storage, packaging, labeling, dispensing, or distribution of drugs;
  - Collects, controls, and maintains all transaction information; and
  - Operates in accordance within the Board’s rules and regulations;
- “Biological product” means the same as the term is defined in federal law [42 USC §262(i)], as in effect on January 1, 2017;
- “Common carrier” means any person who undertakes to transport property, including drugs, for compensation;
- “Compounding” means the combining of components into a compounded preparation under either of the following conditions:
  - As the result of a practitioner’s prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice, to meet the specialized medical need of an individual patient of the practitioner that cannot be filled by a drug approved by the Federal Drug and Drug Administration (FDA); or
  - For the purpose of, or incident to, research, teaching, or chemical analysis, and not for sale or dispensing [*Note:* The bill also clarifies what compounding does and does not include, as outlined below in the section on compounding.];
- “Health care entity” means any person that provides diagnostic, medical, surgical, or dental treatment or rehabilitative care but does not include any retail pharmacy or wholesale distributor;
- “Interchangeable biological product” means a biological product the FDA has:
  - Licensed and determined to meet the standards for “interchangeability” as the term is defined in federal law [42 USC §262(k)], as of January 1, 2017; or
  - Determined to be therapeutically equivalent as set forth in the latest edition or supplement of the FDA’s approved drug products with their therapeutic equivalence evaluations;

- “Nonresident pharmacy” means a pharmacy located outside of Kansas;
- “Outsourcing facility” or “virtual outsourcing facility” means a facility at one geographic location or address that is engaged in the compounding of sterile drugs and has registered with the FDA as an outsourcing facility pursuant to federal law;
- “Product” means the same as the term is defined by Part H of the DSCSA;
- “Repackage” means changing the container, wrapper, quantity, or label of a drug to further the distribution of the drug;
- “Repackager” means a person who owns or operates a facility that repackages;
- “Return” means providing product to the authorized immediate trading partner from which such product was purchased or received, or to a returns processor or reverse logistics provider for handling of such product;
- “Returns processor” or “reverse logistics provider” means a person who owns or operates an establishment that disposes of or otherwise processes saleable or nonsaleable products received from an authorized trading partner such that the product may be processed for credit to the purchaser, manufacturer, or seller, or disposed of for no further distribution; and
- “Trading partner” means:
  - A manufacturer, repackager, wholesale distributor, or dispenser from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct ownership of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct ownership of a product; or
  - A third-party logistics provider from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct possession of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct possession of a product.

The bill also adds definitions for “FDA,” “label,” “labeling,” “long-term care facility,” and “transaction.”

The bill amends definitions in the Act, including:

- “Agent” includes an authorized person who acts on behalf of or at the direction of a repackager, wholesale distributor, or third-party logistics provider;
- “Brand exchange” means:

- In the case of a drug product prescribed, the dispensing of a different drug product of the same dosage form and strength and of the same generic name as the brand name drug product prescribed; and
- In the case of a biological product prescribed, the dispensing of an interchangeable biological product;
- “Co-licensee” changes to “co-licensed partner” and means a person or a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer or an affiliate of the manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a product;
- “Dispenser” includes a retail pharmacy, hospital pharmacy, or group of pharmacies under common ownership and control that do not act as a wholesale distributor, or affiliated warehouses or distribution centers of such entities under common ownership and control that do not act as a wholesale distributor;
- “Distribute” or “distribution” includes a means to offer to deliver, sell, offer to sell, purchase, trade, transfer, broker, give away, handle, store or receive, other than by administering or dispensing, any product but does not include dispensing a product pursuant to a prescription executed in accordance with or approved under federal law;
- “Drop shipment” means the sale, by a manufacturer, repackager, or exclusive distributor, of the manufacturer’s prescription drug, to a wholesale distributor whereby the wholesale distributor takes title to but not possession of such prescription drug and the wholesale distributor invoices the dispenser, and the dispenser receives delivery of the prescription drug directly from the manufacturer, repackager, third-party logistics provider, or exclusive distributor, of such prescription drug;
- “Durable medical equipment” removes references to specific types of equipment and means equipment that:
  - Provides therapeutic benefits or enables an individual to perform certain tasks that the individual is unable to otherwise undertake due to certain medical conditions or illnesses;
  - Is primarily and customarily used to serve a medical purpose;
  - Is generally not useful to a person in the absence of an illness or injury;
  - Can withstand repeated use;
  - Is appropriate for use in the home, long-term care facility, or medical care facility, but may be transported to other locations to allow the individual to complete instrumental activities of daily living, which are more complex tasks required for independent living; and
  - May include devices and medical supplies or other similar equipment determined by the Board in rules and regulations adopted by the Board;

- “Exclusive distributor” means the wholesale distributor that directly purchased the product from the manufacturer and is the sole distributor of that manufacturer’s product to a subsequent repackager, wholesale distributor, or dispenser;
- “Manufacturer” means: (1) a person that holds an application approved under the federal Food, Drug, and Cosmetic Act or a license issued under the federal Public Health Service Act for such drug or, if such drug is not the subject of an approved application or license, the person who manufactured the drug; (2) a co-licensed partner of the person described in (1) that obtains the drug directly from a person described in (1) or (3); or (3) an affiliate of a person described in (1) or (2) that receives the product directly from a person described in (1) or (2);
- “Third-party logistics provider” means an entity that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser, but does not take ownership of the product or have responsibility to direct the sale or disposition of the product;
- “Wholesale distributor” means any person engaged in wholesale distribution of prescription drugs other than a manufacturer, co-licensed partner, third-party logistics provider, or repackager; and
- “Wholesale distribution” means the distribution or receipt of prescription drugs to or by persons other than consumers or patients in which a change of ownership occurs. The bill also adds activities that are not considered wholesale distribution.

## **Pharmacists**

### *Licensure*

The Board has authority to revoke, suspend, place in a probationary status, or deny the renewal of any license of any pharmacist upon findings of the Board. The bill expands that authority to an application for licensure and adds to the list of findings in law as follows:

- The licensee has obtained, renewed, or reinstated, or attempted to obtain, renew, or reinstate, a license by false or fraudulent means, including misrepresentation of a material fact;
- The licensee has been convicted of a misdemeanor involving moral turpitude or gross immorality;
- The licensee has failed to comply with the continuing education requirements of the Board for license renewal;
- The licensee has violated or failed to comply with any lawful order or directive of the Board; and

- The licensee has violated any of the provisions of the State's Prescription Monitoring Program Act or any rule and regulation of the Board pursuant to the provisions of the Prescription Monitoring Program Act.

