Kansas Legislative Research Department June 16, 2017

SUPPLEMENT II TO PRELIMINARY SUMMARY OF LEGISLATION 2017 KANSAS LEGISLATURE

This publication contains summaries of selected bills enacted by the Legislature from May 1, 2017, through adjournment. Bills that have not yet been signed by the Governor are included.

The first Preliminary Summary containing summaries of major bills that were enacted through 12:00 p.m., March 31, was distributed on April 3, 2017. An updated supplement to the first Preliminary Summary was distributed on April 12, 2017.

Highlights, a summary of major legislation in newsletter form, will be prepared and mailed to legislators as soon as possible. *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/klrd.

Kansas Legislative Research Department
300 SW 10th Avenue
Room 68-West, Statehouse
Topeka, Kansas 66612-1504
Telephone: (785) 296-3181
Fax: (785) 296-3824
kslegres@klrd.ks.gov
http://kslegislature.org/klrd

Table of Contents

ABORTION

Woman's Right to Know Act, Informed Consent; SB 83

SB 83 amends the Woman's Right to Know Act as it relates to what constitutes voluntary and informed consent before an abortion can be performed. The bill requires additional information about the physician performing an abortion to be provided to a woman at least 24 hours in advance of the procedure.

Specifically, the bill requires the following information be provided:

- The name of the physician;
- The year the physician received a medical doctor's degree;
- The date the physician's employment began at the facility where the procedure is to be performed;
- The name of any hospital where the physician has lost clinical privileges; and
- The following information notated by marking a box indicating "yes" or a box indicating "no":
    - Whether any disciplinary action has been taken against the physician by the State Board of Healing Arts (Board);
        - If the "yes" box is marked, a website address to the Board documentation for each disciplinary action must be provided;
    - Whether the physician has malpractice insurance;
    - Whether the physician has clinical privileges at any hospital within 30 miles of the facility where the procedure is to be performed;
        - If the "yes" box is marked, the name of each hospital and date the privileges were issued must be provided; and
    - Whether the physician is a resident of Kansas.

The information listed above must be provided on white paper, in a printed format, in black ink, and in 12-point Times New Roman font.

The bill states that if any of the laws related to abortion found in KSA Chapter 65, Article 67, are enjoined, all other provisions in that section of law will be enforced as if the enjoined provisions had not been enacted. If the injunction on the provisions ceases to be in effect, the provisions will have full force and effect.

Common Consumption Areas, Alcohol; Sub. for HB 2277

Sub. for HB 2277 allows a city or county to establish one or more common consumption areas by ordinance or resolution, designate the boundaries of any common consumption area, and prescribe the times during which alcoholic liquor may be consumed.

The bill also eliminates the ten-day waiting period for an applicant to become a member of a class B club.

Finally, the bill makes technical amendments to 2017 House Sub. for SB 13, which amends the Kansas Liquor Control Act and the Kansas Cereal Malt Beverage Act pertaining to the sale of cereal malt beverages, beer, and other goods and services.

Definition

The bill defines a "common consumption area" as an indoor or outdoor area, clearly marked using a physical barrier or any apparent line of demarcation, not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act, where the possession and consumption of alcoholic liquor is allowed pursuant to a common consumption area permit.

Notification

The bill requires a city or county to immediately notify the Director of Alcoholic Beverage Control (ABC), Department of Revenue, if an ordinance or a resolution is adopted establishing a common consumption area, and submit a copy of the ordinance or resolution.

Common Consumption Area Permit Overview

The Director of ABC will issue common consumption area permits, in accordance with rules and regulations adopted by the Secretary of Revenue, to allow for the consumption of alcohol in any area designated by such permit, to the city or county, or to any one person who is a Kansas resident or an organization whose principal place of business is in Kansas and has been approved by the respective city or county. Any application for a common consumption area permit is to be submitted to the Director of ABC and is subject to the following requirements:

- A copy of any ordinance or resolution establishing a common consumption area must be submitted;
- A nonrefundable permit fee of $100 must accompany the application, and all such fees must be remitted to the State Treasurer and deposited in the State General Fund; and
- Permits are to be issued for a period not to exceed one year and are not transferable or assignable.

The bill allows any licensee adjacent to or located within a common consumption area to request permission, using forms prescribed by the Director of ABC, to participate in a common consumption area for the duration of the common consumption area permit. If permission is

received, the bill allows the licensee's legal patrons to remove alcoholic liquor purchased from the licensee into the common consumption area if the beverage is served in a container that displays the licensee's trade name, logo, or other identifying mark unique to the licensee.

Liability

Each licensee within a common consumption area shall be liable for violations that occur on their premises, and each common consumption area permit holder shall be liable for violations that occur off the licensee's premises but within the common consumption area identified by the permit. Additionally, the bill prohibits a permit holder from allowing a person to remove any open container from the boundaries of the common consumption area.

The bill also allows an individual to consume alcohol in an area designated by a city or county on public streets, alleys, roads, sidewalks, or highways located within a common consumption area, and prohibits alcohol consumption in vehicles located in common consumption areas. Additionally, the bill allows for the consumption of alcohol within a common consumption area located on public or private property.

Ten-Day Waiting Period

The bill eliminates the ten-day waiting period for an applicant to become a member of a class B club found in current law.

2017 House Sub. for SB 13 Technical Amendments

The bill makes technical amendments to 2017 House Sub. for SB 13 by striking the term "alcoholic liquor" and inserting the term "beer" when referencing a distributor's ability to establish reasonable minimum order quantities or minimum dollar values of an order and striking the term "liquor" and inserting the term "beverages" in the title of the bill.

Changes to the Kansas Lottery Act, Charitable Bingo Act, State Debt Setoff Program; HB 2313

HB 2313* amends the Kansas Lottery Act to allow the use of lottery ticket vending machines and the use of instant bingo vending machines, amends law concerning underage purchasing of lottery tickets, extends the sunset provision for the Kansas Lottery in current law, amends law directing transfers from the Lottery Operating Fund, and amends law concerning the State Debt Setoff Program.

**** This bill was vetoed by the Governor on Thursday, June 15. The disposition of this bill will be determined on* Sine Die *(June 26).***

Lottery Machines; Definition Changes

The bill amends the definition of "lottery machine" by removing the term "lottery ticket vending machine" from the definition of "lottery machine." The bill further amends the definition of "lottery machine" to specify that lottery ticket vending machines and instant bingo vending machines are not considered lottery machines. The prohibition on games on lottery machines remains unchanged by the bill (KSA 2016 Supp. 74-8710).

Lottery Ticket Vending Machines

The bill allows the Kansas Lottery to use lottery ticket vending machines to sell lottery tickets.

The bill also creates a definition for "lottery ticket vending machine," as follows:

- "Lottery ticket vending machine" means a machine or similar electronic device owned or leased by the Kansas Lottery, the sole purposes of which are to:
    - Dispense a printed physical ticket, such as a lottery ticket, a keno ticket, a pull tab ticket, or an instant bingo ticket, or a coupon, the coupon of which must be redeemed through something other than a lottery ticket vending machine, after a purchaser inserts cash or other form of consideration into the machine;
    - Allow purchasers to manually check the winning status of a Kansas Lottery ticket; and
    - Display advertising, promotions, and other information pertaining to the Kansas Lottery.

The bill states a lottery ticket vending machine shall not:

- Provide a visual or audio representation of an electronic gaming machine;
- Visually or functionally have the same characteristics as an electronic gaming machine;
- Automatically determine or display the winning status of any dispensed ticket;
- Extend or arrange credit for the purchase of a ticket;
- Dispense any winnings;
- Dispense any prize or dispense any evidence of a prize other than the lottery ticket, keno ticket, pull tab ticket, or instant bingo ticket, or any free Kansas Lottery ticket received as a result of the purchase of another Kansas Lottery ticket;
- Provide free games or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

Further, the bill allows lottery ticket vending machines to dispense only the printed physical lottery ticket, keno ticket, pull tab ticket, or instant bingo ticket, including any free Kansas Lottery ticket received as a result of the purchase of another Kansas Lottery ticket, and change from a purchase to the purchaser. The bill specifies any winnings from a lottery ticket vending machine can be redeemed only for cash or check by a lottery retailer or by cash, check, or other prize from the office of the Kansas Lottery.

The bill specifies no more than two lottery ticket vending machines can be located at each Kansas Lottery retailer selling location.

Instant Bingo; Vending Machines

The bill removes language in the definition of "instant bingo" prohibiting bingo games utilizing electronically generated or computer-generated tickets from an instant bingo vending machine. The definition is also amended to specify that instant bingo games can be dispensed by an instant bingo vending machine.

The bill creates a definition for "instant bingo vending machine," as follows:

- "Instant bingo vending machine" means a machine or electronic device owned or leased by the Kansas Lottery in fulfillment of the Kansas Lottery's obligations under an agreement between the Kansas Lottery and a licensee entered into pursuant to the provisions of the bill. As specified in the definition, the sole purpose of an instant bingo vending machine is to:
    - Dispense a printed instant bingo ticket after a purchaser inserts cash or other form of consideration into the machine; and
    - Allow purchasers to manually check the winning status of an instant bingo ticket.

The bill states an instant bingo vending machine shall not:

- Provide a visual or audio representation of an electronic gaming machine or an electronic gaming machine;
- Visually or functionally have the same characteristics as an electronic gaming machine or an electronic gaming machine;
- Automatically determine or display the winning status of any dispensed instant bingo ticket;
- Extend or arrange credit for the purchase of an instant bingo ticket;
- Dispense any winnings;
- Dispense any prize;
- Dispense any evidence of a prize other than the instant bingo ticket;
- Provide free instant bingo tickets or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

Agreements Between Lottery and Nonprofit Organizations; Vending Machine Sales

The bill authorizes the Executive Director of the Kansas Lottery (Executive Director) to enter into agreements with licensed nonprofit organizations for the operation of instant bingo vending machines on the premises of nonprofit organizations. No more than two instant bingo vending machines can be located on the premises of the nonprofit organization.

These agreements are required to provide for the remittance of gross receipts of instant bingo tickets in the vending machines to the nonprofit organization. All sales of instant bingo tickets in the vending machines are considered sales by the nonprofit organization and proceeds from such sales will be remitted to the nonprofit organization.

Underage Purchasing of Lottery Tickets

The bill provides any lottery ticket or share of a ticket purchased by an individual under the age of 18 is null and void and cannot be redeemed for a prize.

Lottery Sunset Provision

The bill extends the sunset for the Kansas Lottery to July 1, 2037. Under prior law, the Kansas Lottery was to be abolished on July 1, 2022.

Transfers from the Lottery Operating Fund

The bill authorizes moneys in the Lottery Operating Fund be used for transfers to the Community Crisis Stabilization Centers Fund and Clubhouse Model Program Fund of the Kansas Department for Aging and Disability Services.

The bill specifies that, from FY 2018 through FY 2022, on or before the 10th day of each month, the Executive Director is required to certify the net profits from the sale of lottery tickets and shares in lottery ticket vending machines. Of that certified amount, moneys will be distributed from the Lottery Operating Fund, as follows:

- 75 percent will be transferred to the Community Crisis Stabilization Centers Fund (created by the bill); and

- 25 percent will be transferred to the Clubhouse Model Program Fund (created by the bill).

Such transfers cannot exceed $4.0 million in the aggregate for FY 2018 or $8.0 million in the aggregate per year for FY 2019, FY 2020, FY 2021, and FY 2022.

State Debt Setoff Program

The bill amends the State Debt Setoff Program (Program) in several ways.

The bill requires the Executive Director to enter into agreements with lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees for

participation in the debt setoff program for the purpose of collecting debts. Each such contract is required to include a provision agreeing to defend, indemnify, and hold harmless the manager or licensee for all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses brought or asserted against the manager or licensee arising from the manager or licensee's performance of an agreement to facilitate the collection of debts.

The bill specifies lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees will not be subject to civil, criminal, or administrative liability for actions taken under the bill, unless such actions are intentional, malicious, or wanton. The State is required to indemnify the manager or licensee for expenses, losses, damages, and attorney fees arising from the performance of activities under the bill, and the manager or licensee will have all the protection of the State under the Kansas Tort Claims Act. The sole remedy at law for persons claiming wrongful withholding of prizes is an appeal to the Department of Administration.

Lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees are required to check the state debtor files before paying moneys on behalf of the State for any gambling winnings requiring completion of a federal tax form. If the person winning the prize is listed in the state debtor files, the prize is to be withheld by the manager or licensee to the extent of such debt. Withheld moneys will be transmitted to the State Treasurer and deposited in the Setoff Clearing Fund.

Debts for child support enforced by the Kansas Department for Children and Families (DCF) under federal law will have the cost of collection paid by DCF. Collection costs will not be added to such debts.

The bill does not apply to Native American tribal gaming facilities.

Public Benefit Corporations; HB 2153

HB 2153 creates and amends law within the Kansas General Corporation Code (GCC) and amends related statutes to create a type of business entity known as a "public benefit corporation" (PBC).

Applicability

The new sections of law created by the bill applies only to PBCs and does not affect a statute or rule of law applicable to non-PBCs, except for those provisions regarding conversion to or from a PBC. Existing provisions of the GCC apply to PBCs, except to the extent the new sections impose additional or different requirements.

Definitions

The bill defines "public benefit corporation" as a for-profit corporation organized under and subject to the requirements of the GCC that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner. A PBC is managed in a manner balancing the stockholders' pecuniary interests, the best interests of those materially affected by the PBC's conduct, and the public benefit or benefits identified in its articles of incorporation. The PBC must identify specific public benefit or benefits and state it is a PBC within its articles of incorporation, and these provisions constitute "public benefit provisions."

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

Conversion To or From a PBC

The approval of two-thirds of the outstanding stock of a non-PBC is required to either amend its articles of incorporation to include PBC provisions or merge or consolidate with or into another entity if such merger or consolidation results in shares becoming shares or other equity interests in a domestic or foreign PBC. These restrictions do not apply prior to the time the corporation has received payment for any of its capital stock.

Similarly, the approval of two-thirds of the outstanding stock of a PBC corporation is required to either amend its articles of incorporation to delete or amend PBC provisions or merge or consolidate with or into another entity if such merger or consolidation results in shares becoming share or other equity interests in a domestic or foreign corporation that is not a PBC and the articles of incorporation does not contain the identical PBC provisions or requirements.

Under any of the above scenarios, a stockholder who holds stock of the corporation immediately prior to the effective time of the amendment, merger, or consolidation, and who has not voted for or consented to such amendment, merger, or consolidation, is entitled to an appraisal by the district court of the fair value of the stockholder's shares of stock. Such appraisal is not available for shares or depository receipts that, at the record date fixed to

determine stockholders entitled to notice of the meeting to act upon the agreement of merger, consolidation, or amendment, were listed on a national securities exchange or held of record by more than 2,000 holders unless (in case of a merger or consolidation) the holders of such stock or depository receipts are forced to accept for such stock or depository receipts anything except shares of stock or depository receipts meeting the same conditions or cash in lieu of fractional shares or fractional depository receipts meeting these conditions.

The existing GCC statute governing appraisal rights and procedures is amended to accommodate the above provisions.

Stock Certificates and Notice

The bill requires stock certificates and notices regarding uncertificated stock issued by a PBC to note conspicuously the corporation is a PBC.

Board of Directors

The board of directors of a PBC is required to manage or direct the business and affairs of the PBC in a manner balancing the pecuniary interests of the stockholders, the best interests of those materially affected by the PBC's conduct, and the specific public benefits identified in the articles of incorporation.

Stockholders of a PBC owning individually or collectively at least 2.0 percent of the PBC's outstanding shares (or the lesser of such percentage of shares of at least $2 million in market value, if the PBC has shared listed on a national securities exchange) may maintain a derivative lawsuit to enforce these requirements.

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

The articles of incorporation may include a provision that any disinterested failure to satisfy the above requirements does not constitute an act or omission not in good faith, or a breach of the duty of loyalty.

Notices and Statements

A PBC is required to include in every notice of a meeting of stockholders a statement that it is a PBC.

A PBC is required to provide to stockholders, at least annually and at the time of the filing of the PBC's annual report, a statement regarding the PBC's promotion of the public benefits identified in the articles of incorporation and of the best interests of those materially affected by the corporation's conduct. This statement must include objectives and standards established by the board of directors, as well as objective factual information based on those standards regarding the PBC's success in meeting the objectives and an assessment of the

PBC's success in meeting the objectives and promoting the public benefits and interests. The bill requires the statement be based on a third-party standard, as defined in this new section.

A PBC is required to post its most recent statement on the public portion of its website. If the PBC does not have a website, it is required to provide a copy of the statement, without charge, to any person requesting a copy, except that compensation paid to directors and any other financial or proprietary information may be omitted from any statement publicly posted or distributed.

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

Applicability to Nonstock Corporations

The GCC section providing for application of GCC provisions to nonstock corporations is amended to exclude its application to the bill's new provisions regarding PBC stock certificate notation and notice, as well as to all of the bill's new provisions in the case of a nonprofit nonstock corporation.

Filings with Secretary of State

The statute requiring certain corporate documents be filed with the Secretary of State is amended to include PBC articles of incorporation.

Name

The bill amends the statute containing name requirements for corporations to require a PBC's name to contain one of the existing identifying words or abbreviations or one of three new words or abbreviations applicable only to PBCs.

CHILDREN AND YOUTH

Child Welfare System Task Force; House Sub. for SB 126

House Sub. for SB 126 requires the Secretary for Children and Families to establish a Child Welfare System Task Force (Task Force) to study the child welfare system in the State of Kansas.

Organization of Task Force

The Task Force is composed of the following voting members:

- The Chairperson of the Senate Committee on Public Health and Welfare;
- The Chairperson of the House Committee on Children and Seniors;
- The Vice-chairperson of the Senate Committee on Public Health and Welfare;
- The Vice-chairperson of the House Committee on Children and Seniors;
- The Ranking Minority Member of the Senate Committee on Public Health and Welfare;
- The Ranking Minority Member of the House Committee on Children and Seniors;
- One member appointed by the Chief Justice of the Supreme Court;
- One Kansas Court Appointed Special Advocates representative, appointed by the Chief Justice of the Supreme Court;
- One member representing a foster parent organization, appointed by the Judicial Council;
- One member of the Child Death Review Board, appointed by the Board;
- One county or district attorney with experience in child in need of care (CINC) cases, appointed by the Kansas County and District Attorneys Association;
- One guardian *ad litem* with experience representing children in CINC cases, appointed by the Judicial Council;
- One family law attorney with experience in providing legal services to parents and grandparents in CINC cases, appointed by the Judicial Council;
- One social worker licensed by the Behavioral Sciences Regulatory Board, appointed by the Judicial Council;

- One Citizen Review Board member, appointed by the Chief Justice of the Supreme Court; and

- One law enforcement officer, appointed by the Kansas Association of Chiefs of Police.

The Task Force also includes the following non-voting members:

- Secretary for Children and Families, or the Secretary's designee;

- Department for Children and Families (DCF) Prevention and Protection Services Director; and

- One representative from each entity that contracts with DCF to provide foster care, family preservation, reintegration, and permanency placement services, appointed by each such entity.

Members of the Task Force shall be appointed on or before July 15, 2017.

The Chairperson and Vice-chairperson of the Task Force alternate annually between the Chairperson of the House Committee on Children and Seniors and the Chairperson of the Senate Committee on Public Health and Welfare, starting in 2017 with the Chairperson of the House Committee as the first Chairperson of the Task Force.

Filing of Vacancies

Any vacancy on the Task Force will be filled by appointment in the manner prescribed for the original appointment.

Meetings and Quorum

The Task Force is required to meet in an open meeting at least six times per calendar year at any place within the state, upon call of the Chairperson.

A majority of the voting members of the Task Force constitute a quorum. Any action by the Task Force shall be by motion adopted by a majority of voting members present when there is a quorum.

Duties of the Task Force

The Task Force is required to study the child welfare system in Kansas by convening working groups addressing DCF's general administration of child welfare, protective services, family preservation, reintegration, foster care, and permanency placement. The required topics include, but are not limited to, the following:

- The level of oversight and supervision by the DCF over each entity that contracts with DCF to provide reintegration, foster care, and adoption services;

- The duties, responsibilities, and contributions of state agencies, nongovernmental entities, and service providers that provide child welfare services in Kansas;

- The level of access to child welfare services, including health and mental health services and community-based services, in the State of Kansas;

- The increasing number of children in the child welfare system and contributing factors;

- The licensing standards for case managers working in the child welfare system; and

- Any other topic the Task Force or working group deems necessary or appropriate.

The Task Force is required to advise and consult with citizen review boards established by statute in conducting the study required by this section.

Working Groups

The members of each working group organized by the Task Force shall not have more than seven non-Task Force members and shall not have fewer than two Task Force members. The Task Force Chairperson, Vice-chairperson, and the Ranking Minority Members together appoint the Chairperson and Vice-chairperson of each working group from the members of the Task Force. The Chairperson and Vice-chairperson of each working group jointly appoint the members of each working group. The non-Task Force members shall be individuals with expertise in the specific working group topic for which they are appointed. All members of the working groups shall be appointed by August 15, 2017.

Data and Information Provided

DCF is required, upon request by the Task Force, to provide data and information relating to child welfare systems in the State of Kansas that is not otherwise prohibited or restricted from disclosure by state or federal law.

The Task Force and each working group are required to consider U.S. Department of Health and Human Services child and family services reviews and child and family services plans and reports relating to foster care prepared by the Legislative Division of Post Audit, the 2015 Special Committee on Foster Care Adequacy, and the 2016 Special Committee on Foster Care Adequacy.

Reports to the Legislature

The bill requires the Task Force to submit a preliminary progress report to the Legislature detailing the Task Force's study on or before January 8, 2018, and a final report to the Legislature detailing the Task Force's study on or before January 14, 2019. The final report shall include, but not be limited to, the following:

- Recommended improvements regarding the safety and well-being of children in the child welfare system in Kansas;

- Recommended changes to law, rules and regulations, and child welfare system processes; and

- Whether an ongoing task force or similar advisory or oversight entity consisting of legislators, attorneys in the area of family law, judges, foster parents, parents with reintegrated children, and other interested parties could aid in addressing child welfare concerns and any other topics the Task Force deems appropriate.

Support Services and Compensation

DCF is required to provide administrative assistance to facilitate organization and meetings of any working groups to prepare and publish meeting agendas; public notices; meeting minutes; and any research, data, or information requested by a working group.

Staff of the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Division of Legislative Administrative Services will provide assistance as requested by the Task Force, including assistance to a legislative Task Force member serving on a working group, subject to approval by the Legislative Coordinating Council.

Task Force members are paid as specified in KSA 75-3223(e), except that any Task Force member who is employed by a state agency are reimbursed by such state agency.

Non-Task Force members of working groups attending working group meetings are paid by DCF, except that any non-Task Force member who is employed by a state agency are reimbursed by such state agency.

Sunset Date

The Task Force sunsets on June 30, 2019.

Effective Date

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

CONCEALED CARRY

Concealed Carry Exemptions; Senate Sub. for HB 2278

Senate Sub. for HB 2278 exempts the following institutions from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns can be prohibited:

- State- or municipal-owned medical care facilities and adult care homes;
- Community mental health centers;
- Indigent health care clinics; and
- Any buildings located in the health care district associated with the University of Kansas Medical Center.

Under previous law, these facilities could exempt themselves from allowing concealed carry in their buildings and public areas until July 1, 2017, if the governing body or chief administrative officer filed notification of such exemption with the Office of the Attorney General.

The bill specifies that public employers will not be liable for wrongful or negligent acts of employees carrying concealed handguns when those weapons are not carried within the scope of their employment, concerning acts or omissions regarding such handguns.

Juvenile Justice—Absconding from Supervision; Immediate Intervention; Sentencing and Placement; Oversight Committee; Required Findings Upon Removal; Fund Provisions; House Sub. for SB 42

House Sub. for SB 42 creates and amends law related to the Kansas juvenile justice system and the changes made to the system by 2016 SB 367, as follows.

[*Note*: House Sub. for SB 42 amends several statutory provisions that, pursuant to amendments made or new statutes created by 2016 SB 367, have not yet taken effect. Such amendments to future versions of existing statutes or to new statutes that have not yet taken effect are noted in this summary.]

Absconding from Supervision

The bill amends the Revised Kansas Juvenile Justice Code (Juvenile Code) statute requiring community-based graduated responses for technical violations of probation to state that absconding from supervision shall not be considered a technical violation of probation and to allow a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful. The statute governing overall case length limits (effective July 1, 2017) is amended to provide that probation term limits and overall case length limits shall be tolled during any time that a juvenile has absconded from supervision while on probation.

The statute governing failure to obey conditions of conditional release (version effective July 1, 2017) is amended to add absconding from supervision as an event allowing the supervising officer to file a report with the court describing the alleged violation and the juvenile's history of violations. (Continuing law then allows the court, following notice and hearing, to find a violation and modify or impose additional conditions of release.)

The statute governing when a juvenile may be taken into custody is amended to add absconding from supervision as an event allowing a supervising officer to request a warrant, and the statute governing issuance of warrants (version effective July 1, 2017) is amended to allow a court to issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe the juvenile has absconded from supervision. The statute governing violation of conditions of probation or placement (version effective July 1, 2017) is amended to add absconding from supervision to the findings enabling a court to extend or modify the terms of probation or placement or enter another sentence.

Immediate Intervention Programs

The bill amends the statute regarding confidential data exchange for the juvenile justice system to require the Kansas Department of Corrections (KDOC) to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program. County and district attorneys, judges, community supervision officers, and juvenile intake and assessment workers shall have access to the database and are required to submit necessary data to the database. KDOC is required to, in consultation with the Office of Judicial Administration (OJA), adopt rules and regulations to implement the database.

The statute governing immediate intervention programs is amended to exclude any juvenile charged with a sex offense from a provision requiring the opportunity for participation in an immediate intervention program be offered to juveniles charged with a misdemeanor. The bill also specifies that participation in an immediate intervention program does not have to be offered to a juvenile who has participated in such a program for a previous misdemeanor or to a juvenile who was originally charged with a felony but had the charge amended to a misdemeanor as a result of a plea agreement. The bill clarifies that nothing in this statute requires a juvenile to participate in an immediate intervention program when the county or district attorney has declined to continue with prosecution of an alleged offense.

Sentencing and Placement

The bill amends the Juvenile Code statutes governing sentencing alternatives (version effective July 1, 2017) and the placement matrix (version effective July 1, 2017) to provide that, upon a finding by the trier of fact during adjudication that a firearm was used in the commission of a felony offense by the juvenile, the judge may commit the juvenile directly to the custody of the Secretary of Corrections for placement in a juvenile correctional facility (JCF) or a youth residential facility for a term of 6 to 18 months, regardless of the risk level of the juvenile. Additionally, the court may impose a period of conditional release of up to six months, subject to graduated responses. The Secretary of Corrections or designee is required to notify the court of the juvenile's anticipated release date 21 days prior to such date. (Under the sentencing alternatives and placement matrix enacted in 2016 SB 367, placement in a JCF could be made only when the judge finds and enters into the written record that the juvenile poses a significant risk of harm to another or damage to property and the juvenile has either been adjudicated for high-level felonies or has certain prior offenses and is assessed as high-risk on a risk and needs assessment.)

The bill amends the sentencing alternatives statute (version effective July 1, 2017) to remove a three-month limit on short-term alternative placement allowed when a juvenile is adjudicated of certain sex offenses and certain other conditions are met.

The bill amends the placement matrix statute (version effective July 1, 2017) to consolidate the categories of serious offender III and serious offender IV, which carry the same risk-level requirements and JCF commitment terms, into a single serious offender III category.

The bill amends the Juvenile Code statute governing jurisdiction to remove a provision requiring the Secretary for Children and Families to address issues of abuse and neglect by parents and to prepare parents for the child's return home in cases in which a sentencing court orders the continued placement of the juvenile as a child in need of care.

Timing of Overall Case, Probation, and Detention Length Limits

The bill establishes that the provisions of the Juvenile Code statute governing overall case, probation, and detention length limits (effective July 1, 2017) applies upon disposition or 15 days after adjudication, whichever is sooner.

Juvenile Justice Oversight Committee

The bill amends the statute establishing the Kansas Juvenile Justice Oversight Committee (Oversight Committee) to add 2 members to the Oversight Committee, bringing its total membership to 21. The members added are one youth member of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention appointed by the chair of that group and one director of a juvenile detention facility appointed by the Attorney General. The bill also provides two additional duties for the Oversight Committee: 1) study and create a plan to address the disparate treatment of and availability of resources for juveniles with mental health needs in the juvenile justice system; and 2) review portions of juvenile justice reform that require KDOC and OJA to cooperate and make recommendations when there is no consensus between the two agencies.

Required Findings Upon Removal

The bill creates new law requiring, when a juvenile is removed from the home for the first time pursuant to the Juvenile Code, the judge to consider and make, if appropriate, the following findings: the juvenile is likely to sustain harm if not immediately removed from the home, allowing the juvenile to remain in the home is contrary to the welfare of the juvenile, or immediate placement of the juvenile is in the juvenile's best interest. The bill also requires the judge to find reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or an emergency exists that threatens the safety of the juvenile.

Fund Provisions

The bill amends the statute creating the Kansas Juvenile Justice Improvement Fund to replace references to the Fund with references to the "Evidence-Based Program Account of the State General Fund." A provision requiring the Secretary of Corrections to determine and certify cost savings "annually, on or before June 30," is amended to require such determination and certification "at least annually, throughout the year." A provision requiring transfer of the certified amount by the Director of Accounts and Reports "annually, on July 1 or as soon thereafter as moneys are available," is amended to require such transfer "upon receipt of a certification pursuant to" the certification provision.

The statute authorizing percentage reductions by the Governor is amended to update a provision exempting the Fund from the statute's provisions to refer to the "Evidence-Based Programs Appropriation of the State General Fund" instead of the "Juvenile Justice Improvement Fund."

Immunity for Earned Discharge Calculations

The bill amends law related to earned discharge for juvenile probationers. Specifically, the bill states that the State of Kansas, the Secretary of Corrections, the Secretary's agents or employees, the OJA, and court services officers shall not be liable for damages caused by any negligence, wrongful act, or omission in making the earned discharge credit calculations.

Technical Amendments

The bill makes numerous technical amendments updating statutory references, ensuring consistent phrasing, and removing an effective date that is made redundant by the bill.

Probation Revocation; Disclosure of Probable Cause Affidavits; Sentencing—Capital Crimes; Mandatory Minimums; Intellectual Disability; Juvenile Adjudications—Decay; Grand Juries—Petitions; Appeal; HB 2092

HB 2092 amends law related to probation revocation, public disclosure of probable cause affidavits, mandatory minimum sentences, sentencing for capital crimes for intellectually disabled persons, decay of juvenile adjudications, and appeal of petitions for grand juries, as follows.

Probation Revocation

The bill allows a court to revoke probation, assignment to a community corrections program, suspension of a sentence, or nonprison sanction of an offender without having previously imposed an intermediate sanction if such probation, assignment, suspension, or sanction was originally granted as a result of a dispositional departure.

Disclosure of Probable Cause Affidavits

The bill amends law regarding the disclosure to the public of affidavits or sworn testimony underlying an arrest warrant to clarify the timing of notification to the defendant of a request for disclosure. Specifically, the bill prescribes that such notice shall be provided upon entry of appearance by an attorney on behalf of the defendant or upon indication by the defendant to the court that the defendant will represent the defendant's self. Previous law required notification of the defendant upon the filing of the request for disclosure.

Mandatory Minimum Sentences

The bill amends law concerning mandatory minimum terms of imprisonment (mandatory minimum sentences) for persons who receive life sentences. In the statutes imposing the mandatory minimum sentence, the bill specifies those provisions shall not apply if, based on the defendant's criminal history classification, the defendant would be subject to presumptive imprisonment and the sentencing range for a severity level 1 crime is greater than the mandatory minimum sentence. The bill clarifies further that, in such case, the defendant shall be required to serve a mandatory minimum sentence equal to the sentence established for a severity level 1 crime. Additionally, in such case, the bill states the defendant shall not be eligible for parole prior to serving such mandatory minimum sentence and prohibits such mandatory minimum sentence from being reduced by the application of good time credits. No other sentence shall be permitted.

Sentencing for Persons with Intellectual Disability

The bill amends the statute governing sentencing for a person with an intellectual disability who is convicted of the crime of capital murder or first degree premeditated murder. Specifically, the bill clarifies that the continuing prohibition in this statute against sentencing such person to a "mandatory term of imprisonment" means imposing a sentence under the "Hard 50" statute and the accompanying statutes setting forth the aggravating and mitigating factors used in imposing this sentence.

Juvenile Adjudication Decay

The bill amends statutes governing the determination of criminal history by adding that no juvenile adjudication for an offense that would be a non-drug severity level 5 through level 10 felony, drug felony, nongrid felony, or misdemeanor if committed by an adult will be considered and scored if the current crime was committed at least five years after the date of the prior adjudication and the offender has no new adjudications or convictions during that period.

Appeal of Grand Jury Petitions

The bill amends the law concerning grand juries summoned by petition. The bill provides that, if a grand jury is not summoned because of a finding the petition, which is substantially in the form required by law on its face, is not in proper form, the person who filed the petition and whose name, address, and phone number appear on the face of each petition shall have the right to appeal the decision to not summon a grand jury as a final judgment to the Kansas Court of Appeals. The bill also amends the statute governing sufficiency of petitions for elections to provide it does not apply to grand jury petitions.

Courts—Judicial Surcharge; Collection of Court Debts; Driver's License Reinstatement Fee and Distribution; HB 2041

HB 2041 amends law related to courts.

Judicial Surcharge; Collection of Court Debts

The bill extends the sunset provision for judicial surcharges on a number of docket fees until June 30, 2019.

The bill also makes technical corrections and reconciles amendments related to expungements made in the 2016 Session.

The bill amends law related to the collection of debts owed to courts. The bill requires the cost of collection of debts owed to courts or restitution be paid by the responsible party as an additional court cost in all cases where the party fails to pay any debts owed to courts or restitution and the court contracts with an agent to collect the debt or restitution.

Reinstatement Fees

The bill amends statutes regarding the reinstatement fee for failure to comply with a traffic citation and its distribution. Effective July 1, 2018, the bill increases the reinstatement fee for each charge from $59 to $100.

Effective July 1, 2018, the bill increases the percentage the Judicial Branch Nonjudicial Salary Adjustment Fund receives of these fees and lowers the percentage distributed to other funds while maintaining the amount distributed. Under previous law, the Nonjudicial Salary Adjustment Fund received 15.30 percent of the fee amount, the Division of Vehicles received 42.40 percent, the Community Alcohol Fund received 31.80 percent, and the Juvenile Alternatives to Detention Fund received 10.59 percent. Under the bill, the Nonjudicial Salary Adjustment Fund receives the first $15 of such reinstatement fees. Of the remaining amount, the Nonjudicial Salary Adjustment Fund receives 41.17 percent, the Division of Vehicles Operating Fund receives 29.41 percent, the Community Alcoholism and Intoxication Programs Fund receives 22.06 percent, and the Juvenile Alternatives to Detention Fund receives 7.36 percent.

The bill also amends the statute establishing the Nonjudicial Salary Adjustment Fund to remove restrictions related to the Judicial Branch pay plan for nonjudicial personnel approved by the Chief Justice for FY 2015.

Domestic Battery; Drug Paraphernalia; Burglary; Cruelty to Animals; Dog Fighting; Law Enforcement Protection Act; Expungement; Illegal Sentences; Postrelease Supervision for Persons Convicted of Sexually Violent Crimes; Custodial Interrogations; SB 112

SB 112 amends law regarding crimes and criminal procedure. Specifically, it creates the crime of aggravated domestic battery and amends the crimes of domestic battery, possession of drug paraphernalia, burglary, cruelty to animals, and dog fighting. Further, it amends provisions concerning illegal sentences, postrelease supervision for persons convicted of sexually violent crimes, and expungement of arrest records. It also enacts the Law Enforcement Protection Act and provisions concerning the electronic recording of certain custodial interrogations.

Domestic Battery

Effective July 1, 2017, the bill creates the crime of aggravated domestic battery, a severity level 7 person felony, which is defined as:

- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner; or

- Knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner.

The bill also amends the existing crime of domestic battery by adding "a person with whom the offender is involved or has been involved in a dating relationship" as a possible victim of the offense. The bill adds a definition of "dating relationship" to this section based on a definition used in the Criminal Code and the Protection from Abuse Act.

The bill amends provisions related to sentencing for domestic battery, as follows. In determining the sentence to be imposed within the limits provided for a first, second, or subsequent offense, the bill requires a court to consider information presented to the court regarding a current or prior protective order issued against the offender. The bill defines "protective order" for these purposes. The bill also removes language allowing the Kansas Department of Corrections to order that certain offenders not be required to undergo domestic violence offender assessments.

Sentencing for Possession of Drug Paraphernalia

Effective July 1, 2017, the bill reduces the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

Sentencing for Burglary

The bill changes burglary of a dwelling with intent to commit a felony, theft, or sexually motivated crime therein to a severity level 7 person felony from a severity level 7 nonperson felony.

Cruelty to Animals

Effective July 1, 2017, the bill amends the humane killing exclusion from the crime of cruelty to animals to remove references to "pound," "incorporated humane society," and "the operator of" an animal shelter. In provisions allowing an animal to be taken into custody and cared for or treated, the bill either removes references to "incorporated humane society" or replaces such references with "animal shelter." A requirement for notice to an owner or custodian is expanded from cases in which the animal is placed in the care of an animal shelter to all cases, and written notification is required.

The requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal is replaced with a provision allowing the law enforcement agency, district attorney's office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill removes a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision prohibiting an animal from being returned to or allowed to remain with a person adjudicated guilty of this crime is amended to remove a requirement that the court first be satisfied an animal owned or possessed by the person will be subjected to such crime in the future. A reference to "duly incorporated humane society" in this provision is replaced with "animal shelter." "Animal shelter" is defined to mean the same as in the Kansas Pet Animal Act.

Dog Fighting

Effective July 1, 2017, the bill amends a provision regarding the placement of a dog taken into custody to replace a reference to "duly incorporated humane society" with "animal shelter." "Animal shelter" is defined to mean the same as in the Kansas Pet Animal Act.

The requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal is replaced with a provision allowing the law enforcement agency, district attorney's office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill removes a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision requiring costs be paid by the county where the dog was taken into custody if no conviction results adds law enforcement agencies and veterinarians to the list of entities entitled to payment for expenses incurred for the care, treatment, and boarding of a dog.

Expungement of Arrest Records

Effective July 1, 2017, if a person has been arrested as a result of mistaken identity or as a result of another person using identifying information of the named person and the charge against the named person is dismissed or not prosecuted, the bill requires the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute to provide notice to the court of such action and petition the district court for the expungement of such arrest record. Further, the bill requires the court to order the arrest record and any subsequent court proceedings expunged and purged from all applicable state and federal systems.

The bill defines "mistaken identity" as the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of a person who committed the crime, misinformation provided to law enforcement as to the identity of a person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. The bill excludes from the definition of "mistaken identity" any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity.

The bill allows any person who may have relevant information about the petitioner to testify at the hearing on such petition and allows the court to inquire into the background of the petitioner. Such a petition must include the same information required in other petitions for expungement of arrest records.