#### *E-mail Requirement*

The bill requires every pharmacist who changes an e-mail address to notify the Secretary of the Board (Secretary) of such change on a form prescribed and furnished by the Board within 30 days.

#### *In-person Examination or Encounter Not Required*

The bill states nothing in the Act shall require an in-person examination or encounter between a person licensed to practice medicine and surgery and the patient prior to a pharmacist filling or refilling any prescription.

#### *Prescription Orders*

The bill consolidates two statutes regarding how a pharmacist receives, fills, and refills prescription orders, omitting outdated provisions, and amends law to prohibit a pharmacist from exercising brand exchange for prescription orders for a biological product.

#### **Wholesale Distributors**

Under the bill, it is unlawful for any person to distribute at wholesale any drugs without first obtaining a registration as a wholesale distributor from the Board. The bill removes the accreditation requirement for wholesale distributors. The authority for the Board to waive registration requirements for accredited wholesale distributors is removed. The bill allows the Board, by rules and regulations, to implement laws related to wholesale distributors to conform with provisions of the DSCSA.

The bill adds a requirement that the Board, by rules and regulations, follow FDA procedures for compliance with the DSCSA with regard to establishing standards and requirements for the issuance and maintenance of a wholesale distributor registration.

#### **Automated Dispensing**

The bill requires an automated dispensing system be under the supervision of a pharmacist licensed in Kansas who is responsible for record keeping and storage of all drugs and verifying and documenting each prescription drug prepared or dispensed by the system. The Board is required to adopt rules and regulations related to the control and operation of the system. It is unlawful for any person to operate an automated dispensing system within Kansas without first obtaining a registration from the Board.

### ***Registration Requirements***

It is unlawful for a person to operate as a wholesale distributor, a third-party logistics provider, an outsourcing facility in Kansas, or an outsourcing facility outside of Kansas and ship, mail, or deliver drugs into the state without first obtaining a registration from the Board. The bill allows the Board to suspend, revoke, or place in a probationary status the registration or deny the renewal of such registration to manufacture or repackage drugs, operate as a wholesale distributor, operate an outsourcing facility, sell durable medical equipment, or operate as a third-party logistics provider, or a registration for the place of business where any such operation is conducted, upon specific findings. The bill adds to those findings a violation of the DSCSA or any rule or regulation adopted under the DSCSA.

### ***Registration Fees***

The bill sets caps on fees for new and renewal registration for wholesale distributors, third-party logistics providers, outsourcing facilities, repackagers, and automated dispensing systems.

### ***Compliance with the Federal Drug Supply Chain Security Act***

The bill requires each pharmacy to comply with the DSCSA and makes it unlawful for any person to violate the Act. The bill also requires any medical care facility pharmacy registered by the Board to comply with the DSCSA.

### ***Third-party Logistics Provider***

The bill makes it unlawful for any person to operate as a third-party logistics provider without first having obtained a registration from the Board and sets forth requirements for third-party logistics providers, as follows:

- The Board requires a new or renewal applicant for registration to operate a third-party logistics provider to provide certain information including all trade or business names used, contact information, type of ownership or operation of the applicant, name of owner or operator, the classification of the business, and other information as the Board deems appropriate;
- In reviewing the qualifications for applicants, the Board is required to consider certain factors, including criminal convictions of the applicant, the applicant's experience in the manufacture or distribution of prescription drugs, furnishing of false or fraudulent information on any related application, any suspension or revocation of any license or registration related to the manufacture or distribution of drugs currently or previously held by the applicant, compliance of the applicant as it relates to previously granted registrations and as it relates to maintenance and availability of records as required by federal law, and any other factors the Board considers relevant to and consistent with public health and safety;

- After reviewing applications, the Board has the authority to deny any application of a registration if the Board determines the granting of such registration is not in the public interest;
- The Board is required to adopt rules and regulations to implement the third-party logistics provider provisions;
- Each facility that operates as a third-party logistics provider is required to undergo an inspection, by the Board or a third party recognized by the Board, prior to initial registration and not less than once every three years thereafter. Individual and third-party inspectors are allowed to conduct the inspections but are required to meet the standards set forth in the bill;
- Individual or third-party inspectors are required to demonstrate competence to the Board, as set forth in the bill; and
- A person licensed or approved by the FDA to engage in third-party logistics needs to satisfy only the minimum federal requirements for licensure provided in applicable FDA regulations.

### ***Outsourcing Facility***

The bill makes it unlawful for any person to operate an outsourcing facility without first having obtained a registration from the Board and sets forth requirements for an outsourcing facility, as follows:

- The Board requires a new or renewal applicant for registration to operate an outsourcing facility to provide certain information including all trade or business names used; contact information; the name of the owner or operator, or both; type of ownership or operation of the applicant; the classification of the business; a copy of the valid FDA registration as an outsourcing facility; the name and license number of the pharmacist who is designated as the pharmacist-in-charge of the outsourcing facility; a copy of a current inspection report resulting from an FDA inspection that indicates compliance with federal law; and other information as the Board deems appropriate;
- In reviewing the qualifications for applicants, the Board is required to consider certain factors, including criminal convictions of the applicant; the applicant's experience in the manufacture or distribution of prescription drugs; furnishing of false or fraudulent information on any related application; any suspension or revocation of any license or registration related to the manufacture or distribution of drugs currently or previously held by the applicant; compliance of the applicant as it relates to previously granted registrations and as it relates to maintenance and availability of records as required by federal law; and any other factors the Board considers relevant to and consistent with public health and safety;

- After reviewing applications, the Board has the authority to deny any application for registration if the Board determines the granting of such registration is not in the public interest;
- The Board is required to adopt rules and regulations to set forth the education and experience requirements for personnel employed by an outsourcing facility and to establish standards and requirements for the issuance and maintenance of an outsourcing facility registration, including inspections;
- Each outsourcing facility is required to undergo an inspection prior to initial registration and not less than once every three years thereafter; and
- No outsourcing facility is allowed to distribute or dispense any drug to any person pursuant to a prescription unless it is also registered as a pharmacy in Kansas and meets all other applicable requirements of federal and state law.