When a court orders expungement of arrest records as described above, the bill requires the order to state the information required in the petition and the grounds for expungement. Additionally, the bill requires the order to direct the Kansas Bureau of Investigation (KBI) to purge the arrest information from the Criminal Justice Information System central repository and all applicable state and federal databases. The clerk of the court must send a certified copy of the order to the KBI, which will carry out the order and notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the bill provides the person eligible for mandatory expungement as described above is treated as not having been arrested.

Illegal Sentences

The right to a hearing regarding an illegal sentence is made inapplicable if the motion, files, and records of the case conclusively show the defendant is entitled to no relief. The bill also defines "illegal sentence" and specifies a sentence does not fall within that definition due to a change in the law occurring after the sentence is pronounced.

Postrelease Supervision for Persons Convicted of Sexually Violent Crimes

The bill clarifies that lifetime postrelease supervision is to be imposed on any offender sentenced to imprisonment for a sexually violent crime committed on or after July 1, 2006, if the offender was 18 years of age or older when the crime was committed. It further establishes a mandatory period of 60 months postrelease supervision, plus good time and program credit earned and retained, for any offender sentenced to imprisonment for a sexually violent crime committed on or after the bill's effective date if the offender was under 18 years of age when the crime was committed. Prior statute provided for lifetime postrelease supervision for any person convicted of a sexually violent crime committed on or after July 1, 2006, regardless of age.

The bill also clarifies that a separate provision regarding postrelease supervision for persons sentenced to a term of imprisonment for sexually violent crimes applies only to such crimes committed on or after July 1, 1993, but prior to July 1, 2006.

Law Enforcement Protection Act

Effective July 1, 2017, the bill enacts the Law Enforcement Protection Act, which enhances the sentencing of felony crimes committed against law enforcement officers in the performance of their duties, or due to their status as law enforcement officers. The bill creates a special sentencing rule with enhanced penalties if a trier of fact finds beyond a reasonable doubt that an offender committed a nondrug felony offense (or the offender committed an attempt or conspiracy to commit such offense) against a law enforcement officer while the officer was performing the officer's duty or solely due to the officer's status as a law enforcement officer. The special sentencing rule is applied as follows:

- For felonies levels 2 through 10, sentencing is enhanced by 1 level;

- For level 1 felonies:

    - The minimum sentence is life in prison;
    - The offender is not eligible for a sentence modification or probation;
    - The offender cannot be released on parole before serving 25 years of the sentence;
    - The offender is not eligible for good time credit; and
    - No other sentence is permitted.

If an offender is subject to a minimum presumptive sentence due to criminal history, the minimum sentence of 25 years does not apply. Instead, the longer minimum sentence applies. The sentence imposed is not considered a departure from the sentencing grid and cannot be appealed. Further, the enhancements do not apply to crimes where the factual aspect concerning a law enforcement officer is a statutory element of the offense.

Finally, the bill defines "law enforcement officer" by reference to two of the three categories included in the definition provided for the term in the criminal code definitions section. This definition includes any person who by virtue of such person's office or public employment is

vested by law with the duty to maintain public order or to make arrests for crimes, and any university or campus police officer.

Policies for the Electronic Recording of Custodial Interrogations

Effective July 1, 2017, Kansas law enforcement agencies must adopt a detailed, written policy concerning the electronic recording of custodial interrogations conducted at a place of detention and to implement such policy on or before July 1, 2018. In developing such policy, local law enforcement agencies must collaborate with the county or district attorney in the appropriate jurisdiction regarding its contents. The policy must require electronic recording of the entirety of a custodial interrogation that concerns a homicide or felony sex offense, as well as the making and signing of a statement during the course of such interrogation. The policy also must include retention and storage requirements and a statement of exceptions in some circumstances, such as equipment malfunction or inadvertent failure to operate the recording equipment properly. The bill requires the policy to be available to all officers and for public inspection during normal business hours. During trial, the bill allows for officers to be questioned pursuant to the rules of evidence regarding any violation of such a policy. Every electronic recording of any statement is confidential and exempt from the Kansas Open Records Act.

Effective Date

Except as noted above, the bill takes effect upon publication in the *Kansas Register*.

EDUCATION

K-12 School Finance; The Kansas School Equity and Enhancement Act; SB 19

SB 19 makes appropriations for the Kansas Department of Education (KSDE) for FY 2018 and FY 2019; enacts the Kansas School Equity and Enhancement Act; adds a section requiring KSDE to produce a report concerning school district revenues, expenditures, and demographics; and amends the Tax Credit for Low Income Students Scholarship Program, the Virtual School Act, and statutes related to Capital Improvement State Aid and capital outlay.

Kansas School Equity and Enhancement Act

The Kansas School Equity and Enhancement Act (Act) provides for State Foundation Aid (SFA) to be provided to school districts. SFA is calculated by multiplying the base aid for student excellence (BASE) by the adjusted enrollment of the district and deducting the local foundation aid of the district. The adjusted enrollment of the district is calculated by adding the weighted enrollments for at-risk students, declining enrollment, high-density at-risk students, bilingual, low enrollment, high enrollment, new school facilities, ancillary school facilities, cost of living, special education and related services, career technical education, and transportation to the enrollment of the district. The BASE is $4,006 for school year 2017-2018, $4,128 for school year 2018-2019, and adjusted each year thereafter according to the average percentage increase in the Consumer Price Index (CPI) for all urban consumers for the Midwest region during the three immediately preceding school years.

The Act also allows districts to adopt a local option budget (LOB) by resolution of the school board. The LOB is capped at 33.0 percent of the product of the BASE and the adjusted enrollment of the district. In any year in which the BASE is less than $4,490, the LOB is capped at 33.0 percent of the product of $4,490 and the adjusted enrollment of the district. Beginning in school year 2019-2020, the BASE allowed to be used to calculate LOB authority will increase based on a three-year CPI average. Any district adopting an LOB in excess of 30.0 percent will be subject to protest petition.

Finally, the Act defines key terms, charges the State Board of Education (KSBE) with developing and implementing a school accreditation system and with conducting a cost study of career and technical education programs, gives the KSBE authority to adopt rules and regulations to administer the Act, and provides for several performance audits by the Legislative Division of Post Audit (LPA). The provisions of the Act are not severable and are scheduled to expire July 1, 2027.

Enrollment

The enrollment of a district is the number of students regularly enrolled at the district on September 20 of the preceding school year. If the enrollment of the district the preceding school year decreased from enrollment in the prior year, the enrollment will be the enrollment of the district from the second preceding school year. Districts that have military students and receive federal impact aid can use the average enrollment of the three preceding school years.

Students who are not Kansas residents will be counted as 1.0 full-time equivalent (FTE) in school years 2017-2018 and 2018-2019, as 0.75 FTE in school years 2019-2020 and 2020-2021, and as 0.5 FTE in subsequent years. Out-of-state students whose parents or legal

guardians are employed by the district or who were enrolled in the district during the preceding school year will continue to be counted as 1.0 FTE.

Students enrolled in kindergarten full time will be counted as 1.0 FTE. Formerly, kindergarten students were counted as 0.5 FTE. Students enrolled in kindergarten in a district in the preceding school year will be counted as 1.0 FTE, regardless of actual attendance during the preceding year.

At-Risk Student Weighting

The at-risk weighted enrollment of a district is determined by multiplying the number of students eligible for free meals under the National School Lunch Act by 0.484. Any district maintaining kindergarten through 12th grade can substitute 10.0 percent of the district's enrollment multiplied by 0.484 for the purposes of this weighting. Beginning with school year 2018-2019, districts must use those funds for at-risk education programs and services contracted for to provide such programs based on programs identified and approved by KSBE as evidence-based best practices.

Bilingual Weighting

The bilingual weighted enrollment of a district is the greater of the FTE enrollment based on hours of contact in bilingual education programs multiplied by 0.395 or the number of students enrolled in bilingual programs multiplied by 0.185.

Low Enrollment Weighting

Low enrollment weighting is available to districts with fewer than 1,622 students enrolled. The weighting is calculated on a linear transition: districts with 100 or fewer students receive a weighting of approximately 101.4 percent of the enrollment of the district, and that amount transitions to approximately 3.5 percent of the enrollment of the district as the enrollment approaches 1,622 students.

High Enrollment Weighting

High enrollment weighting of approximately 3.5 percent is available to districts with more than 1,622 students.

High-Density At-Risk Weighting

If a school or school district's enrollment is at least 50.0 percent at-risk students, the school or school district receives a high-density at-risk weighting equal to 10.5 percent of the at-risk students of the district. If a school or school district's enrollment is between 35.0 percent at-risk students and 50.0 percent at-risk students, the school or school district receives a high-density at-risk weighting on a linear transition downwards from 10.5 percent of the at-risk students of the district. The high-density at-risk weighting is scheduled to expire July 1, 2019.

Beginning with school year 2018-2019, districts must use those funds on at-risk programs and instruction of students receiving at-risk program services identified and approved

by the KSBE as evidence-based best practices. The KSBE will notify districts that do not spend the money on such best practices they must either spend such money on best practices or show improvement within three years of notification. Among other factors, improvement can be shown by the percentage of students at grade level or college and career ready on state math and English language arts assessments, average composite ACT scores, or the four-year graduation rate. Districts that do not spend money on best practices and fail to show improvement within five years will not qualify to receive the weighting in the succeeding school year.

Transportation Weighting

The transportation weighting of a district is determined by multiplying the district's per-student transportation cost by the number of students who reside at least 2.5 miles from the school building they attend and are provided transportation to the school building by the district. The district's per-student transportation cost is determined using the curve of best fit of a density-cost graph of the index of density of all districts in the state. A four-year grandfather clause applies to districts that receive less funding pursuant to the transportation weighting than they did during the 2016-2017 school year.

Career Technical Education Weighting

The career technical education weighting of a district is determined by multiplying the FTE enrollment in approved career technical education programs by 50.0 percent. This weighting is scheduled to sunset July 1, 2019. The bill directs KSDE to study the costs of career technical education programs and report its findings on or before January 15, 2018.

New School Facilities Weighting

The new school facilities weighting of a district is determined by multiplying the number of students enrolled in a new school facility by 25.0 percent. A new school facility is a school facility in its first two years of operation that was financed primarily with bonds approved at an election held on or before July 1, 2015.

Cost-of-Living Weighting

The bill allows districts in which the average appraised value of a single-family residence is more than 25.0 percent higher than the statewide average value to apply for additional funding from the KSBE in an amount not to exceed 0.05 percent of the district's foundation aid. The district must have an LOB of 31.0 percent, and the school board must pass and publish a resolution authorizing the levy. The entirety of this weighting is financed by local property taxes.

Ancillary School Facilities Weighting

A district can apply to the State Board of Tax Appeals (BOTA) for authority to levy local property taxes for the purpose of financing costs attributable to commencing the operation of a new school facility that is in excess of the amount financed by any other source. The amount to be levied for this weighting is reduced over a period not to exceed six years. The entirety of this weighting is financed by local property taxes.

Declining Enrollment Weighting

The declining enrollment weighting is available to districts that have lost revenues due to the declining enrollment of the district. The district must apply to the BOTA for authority to receive this weighting, and the weighting is capped at 5.0 percent of the general fund budget of the district. In school year 2017-2018, a district can receive declining enrollment weighting equal to half the amount the district generated pursuant to the weighting in school year 2007-2008. The entirety of this weighting is financed by local property taxes. The declining enrollment weighting is scheduled to expire July 1, 2018.

Special Education and Related Services Weighting

The special education and related services weighting is calculated by dividing the total state aid payments made to a district for special education and related services by the BASE.

Legislative Studies

The bill requires the House and Senate Committees on Education to review the high and low enrollment weightings and alternatives to such weightings, including a sparsity weighting by July 1, 2018; virtual schools by July 1, 2020; the at-risk weighting and the BASE by July 1, 2021; the successful schools model by July 1, 2023, and by July 1, 2026; and the bilingual weighting by July 1, 2024.

Local Foundation Aid

Local Foundation Aid includes the unencumbered balance of a district's general fund; certain grants received by a district; special education and related services aid; any tuition for non-resident pupils of a district; and 70.0 percent of the federal impact aid a district received. These categories were commonly referred to as "local effort" under prior law.

Reauthorization of the 20-Mill Levy

The bill reauthorizes the statewide 20-mill school finance levy for school years 2017-2018 and 2018-2019. The first $20,000 of assessed valuation of residential properties will continue to be exempt from this levy.

Supplemental General State Aid

Supplemental General State Aid is paid to any district that has adopted a LOB. The amount of aid a district is eligible to receive is determined by multiplying the district's local foundation budget by an equalization factor that equalizes all districts below the 81.2 percentile of assessed valuation per pupil (AVPP) up to that percentile. For school year 2017-2018, the AVPP used is that of the immediately preceding school year. For school year 2018-2019, the AVPP used is an average of the AVPPs of the three immediately preceding school years.

Accreditation

The Act requires KSBE to design and adopt a district accreditation system based on improvement in performance that equals or exceeds the educational goals known as the "*Rose* capacities," which are codified at KSA 2016 Supp. 72-1127, and is measurable. The Act also requires KSBE to report to the Governor and Legislature on or before January 15 of each year regarding the district accreditation system.

KSDE District Report

The Act requires KSDE to develop an annual report for each district reflecting the total amount of revenues received from federal, state, and local sources each year, with certain categories of revenue being specifically identified. The report also includes total expenditures for certain programs and services and certain demographic information.

LPA Performance Audits

The Act requires LPA to perform several performance audits in the future. Topics of required audits include virtual school programs; the cost of providing educational opportunities to every public school student in Kansas to achieve the performance outcome standards adopted by KSBE; at-risk education, bilingual education, and transportation funding; and the best practices of successful schools. The House and Senate Committees on Education will review these reports.

School District Extraordinary Declining Enrollment Fund

The bill allows school districts to apply to KSBE for Extraordinary Declining Enrollment State Aid. KSBE will review all submitted applications and approve or deny any such application based on whether the applicant school district has demonstrated extraordinary declining enrollment since school year 2014-2015. In reviewing the application, KSBE can conduct a hearing and provide the applicant school district an opportunity to present testimony as to such school district's extraordinary declining enrollment. If approved, KSBE will determine the amount of aid to be disbursed, which could be less than the amount requested in the application. If denied, within 15 days of such denial, KSBE must send written notice of such denial to the superintendent of such school district. The bill also establishes the School District Extraordinary Declining Enrollment Fund.

Virtual School State Aid

Virtual School State Aid is paid to districts operating virtual schools. $5,000 per student is paid for students under age 19 enrolled in a virtual school on a full-time basis. $1,700 is paid for each FTE student enrolled in a virtual school on a part-time basis. For students 19 years of age and older, aid is paid at a rate of $709 per credit hour earned, not to exceed six credit hours earned by any one student in any one school year.

Tax Credit for Low Income Students Scholarship (TCLISS) Program Act

On and after July 1, 2018, the bill amends the definition of "public school" within the TCLISS Program Act to mean a school identified by KSBE as one of the lowest 100 performing schools with respect to student achievement. It also amends the definition of "qualified school" to require accreditation on and after July 1, 2020. Accreditation must be by KSBE or a KSBE-recognized national or regional accrediting agency. Additionally, the bill expands eligibility for the tax credit to individuals and places an annual cap of $500,000 on contributions.

Capital Outlay Changes

The bill allows capital outlay funds to be used for utility expenses and property and casualty insurance. Additionally, the bill allows capital outlay funds to be used for construction, reconstruction, repair, remodeling, additions to, furnishing, maintaining, and equipping computer software, performance uniforms, building sites, school buses, and other fixed assets. The law already allowed for acquisition of these items using capital outlay funds.

Beginning in school year 2017-2018, any new property tax exemptions granted by BOTA for property financed by industrial revenue bonds or for economic development purposes pursuant to Article 11, Section 13 of the *Kansas Constitution*, for which the public hearing was not held prior to May 1, 2017, will no longer apply to the capital outlay mill levy. Previously exempted property will continue to be eligible for exemption from the levy.

Beginning July 1, 2017, districts will receive the revenue generated by the capital outlay mill levy on the incremental valuation growth in newly created Neighborhood Revitalization Areas.

Capital Improvement Changes

For all bond issuances approved at an election on or after July 1, 2017, any district with an enrollment of less than 260 students must receive approval from KSBE prior to holding an election to approve the issuance of bonds to be eligible for Capital Improvement State Aid.

In determining the amount of payments a district is obligated to make for bond issuances approved at an election on or after July 1, 2017, KSBE will exclude payments for any capital improvement project, or portion thereof, that proposes to construct, reconstruct, or remodel a facility used primarily for extracurricular activities, unless a State Fire Marshal report, inspection under the Americans with Disabilities Act, or other similar evaluation demonstrates the project is necessary due to concerns relating to safety or disability access.

Additionally, beginning July 1, 2017, in each fiscal year, KSBE can approve for election bond issuances exceeding 14.0 percent of the district's assessed valuation for the election only to the extent of the aggregate amount of bonds retired by districts in the state in the preceding year. A district that has not passed a bond election in the past 25 years is not subject to this limitation.

Appropriations

The bill provides $1.991 billion in general state aid from the State General Fund (SGF) for FY 2018 and $2.047 billion in general state aid from the SGF for FY 2019. For FY 2018, $480.9 million of supplemental general state aid is appropriated from the SGF, and for FY 2019, $486.1 million of supplemental general state aid is appropriated from the SGF. Appropriations are also made for KSDE operations, special education state aid, and KPERS employer contributions for districts from the SGF for both fiscal years.

Public Safety—Kansas Amusement Ride Act; House Sub. for SB 86

House Sub. for SB 86 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. All sections containing criminal penalties will be effective January 1, 2018. All other sections will be effective July 1, 2018.

[*Note:* House Sub. for SB 86 repeals the provisions of House Sub. for SB 70, which was signed into law April 24, 2017, and replaces them as described below.]

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:

- Name of the owner and operator;
- Location of the amusement ride or the location where such ride is stored if not in use;
- Valid certificate of inspection;
- Proof of insurance; and
- Certification the ride meets the applicable 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 ride, $30; and
- Ride 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 the ride's 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 replaces injury reporting requirements in current law with a new section, requiring 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:

- 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 injury caused by either operator or patron error. If a serious injury occurred, 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 received 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

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

The bill changes the required coverage, from at least $1 million to not less than $1 million per occurrence and annual aggregate coverage of $2 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 Committee F24 standards, specifically including boat rides, water slides, inflatable devices, commercial zip lines, 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 (changed from owned by a not-for-profit entity) and operated solely within a single county for strictly private use. The bill removes language related to liability insurance policies covering home-owned amusement rides.

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 continuing law.

The definition for “serious injury” is amended to include other injury or illness that requires immediate medical treatment.

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 of "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; or
- Have received qualified training from a third party, such as:
    - Level II certification from the National Association of Amusement Ride Safety Officials (NAARSO);
    - Level II certification from the Amusement Industry Manufacturers and Suppliers International;
    - 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

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

Annual Inspections

The bill requires each amusement ride to be inspected by a qualified inspector at least 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

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 compliance audits of rides at both temporary and permanent locations. A warning citation will be issued for an owner or operator for a first violation.

The bill directs the Secretary to develop an inspection checklist, to 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 including safety training records, inspection records, maintenance records, and ride operator training activities. Such records must 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 may request, in writing, an informal conference with the Department. If no request for an informal conference is made, the provisions of the notice will 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 Amusement Ride Safety Fund.

All sections containing criminal penalties will be effective January 1, 2018. No criminal prosecution for violations of the Act may be brought prior to that date. Additionally, the Secretary is prohibited from enforcing the Act prior to the date of publication of the rules and regulations required under the Act. The bill requires such rules and regulations be adopted by January 1, 2018. The Secretary will be required to provide the owner or operator of an amusement ride a reasonable period of time to comply with the provisions of the Act.

Rule and Regulation Authority and ASTM Standards

The bill requires the Secretary to adopt rules and regulations on or before January 1, 2018, to implement amendments made to the Kansas Amusement Ride Act and the Amusement Ride Insurance Act. The bill requires those rules and regulations specify nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides, and that require education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017.

The bill specifies 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.

Port Authorities; Senate Sub. for HB 2132

Senate Sub. for HB 2132 allows port authorities to sell real or personal property in a negotiated sale at less than its appraised value. In order to make such a sale, the port authority is required to declare the sale would be in the public interest due to the return of new jobs, capital investment, or increased tax revenue. Current law prohibits port authorities from selling property below its appraised value.

Limited Line of Insurance for Self-Service Storage Units; Fingerprinting of Resident Insurance Agent Applicants; SB 14

SB 14 amends the Insurance Code to create a limited line of insurance for self-service storage unit insurance; enacts new law pertaining to this limited line; and amends a provision in the Uniform Insurance Agents Licensing Act concerning application requirements for resident agent licensure to authorize the fingerprinting of resident insurance agent applicants for the purposes of obtaining a state and national criminal history record check. Descriptions of specific bill provisions follow.

Limited Line of Insurance for Self-Storage Units [New Section 1]

Definitions

The bill establishes definitions for the following terms:

- "Licensee"—a person authorized to sell limited line insurance relating to the rental of self-service storage units pursuant to KSA 2016 Supp. 40-4903, and amendments thereto;
- "Rental agreement"—any written agreement setting forth the terms and conditions governing the use of a storage unit provided by the owner of a self-service storage facility company;
- "Renter" or "occupant"—any person obtaining the use of a storage unit from a self-service storage company under the terms of a rental agreement;
- "Self-service storage company"—any person in the business of renting storage units to the public; and
- "Storage unit"—a semi-enclosed or fully enclosed area, room, or space, primarily intended for the storage of personal property, which shall be accessible by the renter of the unit pursuant to the terms of the rental agreement.

Sale of Self-Service Storage Unit Insurance

Criteria required. The bill requires insurance relating to the rental of self-service storage units to be sold only by a licensee and prohibits the sale of such insurance to any person in this state unless all of the following apply:

- The rental period of the rental agreement does not exceed two years;
- At every self-service storage location where self-service storage insurance agreements are executed, brochures or other written materials are readily available to the prospective renter that:

  - Summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer, offered to renters;
  - Disclose this insurance may provide duplication of coverage already provided by a renter's or homeowner's insurance policy or other source of coverage;
  - State the purchase by the renter of the limited lines insurance is not required to rent a storage unit;
  - Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and
  - Contain any additional information on the price, benefits, exclusions, conditions, or other limitations of such policies as the Commissioner of Insurance (Commissioner) may prescribe by rules and regulations;

- A sign is posted, approved by the Commissioner, at every self-service storage location where such insurance agreements are executed, with language the same or substantially similar to the following: "State law requires the operator of this facility to inform you that insurance sold by this self-storage company may provide duplication of coverage already provided by a renter's or homeowner's policy or other source of coverage. You are encouraged to contact your primary insurance carrier if you have questions about your existing coverage"; and

- Evidence of coverage is provided to every renter who elects to purchase such insurance.

Renter's notification. The bill prohibits a renter or occupant from being required to obtain self-service storage unit insurance as a condition of obtaining a rental agreement for a storage unit. The bill requires the renter to be informed that the insurance offered is not required as a condition of obtaining a rental agreement for a storage unit.

Rules and regulations. The bill requires the Commissioner to adopt rules and regulations as necessary to carry out these new provisions relating to self-service storage unit insurance by January 1, 2018.

Insurance Code Amendments—Limited Line Established [Section 2]

On and after January 1, 2018, the bill amends the law establishing qualifications for licensure in one or more lines of authority. Under current law, agents may receive qualifications for a license in one or more of the following lines of authority: life, accident and health or sickness, property, casualty, variable life and variable annuity products, personal lines, credit, crop insurance, title insurance, travel insurance, pre-need funeral insurance, and bail bond insurance. The bill adds to this list of qualifications by inserting self-service storage unit insurance. This insurance will be defined as:

- A limited line insurance relating to the rental of self-service storage units, including:

- Personal effects insurance that provides coverage to renters of storage units at the same facility for the loss of, or damage to, personal effects that occurs at the same facility during the rental period; and
- Any other coverage the Commissioner may approve as meaningful and appropriate in connection with the rental of storage units.

The bill further provides such insurance may be issued only in accordance with the criteria established by the bill.

Fingerprinting Requirements for Resident Agent Licensure [Section 3]

The bill amends a provision in the Uniform Insurance Agents Licensing Act concerning application requirements for resident agent licensure to authorize the fingerprinting of resident insurance agent applicants for the purposes of obtaining a state and national criminal history record check.

Under the bill, the Commissioner is permitted to:

- Require an applicant be fingerprinted and submit to a state and national criminal history record check. The fingerprints will be used to identify the applicant and to determine whether the applicant has a record of criminal arrests and convictions in Kansas or in other jurisdictions:
  - The Commissioner is authorized to submit the applicant's fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for the respective criminal history record checks. As part of this procedure, local and state law enforcement officers and agencies are required to assist the Commissioner in taking and processing an applicant's fingerprints and release all records of an applicant's arrests and convictions to the Commissioner; and
  - The Commissioner is authorized to conduct, or have a third party conduct, a background check on the applicant.

The bill further provides that whenever the Commissioner requires fingerprinting, a background check, or both, any of the associated costs for this process must be paid by the applicant. The bill also states the Commissioner is permitted to use only the information obtained from a background check, fingerprinting, and the applicant's criminal history for the purposes of verifying the identification of any applicant and in the official determination of the fitness of the applicant to be issued a license as an insurance agent.

Finally, the bill specifies that a person applying for a license who was fingerprinted and submitted to a state and national criminal history record check within the past 12 months in connection with the successful issuance or renewal of any other State-issued license is permitted to submit proof of good standing to the Commissioner instead of submitting to the new fingerprinting and criminal history record check requirements provided in the bill.

Under continuing law, the Commissioner is permitted to determine if an applicant has committed delinquent acts. Additionally, the law allows any applicant whose application is

denied the opportunity for a hearing in accordance with the provisions of the Kansas Administrative Procedure Act.

Internationally Active Insurance Groups; Corporate Governance; Service Contracts; Insurance Holding Company Act; Reinsurance; SB 16

SB 16 enacts new law pertaining to internationally active insurance groups and the corporate governance practices of all domestic insurers; amends a provision in the Insurance Code that exempts the marketing and sale of service contracts from regulation by the Kansas Insurance Department (Department); makes provisions pertaining to internationally active insurance groups part of and supplemental to the Insurance Holding Company Act; and replaces law relating to the regulation of reinsurance with model language from the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Code. Descriptions of specific bill provisions follow.

Group-wide Supervisor for Internationally Active Insurance Groups [New Section 1]

The bill adds law based on provisions of the NAIC Insurance Holding Company System Regulatory Act pertaining to internationally active insurance groups.

Acknowledgment of a Supervisor

The bill authorizes the Kansas Insurance Commissioner (Commissioner) to act as the group-wide supervisor (supervisor) for any internationally active insurance group. However, the bill authorizes the Commissioner to acknowledge another regulatory official as the supervisor, if the internationally active insurance group:

- Does not have substantial insurance operations in the United States;
- Has substantial insurance operations in the United States, but not in Kansas; or
- Has substantial operations in the United States and Kansas, but the Commissioner determined another regulatory official would be appropriate to serve as the supervisor.

The bill specifies an insurance holding company system (system) not otherwise qualifying as an internationally active insurance group could request the Commissioner to make a determination or acknowledgment of a supervisor.

The bill requires the Commissioner, in cooperation with other state, federal, and international regulatory agencies, to identify a single supervisor for an internationally active insurance group. The bill authorizes the Commissioner to acknowledge a regulatory official from another jurisdiction as the appropriate supervisor, in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members in the internationally active insurance group and in consultation with the internationally active insurance group, as long as the following factors relating to the internationally active insurance group are considered:

- The place of domicile of the insurers holding the largest share of the written premiums, assets, or liabilities;

- The place of domicile of the top-tiered insurers in the system;

- The location of the executive offices or largest operational offices;

- Whether another regulatory official is acting or seeking to act as the supervisor under a system the Commissioner determines to be:

    - Substantially similar to a system of regulation in Kansas; or

    - Otherwise sufficient for providing supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

- Whether another regulatory official acting or seeking to act as the supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

The Commissioner is required to acknowledge a regulatory official acting as the supervisor for an internationally active insurance group. However, the Commissioner is required to make a determination or acknowledgment as to the appropriate supervisor if a material change results in the internationally active insurance group's insurers domiciled in Kansas holding the largest share of the premiums, assets, or liabilities, or if Kansas becomes the place of domicile of the top-tiered insurers in the system of the internationally active insurance group.

Collection of Information

The bill authorizes the Commissioner to collect any information necessary from any insurer of a system registered with the Department to determine whether the Commissioner may act as the supervisor for an internationally active insurance group or acknowledge another regulatory official as the supervisor. The bill requires the Commissioner, prior to issuing a determination that the internationally active insurance group is subject to supervision, to notify the insurer registered with the Department and the ultimate controlling person within the internationally active insurance group.

The internationally active insurance group has at least 30 days to provide the Commissioner with additional information necessary for the determination. The bill requires the Commissioner to publish a list, on the Department's website, of all internationally active insurance groups that are subject to group-wide supervision by the Commissioner.

Supervision of the Internationally Active Insurance Group

The bill authorizes the Commissioner, acting as the supervisor for an internationally active insurance group, to engage in the following supervision activities:

- Assess the enterprise risks within the internationally active insurance group to ensure the material financial condition and liquidity risks to the members are identified and reasonable and effective mitigation measures are in place;

- Request, from any member of the internationally active insurance group subject to the Commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members regarding governance, risk assessment, risk management, capital adequacy, and material intercompany transactions;

- Coordinate, with the authority of the regulatory officials of the jurisdictions where members are domiciled, compelling development and implementation of reasonable measures designed to ensure the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members engaged in insurance;

- Communicate with other state, federal, and international regulatory agencies for members and share relevant information;

- Enter into agreements with and obtain documents from any registered insurer, member, and any other state, federal, and international regulatory agencies pertaining to the Commissioner's status as supervisor; and

- Participate in other supervision activities considered necessary by the Commissioner.

Recognition and Cooperation

The bill authorizes the Commissioner to reasonably cooperate with supervision undertaken by a supervisor from a jurisdiction not accredited by the NAIC, as long as the Commissioner's cooperation is in compliance with Kansas law and the supervisor also recognizes and cooperates with the Commissioner's activities as a supervisor for other internationally active insurance groups. The Commissioner is authorized to refuse recognition and cooperation if recognition and cooperation is not reasonably reciprocal.

Agreements and Documentation

Additionally, the bill authorizes the Commissioner to enter into agreements and obtain documentation from registered insurers, affiliates of the insurer, and state, federal, and international regulatory agencies for members of the internationally active insurance group that provide the basis for or clarify a regulatory official's role as supervisor.

Rules and Regulations Authority for Supervisor of Internationally Active Insurance Groups

The bill authorizes the Commissioner to promulgate rules and regulations, adopted no later than July 1, 2018, necessary for the administration of this section of the bill.

Liability for Expenses

Under the bill, a registered insurer subject to these provisions is liable for and required to pay the Commissioner's reasonable expenses for participation in the administration of this section, including the engagement of attorneys, actuaries, any other professionals, and all reasonable travel expenses.

Insurance Holding Company Act

The provisions relating to internationally active insurance groups is made part of and supplemental to the Insurance Holding Company Act. [*Note*: Under this act, the Commissioner is granted the power to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations. A supervisory college could be convened as either a temporary or permanent forum for communication and cooperation among various state, federal, and international regulatory officials charged with the supervision of the insurer or its affiliates.]

Corporate Governance Annual Disclosure [New Section 2]

The bill also adds law based on provisions of the NAIC Corporate Governance Annual Disclosure (CGAD) Model Act. This section of the bill applies to all insurers domiciled in Kansas and is effective on and after January 1, 2018.

Definitions

The bill establishes definitions for the following terms:

- "Corporate governance annual disclosure" or "CGAD"—a confidential report filed by the insurer or insurance group made in accordance with the requirements of this section;

- "Insurance group"—those insurers and affiliates included within a system;

- "Insurer"—the meaning set forth in the Kansas Insurance Holding Company Act [in KSA 2016 Supp. 40-3302] (corporation, company, association, society, fraternal benefit society, health maintenance organization, nonprofit medical and hospital service corporation, nonprofit dental service corporation, reciprocal exchange, person, or partnership writing contracts of insurance, indemnity or suretyship in this state upon any type of risk or loss, except lodges, societies, persons, or associations transacting business), except it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, Puerto Rico, the District of Columbia, or a state or political subdivision of a state; and

- "ORSA summary report"—report filed in accordance with risk management and the Own Risk and Solvency Assessment Act.

The bill also establishes definitions for "Commissioner" and "NAIC."

CGAD Requirements

The bill requires an insurer or the insurance group of which the insurer is a member to submit a CGAD to the Commissioner by June 1 of each year, with the first filing June 1, 2018. If an insurer is a member of an insurance group, the insurer is required to submit the report to the Commissioner of the lead state for the insurance group, in accordance with the lead state's laws, as determined by the procedures outlined in the most recent financial analysis handbook (handbook) adopted by the NAIC.

The bill requires that the CGAD must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting the insurer has implemented the corporate governance practices and a copy of the disclosure was provided to the insurer's board of directors or other appropriate committee. An insurer not required to submit a CGAD must submit one upon request of the Commissioner.

The insurer or insurance group may provide information regarding corporate governance depending on how the insurer or insurance group has structured the system of governance. However, the insurer or insurance group is encouraged to make CGAD disclosures by the following criteria: the level at which the insurer's or group's risk appetite is determined; the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and the supervision of those factors is coordinated and exercised; or the level at which legal liability for failure of general corporate governance duties would be placed. The bill requires the insurer or insurance group to indicate which of the three criteria was used to determine the level of reporting and explain subsequent changes in its level of reporting.

The bill requires the review of CGAD and additional requests to be made through the lead state, as determined by the procedures from the handbook. Additionally, insurers are not required to duplicate information contained in documents already provided to the Commissioner.

The bill authorizes the Commissioner to adopt rules and regulations, no later than January 1, 2019, to carry out the provisions of this section.

The insurer or insurance group has discretion over what information is provided in a CGAD, but the Commissioner could request any additional information and material necessary to provide the Commissioner with a clear understanding of corporate governance policies. Additionally, the bill requires the CGAD to be prepared consistent with all Department rules, regulations, and documentation. The bill recognizes documents, materials, and other information in the CGAD disclosed to the Commissioner as confidential by law and privileged and not subject to the Kansas Open Records Act. The confidential materials subsection sunsets on July 1, 2022.

Sharing of Information

The bill states neither the Commissioner nor any person who receives CGAD-related documents, materials, and other information is permitted or required to testify in any private civil action concerning these confidential documents. However, the Commissioner is permitted, upon request, to share documents and information with other state, federal, and international financial regulatory agencies, provided the recipient of the information agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents. The bill authorizes the Commissioner also to receive confidential documents with the understanding these documents

are confidential or privileged under the laws of the jurisdiction that is the source of those materials. The bill acknowledges the act of sharing information according to the provisions of the bill is not considered a delegation of regulatory authority. The bill specifies no waiver of confidentiality or privilege occurs based on a disclosure of CGAD-related materials authorized under this section of the bill.

Third-party Consultants

The bill authorizes the Commissioner to retain, at the insurer's expense, any third-party consultants necessary to assist the Commissioner in reviewing the CGAD and related information. Third-party consultants and NAIC consultants act in an advisory capacity and are subject to the same confidentiality standards and requirements as the Commissioner.

The third-party consultant is required to verify to the Commissioner, with notice to the insurer, the consultant is free from a conflict of interest. A written agreement with NAIC consultants or third-party consultants regarding sharing and use of information contains the following:

- Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the consultant;

- Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the group has domiciled insurers. Further, the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents and has verified in writing the legal authority to maintain confidentiality;

- Ownership of the CGAD-related information remains with the Department and the consultant's use of the information is subject to the direction of the Commissioner;

- Prohibition from storing the information shared in a permanent database after the underlying analysis is complete;

- Provide prompt notice to the Commissioner and to the insurer or group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

- Consent to intervention by an insurer in any judicial or administrative action in which the consultant may be required to disclose confidential information about the insurer shared with the consultant.

Penalties Related to Filing of CGADs

The bill authorizes the Commissioner to assess a penalty to an insurer who fails to file the CGAD in a timely manner. The penalty is assessed if the insurer has no just cause for failing to timely file and after notice and hearing. The penalty is remitted to the state treasurer and deposited in the state treasury to the credit of the fees and penalties fund.

Severability of CGAD Provisions

The bill contains a severability clause for provisions in this section, but it does not apply to the confidentiality and privileged nature of CGAD-related documents held by the Department.

Service Contracts [Section 3]

The bill amends the Insurance Code to exempt the marketing and sale of certain service contracts from regulation by the Department by expanding the definition of "service contract" to specify the term can also include additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road services.

The bill further specifies "service contract" could include, but would not be limited to, a contract that offers any one or more of the following services:

- Repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;
    - "Road hazard" means a hazard encountered while driving a motor vehicle, including, but not limited to, potholes, rocks, wood debris, metal parts, glass, plastics, curbs, or composite scraps;
- Removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing body panels, sanding, bonding, or painting; and
- Replacement of a motor vehicle key or key-fob in the event the key or key-fob becomes inoperable or is lost or stolen.

Credit for Reinsurance [Section 4]

The bill specifies the requirements for reinsurance credit on and after January 1, 2018. A domestic ceding insurer is permitted a credit for reinsurance, as either an asset or a reduction from liability on account of reinsurance, ceded to an assuming insurer under certain conditions. The bill further specifies credit for reinsurance ceded to a certified reinsurer is limited to reinsurance contracts entered or renewed on or after the effective date of the certification of the assuming insurer by the Commissioner.

Licensed to Transact Business

Credit for reinsurance is allowed when the reinsurance is ceded to an assuming insurer licensed to transact insurance or reinsurance in Kansas. The bill permits this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state in which the entity was entered and licensed to transact insurance or reinsurance.

Accredited by the Commissioner

Credit for reinsurance is allowed by the bill when the reinsurance is ceded to an assuming insurer accredited by the Commissioner as a reinsurer in Kansas. The bill permits this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state in which the entity was entered and licensed to transact insurance or reinsurance. To be eligible for accreditation, an assuming insurer is required to:

- File evidence of the assuming insurer's submission to Kansas' jurisdiction with the Commissioner;
- Submit to Kansas' authority to examine the assuming insurer's books and records;
- Be licensed to transact insurance or reinsurance in at least one state or, in the case of a U.S. branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;
- Annually file a copy of the assuming insurer's annual statement filed with the insurance department of the assuming insurer's state of domicile and most recent audited financial statement with the Commissioner; and
- Demonstrate adequate financial capacity to meet the assuming insurer's reinsurance obligations and be otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is deemed to meet this requirement at the time of application if the assuming insurer maintains a surplus of at least $20.0 million with regard to policyholders and accreditation has not been denied by the Commissioner within 90 days after submission of the application.

Domiciled in States with Similar Reinsurance Standards

Credit for reinsurance is allowed by the bill when the reinsurance is ceded to an assuming insurer domiciled in, or in the case of a U.S. branch of an alien assuming insurer is entered through, a state employing standards regarding reinsurance credit substantially similar to those applicable under the bill. The assuming insurer or U.S. branch of an alien assuming insurer under this qualification will be required to maintain a surplus of at least $20.0 million with regard to policyholders (this requirement will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system) and submit to the authority of Kansas to examine the assuming insurer's books and records. Additionally, the bill permits this credit only with respect to cessions of kinds or classes of business the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state in which the entity was entered and licensed to transact insurance or reinsurance.