### ***Pharmacy Technicians***

The bill amends the law relating to pharmacy technicians, as follows:

- Every person registered as a pharmacy technician is required to have graduated from an accredited high school, obtained a graduate equivalent diploma, or be enrolled and in good standing in a high school education program;
- The Board is required to adopt rules and regulations restricting the tasks a pharmacy technician may perform prior to passing any required examinations;
- Continuing pharmacy technician education requirements are fixed by the Board at not more than 20 clock hours biennially of a program approved by the Board, with prorating allowed for less than biennial licensure periods in accordance with rules and regulations of the Board;
- Every registered pharmacy technician is required to notify the Secretary within 30 days of ceasing employment as a pharmacy technician;
- Every pharmacy technician who changes residential address, e-mail address, or legal name is required, within 30 days, to notify the Secretary of such change on a form prescribed and furnished by the Board;
- A pharmacy technician, while on duty, is required to wear a name badge with the pharmacy technician's name and designation as a pharmacy technician;
- Every registered pharmacy technician is required to display his or her current registration in the part of the business where such person is engaged in pharmacy technician activities; and

- Every pharmacy technician registered after July 1, 2017, is required to pass a certified pharmacy technician examination approved by the Board.

### ***Pharmacist Intern***

The bill requires every pharmacist intern who changes residential address, e-mail address, or legal name, within 30 days, to notify the Secretary of such change, on a form prescribed and furnished by the Board.

### ***Compounding***

The bill requires the Board to adopt rules and regulations governing proper compounding practices and distribution of compounded drugs by pharmacists and pharmacies. Compounding includes the preparation of drugs or devices in anticipation of receiving prescription drug orders based on routine, regularly observed prescribing patterns. Compounding does not include reconstituting any oral or topical drug according to the FDA-approved labeling for the drug, or preparing any sterile or nonsterile preparation that is essentially a copy of a commercially available product.

### ***Pharmacist Prescription Fill Requirements for Biological Products***

#### ***Exception to Prescription Fill in Strict Conformity with Prescriber Directions***

The bill adds an exception to the requirement that prescriptions be filled in strict conformity with any directions of the prescriber to allow a pharmacist to exercise brand exchange for biological product, unless certain conditions are present. The bill provides that a pharmacist who receives a prescription order for a biological product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser, unless:

- In the case of a prescription signed by a prescriber and written on a blank form containing two signature lines, the prescriber signs the signature line following the statement “dispense as written”;
- In the case of a prescription signed by the prescriber, the prescriber writes in the prescriber’s own handwriting “dispense as written” on the prescription;
- In the case of a prescription other than the one in writing signed by the prescriber, the prescriber expressly indicates the prescription is to be dispensed as communicated; or
- The biological product is not an interchangeable biological product for the prescribed biological product.

### *Emergency Refill of Biological Products*

The bill allows a pharmacist to refill a prescription order issued on or after the effective date of the bill for any biological product without the prescriber's authorization when all reasonable efforts to contact the prescriber have failed and, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare. The limit on the amount of the refill authorized in this situation and the prohibition on refilling if the prescriber states no emergency refilling is allowed applicable to prescription drugs not otherwise excluded also applies to refills of biological products. As is currently applicable for emergency refills for authorized prescription drugs, in an emergency refill of a biological product, the following apply:

- The pharmacist is required to contact the prescriber on the next business day following the emergency refill or as soon as possible thereafter;
- A pharmacist is not required to do an emergency refill; and
- Absent gross negligence or willful or wanton acts or omissions by a prescriber, the prescriber is not subject to liability for any damages resulting from the emergency refilling of a prescription order by a pharmacist.

### *Allowable Charges for Brand Exchange*

The bill expands law prohibiting a pharmacist from charging the purchaser more than the regular and customary retail price for the dispensed drug when exercising brand exchange and dispensing a less expensive drug product to make such prohibition applicable to a brand exchange of an interchangeable biological product.

### *Notice and Recording Requirements for Biological Product Substitutions*

#### *Notice to Patient or Patient's Representative*

A pharmacist who selects an interchangeable biological product is required to inform the patient or the patient's representative that an interchangeable biological product has been substituted for the biological product prescribed.

#### *Recording and Notice to Prescriber*

Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee is required to make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication is required to be conveyed by making an entry that is electronically accessible to the prescriber through:

- An interoperable electronic medical records system;

- An electronic prescribing technology;
- A pharmacy benefits management system; or
- A pharmacy record.

Entry into an electronic records system, as described above, is presumed to provide notice to the prescriber. Otherwise, the pharmacist is required to communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, provided that communication is not required when:

- There is no FDA-approved interchangeable biological product for the product prescribed; or
- A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

The pharmacist is required to maintain a record of the biological product dispensed for at least five years.

The Board is required to maintain a link on its website to the current lists of all biological products the FDA has determined to be interchangeable biological products.

### ***Technical Amendments***

Technical amendments are made to update terms and internal references.

### ***Effective Date***

The bill takes effect upon publication in the *Kansas Register*.

## JUDICIARY

### **Kansas Consumer Protection Act and Membership of the Kansas Commission on Interstate Cooperation and the Joint Committee on Special Claims Against the State; SB 50**

**SB 50** creates an unconscionable act or practice under the Kansas Consumer Protection Act related to the unauthorized practice of law and amends law regarding membership of the Advisory Committee to the Kansas Commission on Interstate Cooperation and the Joint Committee on Special Claims Against the State (Joint Committee), as follows.

#### ***Unauthorized Practice of Law***

The bill makes it an unconscionable act or practice under the Kansas Consumer Protection Act, regardless of whether it involves a consumer, consumer transaction, or supplier, for a person who is not licensed or otherwise authorized by the Kansas Supreme Court to practice law in Kansas to do any of the following:

- Commit any act or omission prohibited by the Kansas Supreme Court, by court rule, or by common law, as being the unauthorized practice of law;
- Hold out to the public or otherwise represent, expressly or by implication, that such person is admitted to practice law in Kansas;
- Solicit payment or other consideration, whether in case or in-kind, for services that would constitute the unauthorized practice of law in Kansas if performed at or about the time of such solicitation; or
- Offer or attempt to do any act prohibited by the above provisions.

The bill defines “person” to mean an individual, corporation, agency, partnership, association, or other legal entity that knowingly commits (or aids or abets a person to commit) acts or omissions that violate the above provisions, and a person subject to the bill’s provisions is deemed a “supplier” as defined in the Consumer Protection Act. An individual, sole proprietor, partnership, corporation, limited liability company, the State, or a subdivision or agency of the State aggrieved by a violation of the above provisions is deemed a “consumer” as defined in the Consumer Protection Act.

Any remedies or penalties imposed pursuant to the above provisions are in addition to, not instead of, any remedies or penalties available under the contempt power of any court. The above provisions do not apply to statewide, judicial district, or municipal court supervised public assistance offices and programs, victims assistance programs operated by a county or district attorney, court clerk, county law library, legal aid services providers, legal outreach programs operated by a state or local bar association, or an employee of any such entity acting within the scope of employment.

***Membership of the Advisory Committee to the Kansas Commission on Interstate Cooperation and the Joint Committee on Special Claims Against the State***

The bill amends the law concerning the members of the Advisory Committee to the Kansas Commission on Interstate Cooperation (Commission) and the Joint Committee. The bill specifies the Commission is composed of the chairpersons of the House and Senate Committees on Judiciary, if such chairpersons are members of the Kansas Bar. If the chairperson of the House Committee on Judiciary or the chairperson of the Senate Committee on Judiciary is not a member of the Kansas Bar and there is not another member of the respective Committee on Judiciary who is a member of the Kansas Bar (and could therefore fill this position under current law), the bill allows the Speaker of the House (in the case of the House Committee) or the President of the Senate (in the case of the Senate Committee) to designate the Revisor of Statutes to serve on the Commission in lieu of a House or Senate member, respectively, for the Speaker's or President's then-current term as a legislator. The Revisor could designate an assistant revisor to serve in lieu of the Revisor.

Additionally, the bill removes the requirement that at least one representative member and one senator member of the Joint Committee be attorneys licensed to practice law in the state of Kansas.

The bill takes effect upon publication in the *Kansas Register*.

**Factors for Determining Child Custody and Child in Need of Care Proceedings; SB 124**

**SB 124** amends the law governing determination of legal custody, residency, and parenting time. The bill replaces the requirement for a court to consider, among other relevant factors, evidence of spousal abuse, either emotional or physical, with a requirement to consider evidence of domestic abuse, including, but not limited to, a pattern or history of physically or emotionally abusive behavior, or threat thereof, used by one person to gain or maintain domination and control over an intimate partner or household member or an act of domestic violence, stalking, or sexual assault. The bill also amends the law to require courts to determine parenting time in accordance with the best interests of the child and specify "custody" in that statute refers to "legal custody."

The bill also amends the law governing child in need of care proceedings to allow reports concerning the results and analysis of a court-ordered drug or alcohol test to be admissible in evidence if the report is prepared and attested to by the person conducting the test or an authorized employee of the facility that conducted the test. Such person must prepare a certificate that includes an attestation as to the result and analysis of the test and sign the certificate under oath. The bill states this provision shall not prevent a party from calling such person as a witness.

## LOCAL GOVERNMENT

### **Filling Vacancies when the Number of County Commissioner Districts is Increased; HB 2006**

**HB 2006** addresses how vacancies on county commissions are filled when the vacancies are created by an increase in the number of county commissioner districts pursuant to KSA 2016 Supp.19-204. The bill removes the requirement that the Governor appoint the new members and replaces it with a requirement to hold an election.

The bill authorizes either an election in conjunction with the next regularly scheduled general election or a special election. The bill requires the Governor, in consultation with the board of county commissioners and within five days of the board of county commissioners adopting a resolution expanding the size of the board of county commissioners, to either declare the election be held with the regularly scheduled general election or declare the date of the special election. If the decision is to call a special election, the bill requires the date be not less than 75 days and not more than 90 days from the date of the board of county commissioners adopting the resolution to expand the board's size.

The bill also prescribes how candidates will be nominated to fill the vacancies, requiring each county chairperson of an officially recognized political party to call a county convention for a date not less than 15 days and not more than 25 days after the Governor's declaration of an election to nominate a candidate to fill the vacancies. Independent candidates can be nominated by petition of not less than 5 percent of the qualified electors within the county commission district. The bill requires the petition to be filed with the county election officer within 25 days of the Governor's declaration.

The bill requires the candidate who receives the highest number of votes in each commission district to serve until successors are elected and qualified at the next general election.

### **Definition of "Municipality"; Interlocal Cooperation; HB 2094**

**HB 2094** expands the definition of "municipality" in the statute allowing contracts between municipalities to include a school district, library district, road district, water district, drainage district, sewer district, fire district, park and recreation district, recreation commission, any other political or taxing subdivision, or any other authority, commission, agency, or quasi-municipal corporation created by state law. Previously, only a city, county, or township was included in the definition.

The bill also exempts from review by the Attorney General interlocal cooperation agreements entered into for joint or cooperative action that is subject to the oversight and regulation of a Kansas regulatory agency.

### **Volunteer Service; HB 2137**

**HB 2137** allows any county commissioner or member of a city governing body to serve as an emergency medical service volunteer, ambulance service volunteer, or volunteer fire fighter, and receive the usual compensation or remuneration for their volunteer service.

## PUBLIC SAFETY

### **Kansas Intelligence Fusion Center Act; SB 184**

**SB 184** enacts the Kansas Intelligence Fusion Center Act (Act). The Act will govern the ongoing operations of the Kansas Intelligence Fusion Center (KIFC), a collaboration among federal, state, local, and tribal agencies, as well as certain private-sector entities, which is already functioning within the Adjutant General's Department. The KIFC is constituted and operated as provided by state and federal law and housed within a sensitive compartmentalized information facility (SCIF) to access classified threat information as permitted by state and federal law.

The KIFC has the following responsibilities:

- Generating intelligence analysis critical for homeland security policy and relevant threat warning in order to protect life, liberty, and property in Kansas and the Great Plains region;
- Promoting and improving intelligence sharing among public safety and public service agencies at the federal, state, local, and tribal levels and with critical infrastructure and key resource entities within the private sector;
- Receiving and integrating intelligence and information related to terrorism and other homeland security threats;
- Collecting, analyzing, producing, disseminating, and maintaining such intelligence and information as allowed by law to support local, state, tribal, and federal law enforcement agencies and other governmental agencies and private organizations in preventing, preparing for, responding to, and recovering from any possible or actual terrorist attack or other homeland security threat;
- Maximizing intelligence and information sharing in accordance with all applicable state and federal laws; and
- Ensuring appropriate security measures are in place for the SCIF, data collected or stored at the SCIF, and personnel working at the SCIF.