Maintaining a Trust Fund

Credit for reinsurance is allowed by the bill when the reinsurance is ceded to an assuming insurer maintaining a trust fund in a qualified U.S. financial institution for the payment of the valid claims of the assuming insurer's U.S. ceding insurers.

The assuming insurer is required to annually report information substantially the same as required on the NAIC annual statement form by licensed insurers. The assuming insurer is required to submit for the Commissioner's examination the books and records, at the expense of the assuming insurer.

Further, the bill requires the form of the trust to be approved by either an insurance commissioner of the state where the trust is domiciled, or the insurance commissioner of another state who has accepted principal regulatory oversight of the trust; requires the form of the trust to be filed with insurance commissioners of every state where the ceding insurer's beneficiaries of the trust are domiciled, and further specifies the requirements of the trust instrument; specifies the validity of a trust; and requires the trustee of the trust to submit a report to the Commissioner, no later than February 28 of each year.

Additional categories of the assuming insurer have the following requirements:

- The trust fund for a single assuming insurer is required to consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, in addition to a maintenance of a trusteed surplus of at least $20.0 million, except for an authorized reduction in the required surplus;

- The state commissioner with principal regulatory oversight of the trust is permitted to authorize a reduction in the required trusteed surplus any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three years. The state commissioner is required to make a finding, based on assessment of risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders, and claimants in light of foreseeable adverse loss development. The bill states the risk assessment may involve an actuarial review, considering all material risk factors and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The bill specifies the minimum required trusteed surplus will not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust;

- For a group including incorporated and individual unincorporated underwriters, the following is required:

    - For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust is required to consist of a trusteed account in an amount not less than the underwriters' several liabilities attributable to business ceded by U.S.-domiciled ceding insurers to any underwriter of the group;

  - For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, the trust is required to consist of a trusteed account in an amount not less than the underwriters' several insurance and reinsurance liabilities attributable to business written in the United States;
  - The group is required to maintain a trusteed surplus of which $100.0 million would be held jointly for the benefit of the U.S.-domiciled ceding insurers of any member of the group for all years of account;
  - Incorporated members of the group are not permitted to engage in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members of the group; and
  - The group is required to provide the Commissioner, within 90 days after the financial statements are due to be filed with the group's domiciliary regulator, an annual certification by the group's domiciliary regulator of the solvency of each underwriter member, or the financial statements prepared by independent public accountants of each underwriter member of the group; and

- For a group of incorporated underwriters under common administration, the group is required to have continuously transacted an insurance business outside the United States for at least three years immediately prior to applying for accreditation, maintain an aggregate policyholders' surplus of at least $10.0 billion, maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by the U.S.-domiciled ceding insurers to any member of the group according to reinsurance contracts issued in the name of the group, maintain a joint trusteed surplus of $100.0 million held jointly for the benefit of U.S.-domiciled ceding insurers of any member of the group as additional security for these liabilities, and provide the Commissioner with annual certification of each underwriter member's solvency.

Certified Reinsurer

Credit for reinsurance is allowed by the bill when the reinsurance is ceded to an assuming insurer certified by the Commissioner as a reinsurer in Kansas and the reinsurer secures its obligations.

To be eligible for certification, the assuming insurer is required to:

- Be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Commissioner;
- Maintain minimum capital and surplus, or equivalent, in an amount determined by the Commissioner pursuant to regulation;
- Maintain financial strength ratings from two or more rating agencies deemed acceptable by the Commissioner by regulation;

- Agree to submit to the jurisdiction of Kansas, appoint the Commissioner as the assuming insurer's agent for service of process in Kansas, and agree to provide security for all of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers, if the assuming insurer resists enforcement of a final U.S. judgment;

- Agree to meet the applicable information filing requirements for the initial application and ongoing certification, as determined by the Commissioner; and

- Satisfy any other requirements for certification deemed relevant by the Commissioner.

An association including incorporated and individual unincorporated underwriters is permitted to: be certified as a reinsurer by, in addition to meeting the requirements listed above, satisfying minimum capital and surplus requirements, including a joint central fund; not be engaged in any business other than underwriting as a member of the association; and submit an annual certification to the Commissioner, or financial statements.

The bill requires the Commissioner to create and publish a list of qualified jurisdictions under which an assuming insurer licensed and domiciled in that jurisdiction is eligible for consideration of reinsurer certification. A list of qualified jurisdictions will be published through the NAIC process. The bill prescribes the duties of the Commissioner relating to listing a jurisdiction as qualified, and it authorizes the Commissioner to suspend a reinsurer's certification indefinitely, if the domiciliary jurisdiction ceases to exist.

The bill requires the Commissioner to assign a rating to each certified reinsurer and publish a list of all certified reinsurers and their ratings.

The bill also requires the certified reinsurer to secure obligations at a rating specified in rules and regulations promulgated by the Commissioner and maintain security in an acceptable form. The Commissioner has the discretion to defer to a rating assigned by another jurisdiction in which the reinsurer was certified.

Additionally, the bill outlines the requirements for minimum trusteed surplus requirements if a certified reinsurer maintains a trust; requires the Commissioner to reduce allowable reinsurance credit if the security is insufficient and permit the Commissioner to impose further reductions; and permits a certified reinsurer ceasing to assume new business in the state to request to maintain certification in an inactive status.

Other Assuming Insurers

Credit for reinsurance is allowed by the bill when reinsurance is ceded to an assuming insurer other than the above-listed categories, but only relating to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

Assuming Insurer is Not Licensed, Accredited, or Certified

Generally, credit for reinsurance is not permitted for assuming insurers domiciled in states with similar reinsurance standards or maintaining a trust if those assuming insurers are not licensed, accredited, or certified to transact insurance or reinsurance in Kansas. However, credit for reinsurance is permitted if the assuming insurer, in the reinsurance agreement, agrees to submit to the jurisdiction of any court of competent jurisdiction in any state and comply with any judgments, and designates the Commissioner or a designated attorney to receive lawful process. These criteria for unlicensed, unaccredited, or non-certified assuming insurers will not conflict with or override the obligation of parties to a reinsurance agreement to arbitrate disputes.

Assuming Insurer is Not Licensed, Accredited, or Meeting Requirements of Domicile

An assuming insurer who is not licensed, accredited, or meeting the requirements of domicile is not permitted a credit permitted for assuming insurers maintaining a trust fund or certified with secured obligations, unless the assuming insurer agrees to the following in a trust agreement:

- Comply with an order of the state commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer assets of the trust fund to the state commissioner with oversight if that trust fund is inadequate, insolvent, or placed in receivership, rehabilitation, or liquidation;

- Distribute the assets and file claims with and valued by the state commissioner with regulatory oversight in accordance with the laws of the state where the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

- Distribute assets in accordance with the trust agreement in the case of a state commissioner with regulatory oversight finding the trust fund assets are not necessary to satisfy claims; and

- Waive any right otherwise available under U.S. law if the law is inconsistent with these requirements.

Suspension or Revocation Authority

The bill permits the Commissioner to suspend or revoke a reinsurer's accreditation or certification under certain circumstances. The Commissioner is required to give notice and opportunity for a hearing to the reinsurer, prior to suspension or revocation. A suspension or revocation will not take effect until after the Commissioner's order on a hearing, unless the reinsurer waives the right to a hearing; the order is based on a regulatory action by the reinsurer's domiciliary jurisdiction, or the reinsurer voluntarily surrendered or terminated the ability to transact insurance or reinsurance in the domiciliary jurisdiction; or the Commissioner finds an emergency requires immediate action. Additionally, reinsurance credit is not permitted after the date of revocation or suspension, except to the extent the reinsurer's obligations under the contract are secured.

Management of Reinsurance Recoverables, Diversification, and Notification

The bill requires the domestic ceding insurer to manage its reinsurance recoverables proportionate to the book of business, diversify the reinsurance program, and provide notification to the Commissioner.

Assuming Insurer Not Meeting Requirements

The bill specifies that when a domestic insurer that cedes reinsurance does not meet the above requirements, an asset or reduction from liability is allowed only in an amount not exceeding the liabilities carried by the ceding insurer. The reduction is required to be in the amount of funds held by or on behalf of the ceding insurer under a reinsurance contract with the assuming insurer as security for payment of obligations under the contract. The bill also lists the acceptable forms of security.

Definition of "Qualified U.S. Financial Institution"

The bill defines a "qualified U.S. financial institution" for letters of credit issued or confirmed by that institution to mean an institution organized or licensed under the laws of the United States or any state; regulated, supervised, and examined by the U.S. federal or state authorities having the regulatory authority over banks and trust companies; and determined by either the Commissioner or the securities valuation office of the NAIC to meet the standards of financial condition and standing. The bill also defines "qualified U.S. financial institution" pertaining to any institution eligible to act as a fiduciary of a trust.

Rules and Regulations Authority for Reinsurance Provisions

The Commissioner is granted the authority to adopt, no later than January 1, 2019, rules and regulations necessary to administer reinsurance provisions.

Effective Date of Reinsurance Contracts

The bill applies to all cessions under reinsurance contracts occurring on or after January 1, 2018.

Consolidation; Office of the Securities Commissioner; Insurance Department; Attorney General; Prosecutorial Functions; SB 23

SB 23 establishes the Office of the Securities Commissioner of Kansas as a division under the jurisdiction of the Commissioner of Insurance (Insurance Commissioner) and amends law by consolidating certain prosecutorial functions of the Attorney General. Descriptions of specific bill provisions follow.

Office of the Securities Commissioner as a Division under the Jurisdiction of the Insurance Commissioner

The bill amends the statute that establishes the Office of the Securities Commissioner of Kansas (KSC) as a separate agency, in which the Securities Commissioner serves at the pleasure of the Governor. The bill instead establishes the KSC under the jurisdiction of the Insurance Commissioner and the KSC will no longer be a stand-alone agency.

Appointment and Compensation of the Securities Commissioner

Under the bill, the Securities Commissioner is appointed by the Insurance Commissioner, subject to confirmation by the Senate. The Insurance Commissioner is authorized to fix the compensation of the Securities Commissioner. Further, the Insurance Commissioner is permitted to remove the Securities Commissioner for official misconduct.

Term of Office

The bill requires the Insurance Commissioner to appoint a person as Securities Commissioner no later than September 1, 2017, subject to Senate confirmation, to serve an initial term ending on January 14, 2019.

The bill requires, when this initial term expires and for each term expired thereafter, the Insurance Commissioner appoint a person as Securities Commissioner, subject to Senate confirmation, for a four-year term to run concurrently with the term of the Insurance Commissioner. [*Note*: The Insurance Commissioner is an elected, not an appointed, position.]

The bill specifies the Insurance Commissioner will appoint a successor when a vacancy for Securities Commissioner occurs. The bill provides that, if the vacancy occurs before the expiration of a term of office, the appointment will be for the unexpired term and subject to Senate confirmation.

Further, the bill requires the Securities Commissioner to devote full time to the performance of the duties of the KSC.

Appointment of Directors and Employees within the KSC

The bill permits the Securities Commissioner to appoint directors and other employees within the KSC. Directors appointed by the Securities Commissioner receive compensation fixed by the Securities Commissioner, but the Insurance Commissioner is required to approve such compensation.

Cooperation and Consolidation for Efficiency

The KSC is required to cooperate with the Kansas Insurance Department (KID) to consolidate administrative functions and cross-appoint employees as necessary to provide efficiency.

Agreements and Rules and Regulations

The bill authorizes the Insurance Commissioner and the Securities Commissioner to enter into agreements and adopt rules and regulations, as needed, to administer the provisions of the bill related to the consolidation of administrative functions and cross-appointment of employees.

Attorney General—New Funding Source

Fraud and Abuse Criminal Prosecution Fund

The bill establishes the Fraud and Abuse Criminal Prosecution Fund (Fund) in the State Treasury. The Fund will be administered by the Attorney General.

Expending Moneys from the Fund

The bill requires all moneys credited to the Fund to be expended for the prevention and detection of fraud and abuse and for support of criminal investigations and prosecutions within the jurisdiction of the Attorney General. The bill requires the Attorney General, in expending moneys from the Fund, to give priority to criminal cases referred to the Attorney General for investigation or prosecution by or pursuant to the KSC, the Criminal Anti-Fraud Division of KID, and the Abuse, Neglect and Exploitation of Persons Unit of the Office of the Attorney General (OAG).

Transfer of Certain Fees to the Fund

The bill requires the Director of Accounts and Reports of the Department of Administration to transfer to the Fund $200,000 from the Securities Act Fee Fund and $200,000 from the Insurance Department Service Regulation Fund on July 1 of each year, or thereafter as unencumbered funds are available. Upon making these transfers, the Director is required to give notice to the Attorney General, Insurance Commissioner, and Securities Commissioner. The Attorney General, Insurance Commissioner, and Securities Commissioner are then required to make proper entries on the records of their offices to show these transfers.

Attorney General—Public Policy

The bill declares, in order to promote efficiency in staffing and operations and consistency in the enforcement of criminal law, the public policy of Kansas is for prosecuting attorneys who bring criminal actions in the name of the State, other than county and district attorneys, and the funding therefor, to be located in the OAG under the jurisdiction of the Attorney General.

Further, the bill authorizes any state agency to enter into agreements with the Attorney General to carry out the provisions relating to the Fund and public policy.

Coordination of Efforts among the Attorney General, Insurance Commissioner, and Securities Commissioner and Their Offices

The bill requires the Attorney General, Insurance Commissioner, and Securities Commissioner to coordinate and cooperate to prevent, detect, investigate, and criminally prosecute crimes related to insurance and securities.

The Criminal Anti-Fraud Unit of KID and the KSC are required, upon request of the Attorney General, to provide the Attorney General access to all records, reports, filings, investigation documents, and other records the Attorney General has reasonable suspicion to believe are relevant to any criminal investigation or prosecution of suspected insurance or securities fraud.

At the Attorney General's discretion, the bill permits the Attorney General to assist in any criminal investigation conducted by the Criminal Anti-Fraud Unit of KID of suspected fraud or by the KSC of suspected securities fraud.

The bill authorizes the Attorney General to enter into agreements with the Insurance Commissioner, the Securities Commissioner, or both as necessary to carry out the provisions of the bill.

Attorney General—Rules and Regulations

The Attorney General is permitted to adopt rules and regulations, as deemed appropriate, for the administration of provisions of the bill related to the coordination of efforts among the Attorney General, Insurance Commissioner, and Securities Commissioner.

Consolidation of Prosecutorial Authority in the Attorney General

The bill amends provisions of the Kansas Mortgage Business Act (KMBA), the Kansas Uniform Securities Act, the Insurance Code, the Workers Compensation Act, Employment Security Law, and law generally referred to as the Loan Brokers Act to transfer certain functions to the Attorney General. Details of amendments to these acts are described below.

Kansas Mortgage Business Act

The bill amends the KMBA to empower the State Bank Commissioner to refer violations of the KMBA or any rule and regulation related to the KMBA to the Attorney General or, in consultation with the Attorney General, to the appropriate county or district attorney, who could initiate criminal proceedings. The bill deletes references to the powers and duties of a duly employed attorney of the State Bank Commissioner as a special prosecutor.

Kansas Uniform Securities Act

The bill amends the Kansas Uniform Securities Act to require the Securities Commissioner to prepare and refer evidence of criminal violations of the Kansas Uniform Securities Act to the Attorney General or, in consultation with the Attorney General, to the appropriate county or district attorney who could institute criminal proceedings. The bill requires

the Securities Commissioner and employees to assist in the prosecution of criminal cases, as requested by the Attorney General or county or district attorney.

Additionally, the Securities Commissioner is authorized to pay extradition and witness expenses and other costs associated with the case. The bill deletes references to the powers and duties of a duly employed attorney of the Securities Commissioner as a special prosecutor.

Insurance Code

The bill amends a provision of the Insurance Code relating to the Criminal Anti-Fraud Division of KID to require this Division to prepare and refer criminal cases to the Attorney General or, in consultation with the Attorney General, to the proper county or district attorney, who is permitted to institute appropriate criminal proceedings. The Insurance Commissioner is permitted to pay extradition and witness expenses and other costs associated with the case.

The Division is required to assist in the preparation and presentation of criminal cases, as requested by the Attorney General or county or district attorney. The Division is required to perform other such duties in the prevention, detection, investigation, and prosecution of insurance fraud, as necessary. The preparation is permitted, but not required, to include affidavits, interviews, preservation of evidence, and securing the attendance of individuals involved in the case. Members of the Division are permitted to testify as to the facts of the case.

Workers Compensation Act

The bill amends provisions of the Workers Compensation Act. The bill specifies that, if a district attorney fails to prosecute a fraudulent or abusive act or practice or any other violation of the Workers Compensation Act within 90 days, the Assistant Attorney General assigned to the Division of Workers Compensation is required to notify the Attorney General. [*Note*: Current law applies the 90-day deadline only to cases not prosecuted by a county attorney within that time frame.] The bill then requires the Attorney General to prosecute the case, if it is the Attorney General's opinion the acts and practices involved warrant prosecution.

Additionally, the bill further amends the duties of the Assistant Attorney General assigned to the Division of Workers Compensation by requiring the Assistant Attorney General to investigate and refer to the Attorney General for criminal prosecution acts, practices, or violations constituting crimes. [*Note*: Current law requires the Assistant Attorney General to investigate and criminally prosecute these acts, practices, or violations constituting crimes without referral for prosecution to the Attorney General.]

Employment Security Law

The bill amends the Employment Security Law to require the Special Assistant Attorney General assigned to the Kansas Department of Labor to notify the Attorney General if a county or district attorney fails to prosecute a case related to Employment Security Law violations within 90 days. The bill then requires the Attorney General to prosecute the case, if it is the Attorney General's opinion the acts and practices involved warrant prosecution. [*Note*: Current law requires the Special Assistant Attorney General to prosecute the case without referral for prosecution to the Attorney General.]

Loan Brokers Act

The bill amends law generally referred to as the Loan Brokers Act. The bill requires the Securities Commissioner to prepare and refer evidence concerning criminal violations relating to loan brokers to the Attorney General or, in consultation with the Attorney General, to the proper county or district attorney. The county or district attorney is permitted to institute appropriate criminal proceedings in the attorney's discretion.

The Securities Commissioner is permitted to pay extradition and witness expenses and other costs associated with the case. The Securities Commissioners and employees are required to assist in the prosecution of criminal cases, as requested by the Attorney General or county or district attorney.

Updates to References to the Federal Securities Act

The bill updates references to section 18(b)(4)(E) of the Federal Securities Act of 1933 to section 18(b)(4)(F).

HMO Privilege Fee and Supplemental Medicaid Reimbursement; HB 2079

HB 2079 creates law to allow supplemental Medicaid reimbursement for certain providers of ground emergency medical transportation services and creates an intergovernmental transfer program relating to Medicaid managed care, ground emergency medical transport services, and those services provided by certain emergency medical services personnel in pre-stabilization and preparation for transport.

In addition, the bill increases the annual privilege fee assessed on every health maintenance organization (HMO), changes the privilege fee payment structure, creates a priority system for use of revenue from the assessment, changes accounting procedures for the portion of the assessment dedicated to the Kansas Newborn Screening Fund, and establishes a limit on the amount to be transferred to the Kansas Newborn Screening Fund.

Supplemental Medicaid Reimbursements

In addition to the rate of payment that a provider otherwise receives for Medicaid ground emergency medical transportation services, a provider is eligible for supplemental Medicaid reimbursement to the extent provided by law, if a provider meets the following conditions during the reporting period:

- Provides ground emergency medical transportation services to Medicaid beneficiaries;
- Is enrolled as a Medicaid provider for the period being claimed; and
- Is owned or operated by the State, a political subdivision, or local government, that employs or contracts with persons or providers who are licensed or permitted to provide emergency medical services in the state of Kansas, including hospitals and private entities to the extent permissible under federal law.