The bill requires the Adjutant General's Department to provide facilities, budget, and administrative support for the KIFC, its employees, and participants; to be the custodian of all records collected and maintained at the KIFC; and to serve as security manager for the KIFC. The Office of the Attorney General will provide legal counsel to the KIFC and assign an attorney to serve as privacy and civil liberties counsel to the KIFC.

To oversee the KIFC, the bill establishes the Fusion Center Oversight Board, composed of the Attorney General, who will serve as chairperson; the Adjutant General, who will serve as vice-chairperson; and a member appointed by the Attorney General with expertise in critical infrastructure protection. The bill requires each member of the Board to have a current, valid federal security clearance at the appropriate level; allows the Board to adopt policies and procedures for the operation of the KIFC; and allows the Board to adopt rules and regulations as may be necessary to carry out the provisions of the Act, including rules and regulations

concerning operations of the KIFC. The Office of the Attorney General will provide administrative support to and be the custodian of the records of the Board.

The Board will appoint the executive director, who reports to the Board and serves at the pleasure of the Board. The executive director is responsible for all KIFC operations, facilitating and implementing applicable federal standards and programs by the KIFC, ensuring compliance with all applicable laws and federal requirements, and maintaining proper separation between military and civilian capacities. The Attorney General will appoint a deputy director for law enforcement, who serves at the pleasure of the Attorney General and serves as a liaison between the KIFC and Kansas law enforcement agencies and organizations and strives to provide the appropriate flow of information from each to the other. The bill also provides for such other employees as may be authorized by the Board to properly administer the provisions of the Act.

With Board approval, the bill allows the executive director to enter into agreements with participating agencies or organizations, whether public or private, for their participation in the KIFC. The agreements will define the duties and responsibilities of each participating agency or organization and may provide for payment by the participating agency or organization of a reasonable share of the cost to establish, maintain, and operate the KIFC. Further, with Board approval, the KIFC can accept any gift, grant, payment, or contribution in the form of services, equipment, supplies, materials, or funds from any source, public or private, for the purpose of paying the costs to establish, maintain, or operate the KIFC. All amounts received will be deposited in the KIFC Fund, which the bill creates.

Finally, the bill specifies no classified information shall be accessed or shared with any person or entity that does not meet the criteria of DoDM [Department of Defense Manual] 5200.01-V1-V3; private sector entities participating in the KIFC will not be considered governmental entities; and employees and agents of those entities assigned to the KIFC will not be considered state employees for the purposes of the Kansas Tort Claims Act.

The bill takes effect upon publication in the *Kansas Register*.

## SOCIAL SERVICES

### Public Assistance Applications—Telephonic Signatures; Sub. for Sub. for SB 95

**Sub. for Sub. for SB 95** amends law for public assistance programs concerning telephonic signatures.

The bill requires a telephonic signature by an applicant or an applicant's authorized representative be accepted to fulfill any signature requirement for application for public assistance programs administered by the Secretary for Children and Families (Secretary). The bill makes a telephonic signature an option for applicants, not a requirement. A telephonic signature constitutes a valid and legal signature and shall be defined to mean a recording of the verbal assent of an individual to submit an application for public assistance to the Secretary over a telephone system and the information to which assent has been given. A telephonic signature shall not be denied legal effect or enforceability solely because the signature is telephonic.

The bill requires the Secretary to enter into a memorandum of understanding with a not-for-profit organization that is willing and able to collect and store telephonic signatures on behalf of an applicant. The memorandum shall include the requirements for collecting and storing a telephonic signature, to provide for access to such signatures by the Department for Children and Families (DCF), and require, prior to the adoption of rules and regulations, the Secretary to accept any telephonic signature that is submitted in accordance with the memorandum. The bill requires the Secretary to adopt rules and regulations prior to January 1, 2018, to establish requirements and procedures for telephonic signatures.

The bill requires any vendor or organization to indemnify the Secretary and DCF against any legal actions and damages from, but not limited to, a breach of software or storage security that allows an unauthorized person to obtain a telephonic signature, application, or other information.

On or before July 1, 2018, DCF is required to develop the capability to accept, record, and produce telephonic signatures in electronic audio file formats that are submitted with an online application and securely store telephonic signatures in electronic audio file formats together with applications stored within DCF or enter into an agreement with a vendor to meet these requirements.

If DCF enters into an agreement with a vendor to develop the capability to accept, record, and produce telephonic signatures, the bill requires the agreement to include the following:

- Requirements for accepting, recording, producing, and securing telephonic signatures; and
- Requirements for the vendor to secure the recorded electronic audio files in such a manner that no person has access to the telephonic signatures or applications other than DCF and the vendor.

If DCF enters into an agreement with a vendor to develop the capability to securely store telephonic signatures on electronic audio file formats together with the applications stored within DCF, the bill requires the agreement to include the following:

- Requirements for the vendor to provide full access to the electronic audio files to DCF and limited access to the vendor; and
- Requirements for securing the electronic audio files, ensuring the files are maintained to prevent access by any person other than DCF and the vendor.

### **Kansas Program of Medical Assistance—Medicaid (KanCare) Process and Contract Requirements; Senate Sub. for HB 2026**

**Senate Sub. for HB 2026** changes the Kansas Program of Medical Assistance (KMAP) by amending law and creating in law processes for managed care organizations (MCOs) providing Medicaid services by providing for the services of an independent auditor, and by creating an external independent third-party review process (external review).

#### ***Kansas Department of Health and Environment (KDHE) Processes***

The bill requires the Secretary of Health and Environment (Secretary) to provide accurate and uniform patient encounter data to participating health care providers upon request within 60 calendar days, including, but not limited to, the amount billed by revenue code and procedure code. The bill authorizes KDHE to charge a reasonable fee for furnishing the data.

#### ***Managed Care Organization Processes***

##### *Education*

The bill requires the Secretary to compel the MCOs to provide quarterly in-person education for participating health care providers regarding billing guidelines, reimbursement requirements, and program policies and procedures utilizing a format approved by the Secretary and incorporating information collected through semi-annual surveys of participating health care providers.

Each MCO is required to offer quarterly in-person training on remark codes and Health Insurance Portability and Accountability Act of 1996 (HIPAA) standard denial reasons and any other denial reasons or remark codes specific to the MCO.

##### *Documentation*

The bill requires the Secretary to compel any MCO providing state Medicaid or Children's Health Insurance Program (CHIP) services under the KMAP to provide documentation to a health care provider when the MCO denies any portion of any claim for reimbursement submitted by the provider, including a specific explanation of the reasons for denial and utilization of remark codes, remittance advice, and HIPAA standard denial reasons.

##### *Standards*

The bill requires the Secretary to develop the following uniform standards to be utilized by the MCOs:

- A standardized enrollment form and a uniform process for credentialing and re-credentialing health care providers who have signed contracts or participation agreements with any MCO;
- Procedures, requirements, periodic review, and reporting of reductions in and limitations for prior authorization for health care services and prescriptions;
- Retrospective utilization review of readmissions that complies with applicable federal statutory or regulatory requirements for the Medicaid program or CHIP, prohibiting such reviews for any individual covered by KMAP who is readmitted with a medical condition as an inpatient to a hospital more than 15 days after the patient's discharge;
- A grievance, appeal, and state fair hearing process that complies with applicable federal and state statutory procedure requirements, including any statutory remedies for timely resolution of grievances, appeals, and state fair hearings, imposed upon MCOs providing state Medicaid and CHIP services; and
- Requirements that each MCO, within 60 calendar days of receiving an appeal request, provide notice and resolve 100 percent of provider appeals, subject to remedies, including, but not limited to, liquidated damages if provider appeals are not resolved within the required time.

#### *Independent Auditor*

The Secretary is required to procure the services of an independent auditor to review, at least once per calendar year, a random sample of all claims paid and denied by each MCO and the MCO's subcontractors. Each MCO and its subcontractors are required to pay any claim the independent auditor determines to be incorrectly denied. The bill provides each MCO and its subcontractors may be required to pay liquidated damages, as determined by KDHE. Each MCO and its subcontractors are required to pay the cost of audits conducted under the provisions for an independent auditor.

The independent auditor provisions in the bill expire on January 1, 2020.

#### *Payment to Nursing Facilities with a Change in Ownership*

Under the bill, the Secretary requires each MCO to pay 100 percent of the State's established *per diem* rate to nursing facilities for current Medicaid-enrolled residents during any re-credentialing process caused by a change in ownership of the nursing facility.

#### *Licensed Pharmacy or Pharmacist*

On and after July 1, 2017, a MCO providing state Medicaid or CHIP services under the KMAP is prohibited from discriminating against any licensed pharmacy or pharmacist located within the geographic coverage area of the MCO that is willing to meet the conditions for

participation established by the KMAP and to accept reasonable contract terms offered by the MCO.

### *Rules and Regulations*

Additionally, the Secretary is required to adopt rules and regulations as necessary to implement the requirements regarding data production and training, standardization, the provision of an independent auditor, payment to nursing facilities with a change in ownership, and non-discrimination against a licensed pharmacy or pharmacist, prior to January 1, 2018.

### ***External Independent Third-party Review Process***

The bill requires implementation of an external review process for providers who have received denial of KMAP services and have exhausted the MCO's internal appeals process.

### *Managed Care Organizations Notification Requirements*

Any letter from a MCO to a participating health care provider reflecting a final decision of the MCO's internal appeal process is required to state:

- The provider's internal appeal rights within the MCO have been exhausted;
- The provider is entitled to an external review; and
- The requirements to request an external review.

MCOs are subject to a penalty paid to the provider, not to exceed \$1,000, for failing to meet the above requirements in a final decision letter.

### *Eligibility*

On and after January 1, 2020, a provider who has been denied a health care service to a recipient of medical assistance or a claim for reimbursement to the provider for a health care service rendered and who has exhausted the MCO internal written appeals process is entitled to an external review of the MCO's final decision.

### *Request for External Review*

To request an external review, an aggrieved provider is required to submit a written request to the MCO within 60 calendar days of receiving the final decision resulting from the MCO's internal review process. The written request is required to include each specific issue and dispute directly related to the adverse final decision issued by the MCO, the basis upon which the provider believes the MCO's decision to be erroneous, and the provider's designated contact information.

Within five business days of receiving a request, the MCO is required to:

- Confirm with the provider, in writing, receipt of the request;
- Notify KDHE of the request; and
- Notify the recipient of the medical assistance of the request, if related to denial of the health care service.

If the MCO fails to satisfy the notification requirements, the provider automatically prevails in the review.

Within 15 days of receiving a request, the MCO is required to submit to KDHE all documentation submitted by the provider in the course of the MCO's internal appeal process and provide the MCO's designated contact information. If the MCO fails to satisfy these requirements, the provider automatically prevails in the review.

#### *Review by Office of Administrative Hearings*

The bill requires an external review automatically extend the deadline to request a hearing before the Office of Administrative Hearings (OAH) of the Department of Administration pending the outcome of the external review and, upon conclusion of the external review, the external independent third-party reviewer (reviewer) is required to forward a copy of the decision and new notice of action to the provider, recipient, applicable MCO, KDHE, and the Kansas Department for Aging and Disability Services (KDADS). When a deadline to request a hearing before the OAH has been extended pending the outcome of an external review, all parties are granted an additional 30 days from receipt of the review decision and notice of action to request a hearing before the OAH.

The bill requires KDHE and KDADS to immediately request a continuance from the OAH if a recipient of medical assistance or participating health care provider files a request for a hearing before the OAH regarding a claim for which the provider has filed a request for external review. KDHE and KDADS are also required to forward the decision of the review to the OAH for consideration by the hearing officer together with any other facts of the case.

#### *KDHE Requirements*

Upon receiving notification of a request for an external review, KDHE is required to:

- Assign the review to a reviewer;
- Notify the MCO of the identity of the reviewer; and
- Notify the provider of the identity of the reviewer.

KDHE is required to deny a request for external review if the requesting provider fails to exhaust the MCO's internal appeal process or submit a timely request for an external review.

### *Multiple Appeals*

The bill allows multiple appeals to the external review process regarding the same recipient of medical assistance, a common question of fact, or interpretation of common applicable regulations or reimbursement requirements to be determined in one action upon request. The bill allows other initial denials of claims to be added to such review prior to final decision and after exhaustion of the MCO internal appeals process if the claims involve a common question of fact or interpretation of common applicable regulation or reimbursement requirements.

### *Reviewer Limitations and Requirements*

The reviewer is allowed to review only the documentation submitted by the provider in the course of the MCO's internal appeal process. The reviewer is required to conduct a review of any claim submitted to the reviewer and issue a final decision to the provider, the MCO, and KDHE within 30 calendar days from receiving the request for review from KDHE and the documentation submitted by the provider during the MCO internal review process. The reviewer is allowed to extend the time to issue a final decision by 14 calendar days upon agreement of both parties.