An eligible provider's supplemental reimbursement is required to be calculated and paid as follows:

- The supplemental reimbursement to an eligible provider will be equal to the amount of federal financial participation received as a result of the claims submitted pursuant to federal law;
- The amount certified in conformity with federal regulations and eligible for federal financial participation, when combined with the amount received from all other sources of reimbursement from the Medicaid program, cannot exceed or be less than 100.0 percent of actual costs for ground emergency medical transportation services, as determined pursuant to the Medicaid state plan; and
- The supplemental Medicaid reimbursement will be distributed exclusively to eligible providers under a payment methodology based on ground emergency

medical transportation services provided to Medicaid beneficiaries by eligible providers on a per-transport basis or other federally permissible basis.

The Kansas Department of Health and Environment (KDHE) is required to obtain approval from the federal Centers for Medicare and Medicaid Services (CMS) for the payment methodology to be utilized prior to making any supplement Medicaid reimbursement payments.

The bill states the Legislature's intent to enact the provisions of the bill without any State General Fund (SGF) expenditures.

An eligible provider, as a precondition to receiving the supplemental Medicaid reimbursements, is required to enter into and maintain an agreement with KDHE for the purposes of implementing the payments and reimbursing KDHE for the costs of administering the payments.

The non-federal share of the supplemental Medicaid reimbursement submitted to CMS for purposes of claiming federal financial participation will be paid only with funds from governmental entities owned and operated by the State, a political subdivision, or local government that employs or contracts with persons or providers who are licensed or permitted to provide emergency medical services in Kansas, including hospitals and private entities to the extent permissible under federal law and who are certified as described below.

Participation in the supplemental Medicaid reimbursement program by an eligible provider is voluntary. In order to seek supplemental Medicaid reimbursement, an applicable governmental entity is required to do the following:

- Certify, in conformity with federal regulations, the claimed expenditures for the ground emergency medical transportation services are eligible for federal financial participation;

- Provide evidence supporting the certification as specified by KDHE;

- Submit data, as specified by KDHE, to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation; and

- Keep, maintain, and have readily retrievable any records specified by KDHE to fully disclose reimbursement amounts to which the eligible provider is entitled, and any other records required by CMS.

KDHE is required to promptly seek any necessary federal approvals for the implementation of supplemental Medicaid reimbursements and is allowed to limit the reimbursements to those costs allowable under Title XIX of the federal Social Security Act. If federal approval is not obtained for implementation of the supplemental Medicaid reimbursements, the section of the bill related to the reimbursements will not be implemented.

KDHE is required to submit claims for federal financial participation for the expenditures allowable under federal law for the services related to requirements for participation in the reimbursements. KDHE is also required to submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures allowable under federal law.

KDHE will be able to utilize intergovernmental transfers or certified public expenditures to implement the supplemental Medicaid reimbursement subject to provisions and requirements of the bill.

Intergovernmental Transfer Program

KDHE is required to design, and implement, in consultation and coordination with providers eligible for the program, an intergovernmental transfer program (Program) relating to Medicaid managed care, ground emergency medical transport services and those services provided by emergency medical services personnel at the emergency medical responder, emergency medical technician, advanced emergency medical technician, and paramedic levels in the pre-stabilization and preparation for transport.

A provider is eligible to transfer public funds to the State pursuant to the Program in an applicable reporting period only if the provider meets both of the following conditions:

- Provides ground emergency medical transport services to Medicaid managed care enrollees pursuant to a contract or other arrangement with a Medicaid managed care plan; and

- Is owned or operated by the State, a political subdivision, or local government that employs or contracts with persons or providers who are licensed or permitted to provide emergency medical services in Kansas, including hospitals and private entities to the extent permissible under federal law.

To the extent intergovernmental transfers are voluntarily made by and accepted from an eligible provider described above or a governmental entity affiliated with an eligible provider, KDHE is required to make increased capitation payments to applicable Medicaid managed care plans. The increased capitation payments are required to be at least actuarially determined amounts to the extent permissible under federal law. Funds associated with intergovernmental transfers must be used to fund additional payments to Medicaid managed care plans.

Medicaid managed care plans must enter into contracts or contract amendments with eligible providers for the disbursement of increased capitation payments related to intergovernmental transfers.

The Program developed will be implemented on the date federal approval is obtained, and only to the extent intergovernmental transfers from the eligible provider, or the governmental entity with which it is affiliated, are provided for that purpose.

KHDE must implement the Program and increased capitation payments on a retroactive basis, as approved by CMS and to the extent permissible by federal law. Participation in the Program is voluntary on the part of the transferring entities for purposes of all applicable federal laws.

The bill requires the Program be implemented without any additional SGF expenditures. As a condition of participation in the Program, eligible providers or the governmental entity affiliated with an eligible provider must agree to reimburse KDHE for any costs associated with implementing the Program. Intergovernmental transfers are subject to a fee of up to 20.0

percent of the non-federal share paid to KDHE and may not count as a cost of providing the services not to exceed 120.0 percent of the total amount.

As a condition of participation in the Program, Medicaid managed care plans, eligible providers, and governmental entities affiliated with eligible providers are required to comply with any requests for information or similar data requirements imposed by KDHE for the purpose of obtaining supporting documentation necessary to claim federal funds or to obtain federal approvals.

The Program will be implemented only if and to the extent federal financial participation is available and not otherwise jeopardized and any necessary federal approvals have been obtained.

KDHE will be allowed to return or not accept intergovernmental transfers, or adjust payments as necessary, to comply with federal Medicaid requirements.

The bill requires the State and KDHE to implement whatever program CMS approves for use under the act.

HMO Privilege Fee and Medical Assistance Fee Fund

The annual privilege fees assessed on every HMO will be increased to 5.77 percent for the reporting period beginning January 1, 2018.

The bill directs the moneys collected from this annual assessment be deposited to the credit of the Medical Assistance Fee Fund (in KDHE). The bill also creates the Community Mental Health Center Improvement Fund to be used by the Kansas Department for Aging and Disability Services and restricts use of the moneys in this fund for purposes related to community mental health centers (CMHCs).

The bill specifies that moneys in the Medical Assistance Fee Fund must be expended in the following priority:

- First, restore any reductions initiated during calendar year 2016 to provider reimbursement rates for state Medicaid services;

- Second, $3.5 million in FY 2018, and $5.0 million every fiscal year thereafter, will be transferred to the Community Mental Health Center Improvement Fund to be used for purposes related to CMHCs. The amount transferred cannot exceed $5.0 million in any one fiscal year;

- Third, the estimated amount necessary to fund the Newborn Screening Program for the ensuing fiscal year will be transferred to the Kansas Newborn Screening Fund. Such amount cannot exceed $2.5 million in any one fiscal year; and

- Fourth, any remaining moneys would be expended for the purpose of Medicaid medical assistance payments.

The bill also removes the July 1, 2018, sunset date on the increased privilege fee.

[*Note*: Under current law, the privilege fee is 3.31 percent for the period beginning January 1, 2015, and ending December 31, 2017, and 2.00 percent on and after January 1, 2018. In addition, the moneys collected from the privilege fee are to be deposited to the credit of the SGF, except during the period beginning July 1, 2015, and ending on June 30, 2018, when the moneys are to be deposited to the credit of the Medical Assistance Fee Fund.]

HMO Privilege Fee and Payments

Starting January 1, 2018, each HMO is required to submit a report to the Commissioner of Insurance (Commissioner), on or before March 31 and September 30 each year, containing an estimate of the total amount of all charges to enrollees expected to be collected during the current calendar year.

Upon filing each March 31 report, HMOs are required to submit payment equal to half of the privilege fee assessed for the current calendar year based on the reported estimate. Upon filing each September 30 report, HMOs will submit a payment equal to the balance of the privilege fee assessed for the current calendar year based upon the reported estimate.

Currently, privilege fee payments are submitted annually on or before March 1 and based on actual collections in the previous calendar year.

Any amount owed by an HMO during any calendar year in excess of the estimated amount will be assessed by the Commissioner and will be due and payable upon issuance of the assessment. Any amount overpaid by an HMO will be reconciled upon assessment of privilege fees in the ensuing calendar year and credited against future privilege fee assessments or refunded in cases when the HMO is no longer doing business in Kansas.

Kansas Newborn Screening Fund

On or before July 1 of each year, the Director of Accounts and Reports is required to determine the amount credited to the Medical Assistance Fee Fund from the privilege fee assessment and transfer the estimated amount necessary to fund the Newborn Screening Program for the ensuing fiscal year to the Kansas Newborn Screening Fund. The amount cannot exceed $2.5 million in any one fiscal year.

Currently, the transfers are to be determined and made monthly from a portion of the privilege fee revenue transferred to the SGF, although the revenue has been deposited in the Medical Assistance Fee Fund since July 1, 2015.

Human Trafficking; House Sub. for SB 40

House Sub. for SB 40 amends law concerning human trafficking, including the creation of new crimes and amendments to existing crimes and other related provisions.

Crimes

New Crimes

The bill creates new crimes concerning use of a "communication facility," which the bill defines as any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers, and all other means of communication. The bill provides it is a severity level 7 person felony for a person to knowingly or intentionally use any communication facility to commit the crimes of human trafficking, commercial sexual exploitation of a child, or promoting the sale of sexual relations, as well as in any attempt, conspiracy, or solicitation of those crimes. Further, it is a class A person misdemeanor to use a communication facility in committing, causing, or facilitating the commission of the crime of buying sexual relations. Defendants have an affirmative defense if they were subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child.

Additionally, the bill creates the crime of promoting travel for child exploitation, a severity level 5 person felony, which the bill defines as knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute aggravated human trafficking (using the definition as amended by the bill), sexual exploitation of a child, Internet trading in child pornography (a new crime created by the bill and described below), and commercial sexual exploitation of a child if it occurred in Kansas. The bill defines "travel services" as transportation by air, sea, or ground; hotel or any lodging accommodations; package tours; or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

The bill also creates the crime of Internet trading in child pornography, which is defined by incorporating certain elements of the crime of sexual exploitation of a child when the offender is 18 years of age or older and knowingly causes or permits the performance to be viewed by use of any electronic device connected to the Internet by any person other than the offender or a person depicted in the performance. The crime is a severity level 5 person felony when an offender possesses any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

The conduct constitutes aggravated Internet trading in child pornography when the offender either:

- Employs, uses, persuades, induces, entices, or coerces a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or

- Being a parent, guardian, or other person having custody or control of a child under 18 years of age, knowingly permits such child to engage in, or assist another to engage in, sexually explicit conduct with the intent to promote any performance or with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person.

Aggravated Internet trading in child pornography is a severity level 3 person felony or an off-grid felony when the child is under 14 years of age. If the child is under 14 years of age, the provisions specifying the severity levels for attempt, conspiracy, and criminal solicitation do not apply. The bill also amends statutes governing attempt, conspiracy, and criminal solicitation of a crime to reflect this change.

In addition to the venue provided for under any other provision of law, the bill allows prosecution for these crimes to be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the Internet and is viewed by a law enforcement officer using an electronic device connected to the Internet while engaged in such officer's official duties.

The Internet trading in child pornography crimes do not apply where the crimes of unlawful possession of a visual depiction of a child or unlawful transmission of a visual depiction of a child apply.

Related to the creation of these crimes, the bill adds Internet trading in child pornography and aggravated Internet trading in child pornography to the definition of "sex offense" in the capital murder statute and to the definition of "sexually violent crime" in the aggravated habitual sex offender statute and in the statute governing parole and postrelease supervision. When the child is less than 14 years of age, the bill adds aggravated Internet trading in child pornography to the statute governing crimes for which a defendant is sentenced to imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years, a statute concerning sentencing for off-grid crimes, and to the statute prohibiting direct appeal of certain cases to the Kansas Supreme Court. Additionally, the bill amends a rule governing admissibility of a witness' previous sexual conduct as evidence in certain prosecutions to apply in prosecutions of the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography.

Human Trafficking

The bill amends the definition of aggravated human trafficking, which is a severity level 1 person felony or an off-grid crime if the victim is less than 14 years of age. The bill amends one of the four definitions of the crime to read "recruiting, harboring, transporting, providing, or obtaining by any means, a child knowing that the person, with or without force, fraud, threat, or coercion, will be used to engage in forced labor, involuntary servitude, or sexual gratification of the defendant or another involving the exchange of anything of value." The amendment to this subsection removes the elements of the crime of human trafficking from the definition, changes "person under the age of 18 years of age" to "child," and adds the exchange of anything of value. The bill also adds a subsection providing a new definition for the crime of aggravated human trafficking: hiring a child by giving, or offering or agreeing to give, anything of value to any person to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of another, sexual intercourse, sodomy, or any unlawful sexual act when the offender recklessly disregards the age of the child. This definition is similar to one used to define the crime of commercial sexual exploitation of a child,

which the bill modifies. For the purposes of the crime of human trafficking, "child" means a person under 18 years of age.

The bill creates an affirmative defense to prosecution for these two definitions of aggravated human trafficking for a defendant who, at the time of the violation, was under 18 and committed the violation because the defendant was subjected to human trafficking or aggravated human trafficking. It is not a defense that a victim consented or willingly participated in the forced labor, involuntary servitude, or sexual gratification of the defendant or another, or that the offender had no knowledge of the age of the victim.

The bill specifies a person who violates any of the provisions of the human trafficking statute could be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child or any form of homicide. Further, in addition to any other sentence imposed, a person convicted of human trafficking will be fined between $2,500 and $5,000. A person convicted of aggravated human trafficking, as well as any attempt, conspiracy, or solicitation of that crime, will be fined a minimum of $5,000. Fines collected are remitted to the Human Trafficking Victim Assistance Fund. Additionally, the court can order any person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

The bill amends the definition of "sex offense" in the capital murder statute to add aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of another.

Sexual Exploitation of a Child

The bill amends the crime of sexual exploitation of a child to increase the severity level from a level 5 to a level 3 person felony when committed by:

- Employing, using, persuading, inducing, enticing, or coercing a child under 18 years of age, or a person who the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or

- Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

Buying Sexual Relations

The bill amends the crime of buying sexual relations to provide a person convicted of this crime will be fined between $1,200 and $5,000. Prior law provided for a fine of $2,500 for a first-time offense and a fine of up to $5,000 for a second or subsequent offense. Half of all fines collected will be remitted to the Human Trafficking Victim Assistance Fund. Similarly, the bill designates half of any fine imposed for a municipal violation of buying sexual relations to be remitted to the Human Trafficking Victim Assistance Fund. Prior law provided for $2,500 of any such fine to be remitted to that fund.

Commercial Sexual Exploitation of a Child

The bill replaces two definitions for the crime of commercial sexual exploitation of a child with one definition containing language modified from the existing definitions. Language similar to these definitions is already included in or is added to provisions regarding the crime of human trafficking. The bill also increases the severity level for commercial sexual exploitation of a child from a level 5 to a level 4 person felony.

Other Provisions

Training regarding trafficking. On and after July 1, 2018, the bill requires an applicant for issuance or renewal of a commercial driver's license to complete training approved by the Attorney General in human trafficking identification and prevention and provide satisfactory proof of such completion to the Division of Vehicles prior to such issuance or renewal. The bill requires the Attorney General, in consultation with the Director of Vehicles, to promulgate rules and regulations no later than January 1, 2019, to implement this requirement.

Addition to list of sexually violent crimes. The bill amends the Kansas Offender Registration Act to add the crime of promoting the sale of sexual relations to the list of sexually violent crimes and specifies a person convicted of such crime is required to register for 15 years.

Expungement. The bill requires a court to order expungement of records and files if it finds the juvenile is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of disorderly conduct or selling sexual relations, and the hearing on expungement occurred on or after the date of final discharge.

Additionally, the bill adds to the list of crimes for which juvenile and adult expungement is not allowed the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography. [*Note*: The bill appears to make additional substantive amendments regarding copies of orders of expungement and bail enforcement agent licensing. However, these provisions were in prior law and are technical amendments to reconcile different versions of the statutes created by 2016 legislation.]

Compensation for crime. The bill specifies provisions allowing reduction or denial of compensation from the Crime Victims Compensation Board shall not be construed to reduce or deny compensation to a victim of human trafficking or commercial sexual exploitation of a child who was 18 years or younger at the time the crime was committed and is otherwise qualified for compensation.

Hotline. The bill updates the name of the National Human Trafficking Hotline, which formerly was known as the National Human Trafficking Resource Center.

Protective Orders—Sexual Assault; Sexual Assault Examinations—Exceptions to Parental Notification; Infectious Disease Testing; Crime Victims Compensation; House Sub. for SB 101

House Sub. for SB 101 amends law concerning protective orders, notification of a sexual assault examination of a minor child, infectious disease testing, and claims for compensation through the Crime Victims Compensation Board, as follows.

Protective Orders

The bill amends the law concerning protective orders to extend the provisions of the Protection from Abuse Act (PFAA) and Protection from Stalking Act (PFSA) to apply to victims of sexual assault. Specifically, the bill amends the definition of "abuse" in the PFAA to include "engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent."

The bill also amends the PFSA, renaming it the Protection from Stalking and Sexual Assault Act (PFSSAA). For the purposes of the PFSSAA, "sexual assault" is defined as:

- A nonconsensual sexual act; or
- An attempted sexual act against another by force, threat of force, or duress, or when the person is incapable of giving consent.

The bill adds "sexual assault" throughout the PFSSAA and allows the court to issue an order restraining the defendant from committing or attempting to commit a sexual assault upon the victim. The bill specifies the court may issue a protection from stalking or sexual assault order granting any one or more of the orders allowed by the PFSSAA, including orders restraining a defendant from harassing, abusing, or sexually assaulting a victim. The bill requires the order to include a statement that if such order is violated, the violation will constitute "violation of a protective order" and a "sex offense" as defined by the Kansas Criminal Code and the accused can be prosecuted for, convicted of, and punished for such sex offense.

The bill amends the crime of violation of a protective order to include knowingly violating a protection from sexual assault order, which is a class A person misdemeanor.

Notification of Sexual Assault Examination

The bill adds exceptions to the requirement under previously existing law that mandates a medical facility give a parent or guardian written notice when a sexual assault examination of a minor child has taken place. The exceptions apply when a medical facility has information that a parent, guardian, or family or household member is the subject of a related criminal investigation, or when the physician, licensed physician assistant, or registered professional nurse, after consultation with law enforcement, reasonably believes the child will be harmed if such notice is given.

Infectious Disease Testing

The bill amends a statute regarding infectious disease testing of certain alleged offenders or persons arrested and charged with a crime to require such testing occur within 48 hours after the alleged offender appears before a magistrate following arrest. The bill also requires the court to order the arrested person to submit to follow-up tests for infectious diseases as medically appropriate. Finally, the bill clarifies that the results of such tests are to be disclosed to the victim and parent or legal guardian of the victim.

Crime Victims Compensation

The bill allows a claimant, or victim on whose behalf the claim is made, to be compensated for mental health counseling through the Crime Victims Compensation Board when a claim is filed within two years of notification to the claimant that DNA testing has revealed a suspected offender or when a claim is filed within two years of notification to the claimant the identification of a suspected offender.

Kansas Code of Civil Procedure—Updates; Service; Case Management; Discovery; Default Judgment; House Sub. for SB 120

House Sub. for SB 120 amends the Kansas Code of Civil Procedure (Code). The bill states the Code shall be employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. Previously existing law required the Code to be liberally construed and administered for the same purpose.

The bill also amends the law granting an additional three days for action after being served *via* certain kinds of service. The bill clarifies this provision applies to a party "after being served," rather than simply "after service." Additionally, the bill removes service by fax and electronic service from the list of kinds of service that allow additional time to act.

In the statute listing matters on which the court must take appropriate action at a case management conference, the bill adds issues related to preservation of electronically stored information (ESI). Additionally, in determining issues related to claims of privilege or protection as trial-preparation material, the bill requires consideration of agreements made under state law controlling the effect of disclosure of information covered by the attorney-client privilege or work-product protection.