### *Final Decision*

Within ten business days of receiving a final decision of the external review, the MCO is required to notify the impacted recipient of the medical assistance and the participating health care provider of the final decision, if related to the denial of the health care service.

A party is allowed to appeal the final decision to the OAH within 30 calendar days from receiving the final decision of the reviewer.

The final decision of any external review directs the losing party of the review to pay an amount equal to the costs of the review to the reviewer. Any payment ordered is stayed pending any appeal of the review. If the final outcome of any appeal is to reverse the decision of the external review, the losing party of the appeal is required to pay the costs of the review to the reviewer within 45 calendar days of entry of the final order.

### *Rules and Regulations*

KDHE is required to adopt rules and regulations to implement the provisions of the external review process prior to January 1, 2020.

## STATE FINANCES

### State Budget; Senate Sub. for Sub. for HB 2052

**Senate Sub. for Sub. for HB 2052** includes funding for FY 2017, FY 2018, FY 2019, FY 2020, and FY 2021 supplemental expenditures for most state agencies. The FY 2017 supplemental budget totals \$15.9 billion from all funds, including \$6.3 billion from the State General Fund. This is an all funds increase of \$120.4 million and a State General Fund reduction of \$80.9 million from the FY 2017 approved budget.

Key adjustments from the approved budget include:

- Permanently delaying a \$75.0 million payment to K-12 education by one fiscal year;
- Deleting \$64.1 million, all from the State General Fund, from the approved amount of FY 2017 KPERS-School employer contributions. Repayments of the reduced contributions are to be restored to the KPERS Trust Fund over 20 years starting in FY 2018 at \$6.4 million per year;
- Adding language to transfer funding from the Treasurer's Unclaimed Property Fund in KPERS to the State General Fund to guarantee a \$50.0 million ending balance in FY 2017, with the remainder to be transferred in FY 2018. The total to be transferred will be \$317.0 million over two years. It is to be paid back in six equal yearly increments starting in FY 2019;
- Deleting \$115.4 million to eliminate repayment of the delayed FY 2016 KPERS employer contributions for FY 2018;
- Funding the human services consensus caseload estimates, adding \$147.0 million, including \$1.9 million from the State General Fund, in FY 2017;
- Increasing transfers from various agencies to the State General Fund by \$6.8 million;
- Reducing agency earnings by \$18.0 million to adjust for the anticipated reduction in the value of the Kansas Bioscience Authority portfolio sale;
- Reducing the transfer from the State Highway Fund to the State General Fund by \$15.4 million;
- Reducing the Extraordinary Needs Fund by \$13.0 million (as required because the sale of the Kansas Bioscience Authority did not exceed \$25.0 million);
- Adding language to authorize the sale of property by the Secretary for Children and Families and the Secretary of Corrections, without requiring approval of the State Finance Council, in Chanute, Wichita, and Lansing in FY 2017; and

- Adding \$6.0 million, including \$1.8 million for disaster relief expenditures in FY 2017. (The Adjutant General states there are 15 open disasters, 7 of which are wildfires in March.)

The bill takes effect upon publication in the *Kansas Register*.

## TRANSPORTATION AND MOTOR VEHICLES

### Annual Permit for Certain Heavy Agriculture-related Nondivisible Loads; HB 2095

**HB 2095** authorizes the Secretary of Transportation (Secretary) to issue an annual overweight divisible load operating permit for a truck-tractor semitrailer combination vehicle or a truck-tractor semitrailer, trailer combination vehicle with a gross vehicle weight of more than 85,500 pounds but not more than 90,000 pounds transporting divisible loads on 6 or more axles. The permit will be with respect to highways under the Secretary's jurisdiction, including city connecting links. The fee for the annual permit will be \$200, and collected fees will be deposited into the State Highway Fund. No single-trip permits will be issued.

The bill includes the following restrictions on such operation:

- No operation on the interstate system when loaded in excess of 80,000 pounds;
- Must be registered at the maximum weight category;
- Shall not be operated on any bridge or highway that has a posted gross weight limit or posted axle weight limit less than that at which the vehicle is operating;
- Must comply with weight limits on wheels, axles, and groups of axles, except as otherwise allowed by the bill;
- Cannot violate width, height, and length restrictions in continuing law;
- Must not operate with a total weight of more than 85,500 pounds when highway surfaces have ice or snowpack, or drifting snow; and
- Shall not operate with a total weight of more than 85,500 pounds unless the vehicle is carrying agricultural inputs, farm supplies, biofuels, feed, raw or processed agricultural commodities, livestock, raw meat products intended by the shipper for further processing, or farm products. The bill directs the provisions in this paragraph to be construed liberally.

The bill requires the permit be carried in the vehicle when the vehicle is operated at a weight of more than 85,500 pounds. The bill specifies maximum loads to be carried on any group of two or more consecutive axles, by distance between those axles and number of axles.

The bill also amends the definition of "triple axles" to increase from 120 inches to 132 inches the maximum distance at which such axles could be spaced apart.

### Bicycle Safety Equipment; HB 2170

**HB 2170** requires a bicycle in use between sunset and sunrise to be equipped on the rear with a red reflector visible from 100 feet to 600 feet or a lamp that emits a red light visible from 500 feet, or the operator must wear a device that emits a red or amber light visible from

500 feet. Previous law required both a reflector and a red light visible from the rear and also a lamp on the front emitting white light.

The bill also removes references to equipment approval by the Secretary of Transportation.

### **Autism Awareness and 4-H Foundation License Plates; Military Honors Decals; Disability Decals; HB 2174**

**HB 2174** establishes two distinctive license plates, authorizes decals on distinctive license plates to indicate transportation of a person with a disability, and authorizes additional decals indicating military honors on certain military-related distinctive license plates.

#### ***License Plates***

##### *Autism Awareness*

The bill authorizes an autism awareness license plate on and after January 1, 2018, for use on a passenger vehicle or truck registered for a gross weight of 20,000 pounds or less. The bill allows any owner or lessee to apply for the new plate after paying annual vehicle registration fees and a logo use royalty fee of between \$25 and \$100 to the organization Autism Hope for Families, Inc. Royalties are deposited into the Autism Awareness Royalty Fund, which the bill creates. Payments from the Autism Awareness Royalty Fund will be made on a monthly basis to the appropriate designee of the Autism Hope for Families, Inc.

##### *Kansas 4-H Foundation*

The bill authorizes a Kansas 4-H Foundation license plate on and after January 1, 2018, for use on a passenger vehicle or truck registered for a gross weight of 20,000 pounds or less. The bill allows any owner or lessee to apply for the new plate after paying annual vehicle registration fees and a logo use royalty fee of between \$25 and \$100 to the Kansas 4-H Foundation, Inc. Royalties will be deposited into the Kansas 4-H Foundation Royalty Fund, which the bill creates. Payments from the Kansas 4-H Foundation Royalty Fund will be made on a monthly basis to the appropriate designee of the Kansas 4-H Foundation, Inc.

#### ***Decals for License Plates***

##### *Indicating Disability*

On and after January 1, 2018, the bill authorizes a wheelchair emblem decal to be affixed to a distinctive license plate and a permanent placard as an alternative to indicate the vehicle transports a person with a permanent disability. Under current law, the options are a permanent placard or a permanent placard and a special license plate. An individual identification card will also be issued to accompany the permanent placard and wheelchair emblem decal; under current law, the identification card is issued to anyone with a permanent placard or permanent placard and a special license plate.

*Indicating Military Honors*

The bill expands eligibility to purchase license plate decals indicating certain military honors to those persons issued a distinctive military license plate who have received an Army of Occupation Medal or Navy Occupation Service Medal upon providing satisfactory proof of receiving such medal to the Director of Vehicles.

## **WATER**

### **Water Impairment and Water Conservation Areas; SB 46**

**SB 46** amends law pertaining to a water right holder's options for remedy of a water impairment and the administrative procedure available to a water right holder. Additionally, the bill amends the law as it relates to water conservation areas (WCAs).

#### ***Administrative Remedy for Water Right Impairment***

The bill requires any person with a valid water right or permit to divert and use water to first exhaust the administrative remedies available to the person before seeking a court-ordered injunction to stop the impairment of the person's water right by the activity of another entity without prior right to the same water.

Additionally, the bill amends the law pertaining to administrative remedies available to allow claimants to submit complaints to the Chief Engineer of the Division of Water Resources (DWR), Kansas Department of Agriculture (KDA), indicating their water rights are being impaired by an entity without prior right to the same water, and to require the Chief Engineer to handle complaints in the following manner:

- Initiate an investigation within two weeks of a complaint and notify the parties so they may have an opportunity to submit relevant information; and
- Complete an investigation within 12 months of the date the complaint was received. The Chief Engineer is authorized to extend the investigation for good cause by notifying the parties in writing of the amount of time needed to complete the investigation.

Following the investigation, the Chief Engineer may issue an order that limits, curtails, or prevents the diversion of water by any person without a prior right to the same water that otherwise disposes of the complaint.

Finally, the complainant may petition the Chief Engineer to issue a temporary order, to be in effect until a final order is issued, to limit, curtail, or prevent the diversion and use of water by any person without a prior right to the same water as the complainant if the Chief Engineer finds limiting, curtailing, or preventing diversion and the use of water would not be adverse to public interest.

#### ***Posting Applications and Orders; Notice***

The bill requires the KDA to post all completed applications and orders issued by the DWR regarding WCAs on its official website. The bill also requires the DWR, in conjunction with the groundwater management district (GMD) within which a water right is situated, to notify appropriate water right owners of a water right pending request or application relating to WCAs.

### ***Management Plan to Establish a WCA***

The bill requires the following be included in the management plan of a WCA, in addition to what is already required by the law: a finding or findings that the area within the geographic boundaries listed in the water management plan has been closed to new appropriations by rule, regulation, or order of the Chief Engineer.

The bill clarifies that one or more of the corrective control provisions provided in the law must be included in the management plan.

### ***Flexibility in Water Authorized***

The bill allows the Chief Engineer to authorize a management plan that allots water authorized by existing water rights in order to provide flexibility in the management of water resources. This is subject to the following limitations:

- The management plan be limited to the WCA term;
- The management plan allow, in any given calendar year, the water use of an individual water right or rights to exceed the annual authorized quantity of the individual water right or rights participating in the management plan, provided the water use would not exceed the total annual authorized aggregate quantity and rate of all the water rights participating in the management plan in any given year;
- The authority granted through the management plan supersedes the participating water rights during the term of the WCA or until the management plan is suspended by the Chief Engineer; and
- For purposes of determining priority, the management plan be assigned the priority date of its effectiveness.

The bill provides that, as a part of the consent agreement and order of designation, the Chief Engineer could include use of multi-year flex accounts.

### ***Water Right Impairment***

The bill prohibits a management plan authorized under a WCA from impairing any water right. If an impairment occurs, the Chief Engineer, following a complaint and investigation, is authorized to suspend operation of the WCA. In this event, each participating water right may operate in accordance with its permitted terms and conditions as in effect prior to the operation of the WCA. Upon conclusion of the Chief Engineer's investigation and finding of impairment, the Chief Engineer may terminate the WCA or modify the WCA, subject to consent of the participating water right owners.

### ***WCA Boundary Notification***

The Chief Engineer is required to provide notification to all water right owners with a point of diversion within half a mile, or farther if necessary, of the boundaries of a WCA. Notification includes a reference to an electronic publication of the management plan and any relevant technical analysis.

### ***Perfecting Water Rights; GMDs***

The bill prohibits a water right from being perfected pursuant to a WCA. In addition, nothing in Section 4 of the bill will be construed as limiting or affecting any duty or power of a GMD granted to a district by the Kansas Groundwater Management District Act.

### **Rural Water Districts; HB 2080**

**HB 2080** adds water district vehicles to the list of vehicles that can be permanently registered in the state. Current law provides for permanent registration of city, county, township, school district, community college, and technical college vehicles. Continuing law also states vehicles used for utility purposes are to be registered for a five-year period.

The bill requires boards of rural water districts to reinstate any benefit unit that has been forfeited due to delinquent payments upon payment of:

- All unpaid fees and charges due to the district in addition to any fees and charges that have accrued since the date of forfeiture; and
- Any benefit unit reinstatement fee in an amount the bill limits to no more than 20 percent of the water district's current fee to establish a new benefit unit.

The bill also clarifies language regarding who could serve as a director on the board of a rural water district. Any individual, firm, partnership, association, or corporation that is a participating member of the rural water district is eligible to hold office as a director.

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