The bill makes several amendments to the statute governing discovery. Specifically, the bill amends the scope of discovery to be any nonprivileged matter relevant to any party's claim or defense and revises language allowing courts to limit the scope of discovery based on the needs of the case considering the importance of the issues at stake; the amount in controversy; the parties' resources and relative access to relevant information; the importance of discovery in resolving the issues; and whether the burden or expense of the proposed discovery outweighs its likely benefit. The bill provides that information need not be admissible if it falls within this scope of discovery. This language replaces previously existing law defining the scope of discovery to include any nonprivileged matter relevant to the subject matter involved in the action, including the existence, description, nature, custody, condition, and location of any documents or other tangible things; the identity and location of persons who know of any

discoverable matter; and inadmissible information if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

The bill amends the subsection of the discovery statute governing protective orders to allow the court to specify in the order the allocation of expenses for disclosure or discovery. In another subsection, the bill allows parties to stipulate to the sequence of discovery.

In the statute governing requests parties may serve on each other, the bill amends the subsection concerning responses to require the response to state with specificity the grounds for objecting to the request. Further, the responding party may state it will produce copies of documents or of ESI instead of permitting inspection. The bill then requires production to be complete no later than the time for inspection specified in the request or another reasonable time specified in the response. In another subsection, the bill requires objections to state whether any responsive materials are being withheld on the basis of that objection.

The bill amends the statute concerning failure to comply with disclosure or discovery to allow a motion to compel disclosure if a party fails to produce documents. Additionally, the bill replaces language concerning sanctions when a party fails to preserve ESI with language outlining the court's options when ESI that should have been preserved in anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it and it cannot be restored or replaced. After making certain findings, the court may presume the information lost was unfavorable to the party, instruct the jury to presume the information lost was unfavorable to the party, or dismiss the action or enter a default judgment.

Concerning when a default judgment can be set aside, the bill specifies the court may set aside a "final" default judgment pursuant to current statutory provisions concerning relief from a final judgment, order, or proceeding and judgments entered on service by publication in a newspaper.

Finally, the bill makes technical amendments and repeals KSA 2016 Supp. 60-268, which stated that forms provided by the Judicial Council suffice under the Code and illustrate the simplicity and brevity the Code contemplates.

Crisis Intervention Act; Senate Sub. for HB 2053

Senate Sub. for HB 2053 creates the Crisis Intervention Act (Act) and amends law related to mental health to reflect the provisions of the Act, as follows.

Crisis Intervention Act

Definitions

For purposes of the Act, the bill defines "crisis intervention center" (center) to mean an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year, equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition, and that uses certified peer specialists. "Crisis intervention center service area" is defined as the counties to which the crisis intervention center has agreed to provide service. The bill also defines "behavioral health professional," "head of a crisis intervention center," "law enforcement officer," "licensed addiction

counselor," "physician," "psychologist," "qualified mental health professional," "treatment," "domestic partner," "physician assistant," "immediate family," "restraints," and "seclusion."

Effect on Rights

The Act states the fact a person has been detained for emergency observation and treatment (EOT) under the Act cannot be construed to mean the person has lost any civil right, property right, or legal capacity, except as specified in any court order or as limited by the Act or reasonable policies the head of a center may, for good cause, find necessary to make for the orderly operation of the facility. No person in custody under the Act can be denied the right to apply for a writ of *habeas corpus*. No judicial action taken as part of the 48-hour court review [described below] constitutes a finding by the court. There is no implication or presumption a patient under the Act is, for that reason alone, a person in need of a guardian or conservator, or both, under the Act for Obtaining a Guardian or a Conservator, or Both.

Effect on Voluntary Admission

The Act states it cannot be construed to prohibit a person with capacity from applying for admission as a voluntary patient to a center, and any person desiring to do so is given an opportunity to consult with the person's attorney prior to applying. If the head of the center accepts the application and admits the person as a voluntary patient, the head of the center must provide written notification to the person's legal guardian, if known.

Custody and Transportation by Law Enforcement Officer

The bill allows any law enforcement officer (LEO) who takes a person into custody under the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem to transport such person to a center if the LEO is in a crisis intervention center service area. The center cannot refuse to accept any person brought by an LEO for evaluation if the LEO's jurisdiction is in the center's service area. If the LEO is not in a center service area or chooses not to transport the person to a center, the LEO must follow the procedures under the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem or the Care and Treatment Act for Mentally Ill Persons.

Admission and Detention Upon Application by Law Enforcement Officer

The Act allows a center to admit and detain any person 18 years of age or older who is presented for EOT upon the written application of an LEO. Such application is made on a form set forth or approved by the Secretary for Aging and Disability Services (Secretary). The Act specifies certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was taken into custody) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and that, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application is kept in the regular course of business with the law enforcement agency and a copy is provided to the center and to the patient.

Admission and Detention Upon Application by Adult

The Act allows a center to evaluate, admit, and detain any person 18 years of age or older who is presented for EOT upon the written application of any adult. Such application is made on a form set forth or approved by the Secretary. The Act specifies certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was presented to the crisis intervention center) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application is kept by the applicant and a copy is provided to the center and to the patient.

Evaluation, Court Review, Discharge, and Further Placement

The head of the center is required to evaluate a person admitted under the Act within four hours of admission to determine whether the person is likely to be a mentally ill person or a person with an alcohol and substance abuse problem subject to involuntary commitment under the care and treatment acts for such persons and whether, due to such problem or condition, the person is likely to cause harm to self or others if not immediately detained. The head of the center is required to inquire whether the person has a wellness recovery action plan or psychiatric advance directive.

The Act requires evaluation of a person admitted under the Act by a behavioral health professional not later than 23 hours after admission and again not later than 48 hours after admission to determine whether the person continues to meet the criteria described in the paragraph above. The 23-hour evaluation must be conducted by a different professional than the professional who conducted the initial evaluation.

Within 48 hours of admission, if the head of the center determines the person continues to meet the criteria above, the head of the center is required to file an affidavit to that effect for review by the district court in the county where the center is located. The affidavit must include or be accompanied by the written application for EOT, information about the person's original admission, the care and treatment provided, and the factual circumstances supporting the evaluating professional's opinion that the person meets the criteria described above. After reviewing the affidavit and accompanying information, the court must order the release of the person or order that the person may continue to be detained and treated at the center, subject to the limitations described below.

The head of the center is required to discharge a person admitted under the Act at any time the person no longer meets the criteria described above, and not later than 72 hours after admission, unless the head of the center determines the person continues to meet the criteria described above, in which case the head of the center is required to immediately file a petition under the appropriate care and treatment act and find appropriate placement for the person (including community hospitals equipped to take involuntary commitments or the designated state hospital). If the 72-hour period ends after 5 p.m., the Act requires such petition be filed by the close of business of the first day thereafter that the district court is open.

The center is required to make reasonable accommodations for the person's transportation upon discharge from the center.

Requirements of the Head of the Center

When a person is involuntarily admitted to or detained at a center under the Act, the head of the center is required to immediately advise the person that the person is entitled to immediately contact the person's legal counsel, legal guardian, personal physician or psychologist, minister of religion, or immediate family. If the person desires to make such contact, the head of the center is required to make available reasonable means for such communication.

The head of the center is also required to provide notice of the person's involuntary admission, including a copy of the documentation authorizing the admission, to the person's attorney or legal guardian (once known), unless the attorney or guardian was the person who signed the application. If authorized by the patient under the act governing confidential communications and information of treatment facility patients, the head of the center is also required to provide notice to the patient's immediate family (once known), unless the family member to be notified was the person who signed the application.

Finally, the head of the center is required to immediately advise the person in custody of the person's rights as detailed in the Act.

Medications and Treatment

The Act requires medications and other treatments be prescribed, ordered, and administered only in conformity with accepted clinical practice. Medications can be administered only by written order of a physician or by verbal order noted in the patient's records and subsequently signed by the physician, and the attending physician is required to regularly review the drug regimen and monitor any symptoms or side effects. Prescriptions for psychotropic medications can be written for no longer than 30 days but can be renewed.

During treatment, the responsible physician or psychologist (or designee) is required to reasonably consult with the patient or patient's legal guardian and give consideration to the views expressed by such persons regarding treatment and any alternatives, including views in a wellness recovery action plan or psychiatric advance directive. No medication or other treatment can be administered to any voluntary patient without the consent of such patient or the patient's legal guardian.

The Act requires consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder be obtained in accordance with applicable law.

If a patient objects to taking any medication prescribed for psychiatric treatment, and after full explanation of the benefits and risks of such medication such objection continues, the medication can be administered over the patient's objection, with the objection recorded in the patient's medical record.

The administration of experimental medication is prohibited without the patient's written consent.

Restraints or Seclusion

Restraints or seclusion is prohibited unless the head of the center or a physician or psychologist determines such measures are necessary to prevent immediate substantial bodily injury to the patient or others and alternative methods are not sufficient to accomplish this purpose. Restraints or seclusion cannot be used as punishment or for the convenience of staff. When restraint or seclusion is used, the Act requires use of the least restrictive measure necessary to prevent injury, and the use cannot exceed three hours without medical reevaluation, except between the hours of midnight and 8:00 a.m. The Act requires monitoring of the use of restraint or seclusion no less than once per each 15 minutes. The head of the center or a physician or psychologist is required to sign a statement explaining the treatment necessity for the use of seclusion or restraint, which is added to the patient's permanent treatment record.

The above provisions do not prevent, for a period of up to two hours without review and approval by the head of the center or a physician or psychologist, the use of restraints as necessary for a patient likely to cause physical injury to self or others without such restraint, the use of restraints primarily for examination or treatment or to ensure the healing process, or the use of seclusion as part of a treatment methodology that calls for time out due to the patient's refusal to participate or disruption.

Rights of Patients; Penalty for Deprivation of Rights

The bill includes in the Act a list of rights of patients (in addition to the rights provided elsewhere in the Act), including rights related to clothing*, possessions*, and money*; communication* and correspondence*; conjugal visits*; visitors*; refusal of involuntary labor; prohibition of certain treatment methods without written consent of the patient; explanation of medication and treatment; communication with the Secretary, the head of the center, and any court, attorney, physician, psychologist, qualified mental health professional, licensed addiction counselor, or minister of religion; contact of, consultation with, and visitation by the patient's physician, psychologist, qualified mental health professional, licensed addiction counselor, minister of religion, legal guardian, or attorney at any time; information regarding these rights upon admission; and humane treatment, consistent with generally accepted ethics and practices.

The head of a center can, for good cause only, restrict those rights marked above with "*." The remaining rights cannot be restricted by the head of a center under any circumstances. Each center is required to adopt policies governing patient conduct that are consistent with the above provisions. The Act requires a statement explaining the reasons for any restriction of a patient's rights be immediately entered on the patient's medical record, with copies of the statement made available to the patient and to the patient's attorney, and the bill requires notice of any restriction to be communicated to the patient in a timely manner.

Any person willfully depriving any patient of the rights listed above, except for the restriction of rights as permitted by the Act or in accordance with a properly obtained court order, is guilty of a class C misdemeanor.

Records

Any district court, treatment, or medical records of a person admitted to a center under the Act that are in the possession of a district court or center are privileged and not subject to disclosure, except as provided under the Care and Treatment Act for Mentally Ill Persons.

Immunity and Criminal Making of a Report

The Act provides immunity from civil and criminal liability for acting or declining to act pursuant to the Act for any person, law enforcement agency, governing body, center, or community mental health center or personnel.

It is a class A misdemeanor to, for corrupt consideration, advantage, or malice, make, join in making, or advise the making of a false petition, report, or order provided for in the Act.

Amendments to Law

Act Establishing Standards for Facilities Providing Residential Care and Support, Psychiatric and Mental Health Care and Treatment, and Other Disability Services

The definitions section of this act is amended to define "crisis intervention center" and include this term within the definition of "center." The sections of this act setting forth the purpose of the Act and the authority, powers, and duties of the Secretary (for purposes of the Act) is amended to incorporate crisis intervention centers.

Care and Treatment Act for Mentally Ill Persons

This act is amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of patients under this act is amended to add "qualified mental health professional" to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act is amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act is added.

Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem

This act is amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of patients under this act is amended to add "licensed addiction counselor" to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act is amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act is added.

Driving Under the Influence; Ignition Interlock Devices; Expungement; HB 2085

HB 2085 amends law regarding ignition interlock devices to require every person who has an ignition interlock device installed to complete the ignition interlock device program pursuant to rules and regulations adopted by the Secretary of Revenue. An approved service provider must provide proof of completion to the Division of Vehicles before the person's driving privileges are fully reinstated.

The bill also amends statutes governing expungements in municipal and district courts to state that provisions regarding expungement of violations of driving under the influence (DUI) or test refusal apply to all violations committed on or after July 1, 2006, except that the district court expungement provision for a second or subsequent violation does not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

Kansas Sexually Violent Predator Act—Annual Review of Committed Persons and Persons in Transitional Release; Petitions for Transitional Release and Conditional Release; HB 2128

HB 2128 amends law regarding procedures for annual review, transitional release, and conditional release for persons civilly committed under the Kansas Sexually Violent Predator Act (Act), as follows.

Annual Review of Committed Persons

The bill amends provisions related to the annual review of committed persons to require the court to file the notice to the person and annual report required under current statute upon receiving the notice and report. The bill requires the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a request waives the person's right to a hearing until the next annual report is filed. A contested annual review hearing for transitional release shall consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release is permitted to petition for conditional release, and only a person in conditional release is permitted to petition for final discharge. The bill removes a provision in previous law stating that nothing in the Act shall prohibit a person in conditional release from otherwise petitioning the court for discharge at the annual review hearing.

The bill replaces the previously existing provision allowing a person to retain a qualified professional person to examine the person with a provision allowing a person to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner shall have access to all available records concerning the person. If an indigent person requests an examiner, the court shall determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner is discretionary and, before appointing an examiner, the court is required to consider factors including the person's compliance with institutional requirements and participation in treatment to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof is on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in transitional release. The report (or a copy) of the findings of a qualified expert is admissible as if the qualified expert had testified in person. If the

person does not participate in the prescribed treatment plan, the person shall be presumed to be unable to show probable cause to believe the person is safe to be released.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act must conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so an annual review hearing is warranted. The court must enter an order reflecting its determination.

A previously existing provision providing the person with the benefit of the same constitutional protections afforded during the determination of whether the person is a sexually violent predator is changed to entitle the person to the assistance of counsel. The bill provides that if the person is indigent and without counsel, the court shall appoint counsel to assist the person.

Provisions in previous law are removed or modified to conform to the new procedures, including the addition of the "significantly changed" standard. The term "committed person" is changed to "person" throughout the annual review section.

Petitions for Transitional Release and Conditional Release

The statute setting forth the procedure for petition for transitional release is amended to reflect the "significantly changed" standard and to add a nearly identical procedure for petition for conditional release. This procedure allows the Secretary for Aging and Disability Services (Secretary), if the Secretary determines the person's mental abnormality or personality disorder has significantly changed so the person is not likely to engage in repeat acts of sexual violence if placed in conditional release, to authorize the person to petition the court for conditional release. After specified service, the court must set a hearing within 30 days. The Attorney General shall represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show beyond a reasonable doubt that the petition's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and if placed in conditional release is likely to engage in repeat acts of sexual violence.

If, after the hearing, the court is convinced beyond a reasonable doubt the person is not sufficiently safe to warrant conditional release, the court must order that the person remain either in secure commitment or in transitional release. Otherwise, the person shall be placed in conditional release. The bill specifies other statutory provisions regarding conditional release that apply to a conditional release under this section.

Annual Review of Persons in Transitional Release

The previously existing procedure for court review of reports regarding persons in transitional release is replaced with a procedure substantially similar to the annual review procedure the bill provides for committed persons, as follows.

The bill requires the Secretary to provide the person with a written notice of the person's right to petition the court for release over the Secretary's objection. The bill requires the notice contain a waiver of rights. The Secretary must forward the report and notice to the court that committed the person under the Act, and the court must file the notice and report. The bill

requires the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a request waives the person's right to a hearing until the next annual report is filed. A contested annual review hearing for conditional release shall consist of a consideration of whether the person is entitled to conditional release from transitional release. Only a person in transitional release is permitted to petition for conditional release, and no person in transitional release is permitted to petition for final discharge.

The person is allowed to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner shall have access to all available records concerning the person. If an indigent person requests an examiner, the court shall determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner is discretionary and, before appointing an examiner, the court must consider factors that include the person's compliance with institutional requirements and participation in treatment to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof is on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in conditional release. The report (or a copy) of the findings of a qualified expert is admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person shall be presumed to be unable to show probable cause to believe the person is safe to be released.

The person has the right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person is not entitled to be present at the hearing.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act must conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so an annual review hearing is warranted. The court must enter an order reflecting its determination.

If the court at the annual review hearing determines probable cause exists to believe the person's mental abnormality or personality disorder has significantly changed so the person is safe to be placed in conditional release, the court must set a hearing for conditional release. The person is entitled to be present and to have the assistance of counsel. The Attorney General shall represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be placed in conditional release and, if conditionally released, is likely to engage in repeat acts of sexual violence. The person has the right to have experts evaluate the person, and the court must appoint an expert if the person is indigent and requests an appointment.

Subsequent to either a court review or hearing, the court must issue an appropriate order with findings of fact, and the order must be provided to the Attorney General, the person, and the Secretary.

For purposes of this section, if the person is indigent and without counsel, the court must appoint counsel to assist the person.

Provisions in previously existing law are removed or modified to conform to the new procedures, including the addition of the "significantly changed" standard.

County Commission Meetings; Member Selection—Regional System of Cooperating Libraries Governing Board; HB 2102

HB 2102 amends law relating to scheduling of county commission meetings and selection of members of the governing board of a regional system of cooperating libraries.

Scheduling of County Commission Meetings

The bill requires the board of county commissioners to meet on such days and times each month as established by resolution adopted by the board. Current law requires boards of county commissioners in certain counties to meet on the first Monday of each month at the county seat. The bill strikes language differentiating meeting requirements of commissioners in counties with more than 8,000 inhabitants.

The bill allows for a special session to be called for the transaction of any business by a call of the majority of board members and removes language about transacting general or special business and calling special sessions as often as the interest and business of the county may demand. The bill clarifies that the business transacted at any special session will be governed by that business set out in the call for the meeting.

Additionally, the bill replaces the term “chairman” with “chairperson” in the amended statute.

Member Selection—Regional System of Cooperating Libraries Governing Board

The bill eliminates the requirement that the Governor appoint one or more representatives to the governing board of a regional system of cooperating libraries and instead requires such representative or representatives be appointed by the board of county commissioners of each county that is a part of the regional system. Likewise, the bill eliminates gubernatorial involvement in selection and certification of governing board members who are added when another county joins the territory of a regional system, and replaces that language with a requirement that such selection be made by the relevant board of county commissioners with the board of each participating library (as in current law), and that the selection be certified to the State Librarian by both such entities.

OPEN RECORDS

Open Records Exceptions; Juror Information; Procedure and Justifications for Closed or Executive Meetings; HB 2301

HB 2301 amends law related to public records and public meetings, as follows.

Juror Information

The bill amends law within the Kansas Code of Criminal Procedure relating to trial jurors. The bill removes addresses of prospective jurors from the information included in the list of prospective jurors filed as a public record with the clerk of the court.

Open Records Exceptions

The bill continues in existence the following exceptions to the Kansas Open Records Act (KORA):

- KSA 2016 Supp. 74-2012, concerning motor vehicle records;
- KSA 2016 Supp. 22-4909, concerning criminal offender registration;
- KSA 2016 Supp. 45-221(a)(51) and (52), concerning home addresses of law enforcement officers and judges;
- KSA 2016 Supp. 65-1505, concerning criminal history records checks;
- KSA 2016 Supp. 74-5607, concerning peace officers standards and training;
- KSA 2016 Supp. 75-7d01 and 75-7d05, concerning the batterer intervention program certification;
- KSA 2016 Supp. 75-5133, concerning charitable gaming and microdistillery information;
- KSA 2016 Supp. 79-3234, concerning social security numbers;
- KSA 2016 Supp. 75-7d08, concerning the batterer intervention program;
- KSA 2016 Supp. 12-5711, concerning the Fort Scott/Bourbon County Riverfront Authority;
- KSA 2016 Supp. 21-2511, concerning biological samples for the Kansas Bureau of Investigation;

- KSA 2016 Supp. 38-2313, concerning fingerprints and photographs of juvenile offenders;

- KSA 2016 Supp. 65-516, concerning child care facilities;

- KSA 2016 Supp. 74-8745, concerning the multistate lottery;

- KSA 2016 Supp. 74-8752, concerning the multistate lottery investigation and audit;

- KSA 2016 Supp. 74-8772, concerning the Kansas Racing and Gaming Commission; and

- KSA 2016 Supp. 75-7427, concerning the Office of Inspector General.

The bill removes the sunset date of July 1, 2021, placed on the following exceptions to KORA by the 2016 Legislature following its review of the exceptions:

- KSA 2016 Supp. 40-955, concerning insurance rate filings;

- KSA 2016 Supp. 45-221(a)(10)(F), concerning victims of sexual offenses;

- KSA 2016 Supp. 45-221(a)(50), concerning information provided to the 911 Coordinating Council;

- KSA 2016 Supp. 65-4a05, concerning individual identification present in documents related to licensing of abortion clinics;

- KSA 2016 Supp. 65-445(g), concerning child sexual abuse reports;

- KSA 2016 Supp. 12-5611, concerning the Topeka/Shawnee County Riverfront Authority;

- KSA 2016 Supp. 22-4906 and 22-4909, concerning criminal offender registration;

- KSA 2016 Supp. 38-2310, concerning records concerning certain juveniles;

- KSA 2016 Supp. 38-2311, concerning juvenile treatment records;

- KSA 2016 Supp. 38-2326, concerning juvenile offender information systems;

- KSA 2016 Supp. 44-1132, concerning discrimination in employment;

- KSA 2016 Supp. 60-3333, concerning environmental audit reports;

- KSA 2016 Supp. 65-6154, concerning emergency medical services reports;
- KSA 2016 Supp. 71-218, concerning community colleges and employee evaluation documents;
- KSA 2016 Supp. 75-457, concerning substitute mailing addresses;
- KSA 2016 Supp. 75-712c, concerning reports of missing persons;
- KSA 2016 Supp. 75-723, concerning the Abuse, Neglect, and Exploitation of Persons Unit in the Office of the Attorney General; and
- KSA 2016 Supp. 75-7c06, concerning concealed firearm records.

The bill also removes a reference to a repealed statute.

Procedure and Justifications for Closed or Executive Meetings

The bill amends the Kansas Open Meetings Act with respect to closed or executive meetings. The bill requires any motion to recess for a closed or executive session to include a statement describing the subjects to be discussed during the closed or executive session and the justification for closing the meeting. Current law requires a statement of the justification for closing the meeting and the subjects to be discussed during the closed meeting. The bill leaves unchanged the requirement the motion contain the time and place at which the open meeting will resume.

The bill requires the complete motion be recorded in the minutes of the meeting.

Justifications for closing meetings are limited to the circumstances listed in the bill. The justifications are substantively similar to the list of subjects allowed to be discussed at closed or executive sessions under current law, with the following exceptions:

- The bill amends language related to KSA 22a-243(j) to specify matters relating to the investigation of child deaths can be discussed;
    - Current law states matters related to district coroners can be discussed in executive session pursuant to the statute;
- The bill specifies what matters can be discussed pursuant to statute in the following instances:
    - Matters relating to parimutuel racing pursuant to KSA 74-8804 and amendments thereto;
    - Matters relating to the care of children pursuant to KSA 2016 Supp. 38-2212(d)(1) or 38-2213(e) and amendments thereto;
    - Matters relating to patients and providers pursuant to KSA 39-7,119(g) and amendments thereto;

  - Matters relating to maternity centers and child care facilities pursuant to KSA 65-525(d) and amendments thereto; and
  - Matters relating to the Office of Inspector General pursuant to KSA 2015 Supp. 75-7427 and amendments thereto;

- The bill adds a justification allowing the Governor's Domestic Violence Fatality Review Board to conduct case reviews in closed or executive meetings; and

- The bill strikes language related to repealed statutes.

RETIREMENT

Working After Retirement; New Provisions; House Sub. for SB 21

House Sub. for SB 21 makes changes to the Kansas Public Employees Retirement System (KPERS or Retirement System) pertaining to working after retirement.

The bill establishes a new working-after-retirement rule, which takes effect on January 1, 2018. For retirees under the age of 62, there is a 180-day waiting period before returning to work. If the retiree is 62 or older, the current 60-day waiting period applies. The current prohibition placed upon prearrangement for employment continues to apply. For covered positions, the employer pays the statutory contribution rate on the first $25,000 of compensation and, for that portion of compensation greater than $25,000, the contribution rate is 30 percent of the compensation. Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer makes no contributions. None of the above provisions sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions are not subject to an earnings limitation. Employers will pay the statutory contribution rate on the first $25,000 of compensation and, for that portion of compensation greater than $25,000, the contribution rate will be equal to 30 percent for retirees employed in covered positions. The employer makes no contributions for non-covered positions. This provision applies to:

- Retirees who returned to work on or after May 1, 2015, or who have lost grandfathered status since that date due to a break in service or a change of jobs or employers;

- Retirees in licensed school positions who retire after May 1, 2015, or took early retirement after March 2009;

- Retirees who are currently covered by a grandfathering provision (*i.e.*, returned to work before May 1, 2015, and have not lost grandfather status);

- Retirees in licensed school professional positions who are currently covered by a grandfathering provision (*i.e.*, retired before May 1, 2015, or took early retirement before March 2009); and

- "Great-grandfathered" retirees who returned to work for either the same or different employer before July 1, 2006.

Exemption Changes, Effective July 1, 2017

The bill clarifies the working-after-retirement exemption covers any substitute teacher working without a contract. Retirees who retired before January 1, 2018, and who returned to work in licensed school professional positions are covered by the current provisions for

grandfathered licensed school professionals. The exemption is expanded to include statewide elected officials and legislators, exempting them from both earnings limits and employer contributions; there is a 30-day waiting period following retirement before taking office, which does not apply in the case of filling a vacant office. Working-after-retirement provisions apply to retirees employed as independent contractors or employed by third parties; however, retirees who are independent contractors or are employed by third parties are excluded from the working-after-retirement provisions if:

- The contractual relationship was not created to allow the retiree to continue employment in a position similar to the one the retiree held before retiring;
- The retiree's activities are not normally performed exclusively by employees of the KPERS participating employer; and
- The retiree meets the statutory criteria for an independent contractor or, if employed by a third-party contractor, the activities are on a limited-term basis and the third party is not itself a KPERS participating employer.

Exemption Changes, Effective January 1, 2018

The exemptions for licensed school professionals and hardship, hard-to-fill, and special education positions are eliminated.

Participating Service; KP&F Death Benefits; Board of Regents Retirement Plan; Administration of KPERS; SB 205

SB 205 makes numerous changes to the Kansas Public Employees Retirement System (KPERS or Retirement System) pertaining to participating service; Kansas Police and Firemen's (KP&F) death benefits for certain surviving spouses; the Board of Regents Retirement Plan, as it relates to working after retirement; and the administration of KPERS.

Participating Service

The bill expands the definition of "participating service" for members of KPERS and KP&F. Time away from work or normal duties while in paid status authorized and approved by a participating employer constitutes service credit. Administrative, vacation, sick, or personal leaves—including worker's compensation or light or temporary duty assignments—qualify as service credit without limitation. This provision applies retroactively, starting on July 1, 2014.

If a member does not return to work for the participating employer at the conclusion of the leave, except for death or disability, the service credit will be removed. If a member voluntarily quits employment, the period of leave exceeding 365 days will be removed from the service credit. In either case, the Retirement System will reimburse the employer and employee for contributions made during that period.

Under previous law, the credit for leave types was addressed administratively by KPERS without specific statutory language. Some forms of leave, such as sick and annual, qualified for service credit. If paid administrative leave extended beyond a calendar quarter, service credit

was not earned. Some alternative forms of work assignment, such as light duty, could have received service credit while others, such as temporary duty, did not.

KP&F Death Benefits

The bill revises death benefits for certain surviving spouses covered by KP&F. Upon the service-connected death of a KP&F member, the member's spouse receives an immediate lump-sum benefit equal to 100 percent of the member's final average salary and an annual spouse's benefit equal to the greater of:

- 50 percent of the member's final average salary; or
- The amount the member would have been paid had the member elected the joint and survivor retirement benefit option and retired as of the first day of the month following the date of death.

Under previous law, a surviving spouse received an annual benefit equal to 50 percent of the member's final average salary plus an additional 10 percent for each child under the age of 18, or 23 if the child was a full-time student, capped not to exceed 75 percent of the member's final average salary. The bill increases the cap to 90 percent.

The benefits apply retroactively, starting on July 1, 2016. KPERS implements the provisions of the bill.

Board of Regents Retirement Plan

The bill exempts from the working-after-retirement earnings cap those retirees who are reemployed by the Board of Regents and covered by the Regents Retirement Plan, which is not administered by KPERS.

Administration of KPERS

The bill deletes reference to 8 percent as the Retirement System's actuarial assumed rate of return and inserts language referring to the actuarial assumed rate of return established by the KPERS Board of Trustees.

State Budget; Senate Sub. for HB 2002

Senate Sub. for HB 2002 includes funding for FY 2017, FY 2018, and FY 2019 supplemental expenditures for most state agencies and FY 2018 and FY 2019 capital improvements for selected state agencies. This summary, excluding the table, does not include expenditures associated with SB 30 (the tax bill) or SB 19 (the education bill).

FY 2018

The approved FY 2018 budget, from Senate Sub. for HB 2002, totals $15.6 billion, including $6.4 billion from the State General Fund. The approved budget increases the Governor's recommended expenditures by $248.9 million, including $170.0 million from the State General Fund, for FY 2018. Adjustments to the Governor's recommendations include:

- Add $141.4 million, including $135.8 million from the State General Fund, to restore Kansas Public Employee Retirement System (KPERS) employer contributions to the statutory rate for FY 2018;

- Add $47.2 million, all from the State General Fund, to remove savings associated with Alvarez & Marsal (A&M) recommendations for health insurance and procurement in K-12 schools for FY 2018;

- Add $26.7 million, including $12.2 million from the State General Fund, for: a 2.5 percent adjustment for all state employees with less than five years of service, except highway patrol law enforcement personnel, legislators, teachers and licensed personnel at the Schools for the Deaf and Blind, employees at the Kansas Bureau of Investigation who are part of the Recruitment and Retention Plan, and other Statewide Elected Officials; a 5.0 percent adjustment for state employees who have not had a pay adjustment in five years; and a 2.5 percent adjustment for judges and non-judicial staff in FY 2018;

- Add $20.3 million, including $9.1 million from the State General Fund, and add language providing a 3.0 percent rate increase for providers of Home and Community Based Services under each of the waivers for FY 2018;

- Add $10.5 million, all from the State General Fund, for community mental health centers;

- Add $4.7 million, all from the State General Fund, and add language to open at least 20 additional beds for patients at Osawatomie State Hospital. If the facility cannot open the beds at Osawatomie State Hospital, the funding is to be used to enter into a contract to provide patient beds through third-party facilities for FY 2018 and add $6.6 million, including $2.3 million from the State General Fund, for operational expenditures and add language that the State Finance Council will review the current status of funding for FY 2018;

- Add $6.5 million, all from the State General Fund, to replace federal and other funding lost due to Larned State Mental Health Hospital previously counting patients in the Sexual Predator Treatment Program as part of the eligible Disproportionate Share Hospital population and due to a decreased number of patients eligible for Medicaid and Medicare reimbursements for FY 2018;

- Add $2.7 million, all from special revenue funds, to establish an on-site health clinic for state employees provided that no more than $500,000 shall be expended to construct and renovate the facility for FY 2018.

- Add $2.1 million, all from the State General Fund, for the Senior Care Act for FY 2018;

- Add $5.0 million, including $2.2 million from the State General Fund, and add language requiring the Kansas Department of Health and Environment to set Medicaid reimbursement rates for children's hospitals contracting with a KanCare managed care organization (MCO) at reimbursement rates that restore calendar year 2015 reductions and require the agency to complete a study on the statewide average cost recovery ratio for all Kansas hospitals contracting with MCOs for FY 2018.

- Add $1.1 million, all from the State General Fund, for expenditures related to state capital *habeas* proceedings for four capital punishment cases for FY 2018;

- Add $1.0 million, all from the State General Fund, for domestic violence prevention grant matching funds for FY 2018; and

- Eliminate the securitization of tobacco proceeds and delete $34.5 million in State General Fund expenditures and $7.2 million from Temporary Assistance for Needy Families (TANF) to restore expenditures from the Children's Initiatives Fund for FY 2018.

FY 2019

The approved FY 2019 budget, in House Sub. for SB 2002, totals $15.8 billion, including $6.3 billion from the State General Fund. The approved budget increases the Governor's recommended expenditures by $0.3 million, including $132.3 million from the State General Fund, for FY 2019. Adjustments to the Governor's recommendations include:

- Add language to repay delayed FY 2019 employer contributions of $194.0 million to KPERS *via* layered amortization beginning in FY 2020;

- Eliminate the securitization of tobacco proceeds and delete $34.5 million in State General Fund expenditures and $7.2 million from TANF to restore expenditures from the Children's Initiatives Fund for FY 2019;

- Add $89.0 million, all from the State General Fund, to remove savings associated with A&M recommendations for health insurance and procurement in K-12 schools for FY 2019;

- Add $6.5 million, all from the State General Fund, to replace federal and other funding lost due to the agency previously counting patients in the Sexual Predator Treatment Program for FY 2019;

- Add $48.1 million, including $21.6 million from the State General Fund, and add language providing a 4.0 percent rate increase for providers of Home and Community Based Services under each of the waivers for FY 2019;

- Add $4.7 million, all from the State General Fund, and add language to open at least 20 additional beds for patients at Osawatomie State Hospital. If the facility cannot open the beds at Osawatomie State Hospital, the funding is to be used to enter into a contract to provide patient beds through third-party facilities for FY 2019;

- Add $65.0 million, including $29.3 million from the State General Fund, due to the hospital provider assessment rate not being increased to restore the 4.0 percent Medicaid provider reduction to hospitals and for other Medicaid expenditures for FY 2019;

- Add $13.2 million, all from the State General Fund, for community mental health centers for 2019;

- Add $1.0 million, all from the State General Fund, for domestic violence prevention grant matching funds for FY 2019;

- Add $2.1 million, all from the State General Fund, for the Senior Care Act for FY 2019; and

- Add $1.4 million, all from the State General Fund, for expenditures related to state capital *habeas* proceedings for four capital punishment cases for FY 2019.

Following is a summary table that reflects all changes to both State General Fund receipts and State General Fund expenditures from various bills that have passed the Legislature.

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES

Senate Sub. for HB 2002 Conference Profile
(dollars in millions)

	Actual FY 2016	Conf. Rec. FY 2017	Conf. Rec. FY 2018	Conf. Rec. FY 2019
Beginning Balance	$ 71.5	$ 37.1	$ 50.0	$ 134.8
Receipts (November 2016 Consensus)	6,080.6	6,073.1	5,687.6	5,564.4
Governor's Revenue Adjustments	0.0	10.3	337.3	487.2
PMIB Transfer	0.0	230.0	87.3	0.0
SB 30–Tax Bill	0.0	0.0	591.0	633.0
SB 19–Education Tax Credit	0.0	0.0	(9.0)	(9.0)
Legislative Receipt Adjustments	0.0	(4.1)	(14.7)	(10.1)
Adjusted Receipts	$ 6,080.6	$ 6,309.3	$ 6,679.4	$ 6,665.5
Total Available	$ 6,152.1	$ 6,346.4	$ 6,729.4	$ 6,823.1
Less Expenditures	$ 6,115.1	$ 6,296.5	$ 6,408.0	$ 6,329.6
SB 19–Education Bill	0.0	0.0	186.6	283.8
Ending Balance	$ 37.0	$ 50.0	$ 134.8	$ 186.9
Ending Balance as a % of Expenditures	0.6%	0.8%	2.1%	3.0%

Department of Agriculture Fees; House Sub. for SB 60

House Sub. for SB 60 extends the sunset for certain fees assessed by the Kansas Department of Agriculture (KDA) on pesticides, fertilizer, and milk, cream, and dairy products. Additionally, the bill reinstates certain dam inspection fees and allows the KDA to assess a fee for processing certain paper documents when an electronic alternative for submission exists. Finally, the bill requires the Secretary of Agriculture (Secretary) to lower certain fees and potentially raise certain fees through rules and regulations, if certain criteria are met.

Pesticide and Fertilizer Fees

The bill extends the sunset for certain pesticide and fertilizer fees from July 1, 2018, to July 1, 2023. The following table outlines the program; the specific fee; the amount the fee would have reverted to on July 1, 2018; and the fee amount that is extended.

MODIFICATIONS TO KDA FEES: PESTICIDE & FERTILIZER, WATER APPROPRIATIONS

Program	Service	Amount the Fee Would Have Reverted to on July 1, 2018	Fee Extended under Bill
Pesticide & Fertilizer	Business License Application	$112 per category	$140 per category
Pesticide & Fertilizer	Uncertified Applicator Registration	$10	$15
Pesticide & Fertilizer	Government Agency Registration	$35 maximum	$50 maximum
Pesticide & Fertilizer	Pest Control Technician Registration	$25 maximum	$40 maximum
Pesticide & Fertilizer	Commercial Certification Examination per category and re-exam per category	$35 maximum	$45 maximum
Pesticide & Fertilizer	Certified Private Applicator Certificates	$10 maximum	Fee fixed by rule and regulation
Pesticide & Fertilizer	Chemigation User Permit	$55	$75
Pesticide & Fertilizer	Chemigation User Permit for additional points of diversion	$10	$15
Pesticide & Fertilizer	Chemigation Equipment Operator Certification or renewal	$10	$25
Water Appropriations	Application for a permit to appropriate water based on acre feet	$100 $150 $150+$10	$200 $300 $300+$20
Water Appropriations	Application for a permit to appropriate water for storage based on acre feet	$100 $100+$10 for each additional 250	$200 $200+$20 for each additional 250
Water Appropriations	Application to change a point of diversion less than 300 feet	$50	$100
Water Appropriations	Application to change a point of diversion more than 300 feet	$100	$200

MODIFICATIONS TO KDA FEES: PESTICIDE & FERTILIZER, WATER APPROPRIATIONS

Program	Service	Amount the Fee Would Have Reverted to on July 1, 2018	Fee Extended under Bill
Water Appropriations	Application to change the place of use	$100	$200
Water Appropriations	Application to change the use made of water	$150	$300
Water Appropriations	Term permit based on acre feet	$100 $100 $150+$10 for each additional 100	$200 $300 $300+$20 for each additional 100
Water Appropriations	Term permit for storage based on acre feet	$100 $100+$10 for each additional 250	$200 $200+$20 for each additional 250
Water Appropriations	Reinstatement Request	$100	$200
Water Appropriations	Extension of time for diversion work or perfection of water right	$50	$100
Water Appropriations	Temporary permit or extension	$100	$200

The bill also extends the sunset on a penalty of $10 a day for failing to file an affidavit and pay inspection fees from July 1, 2015, to July 1, 2023. Under former law, the penalty would have reverted to $5 a day.

The bill requires the Secretary, through rules and regulations, to reduce the fee for registrations of agricultural chemicals and commercial fertilizers whenever it is determined the fee is yielding more revenue than is necessary for the administration of the registration program for a period of not less than one year. It also allows the Secretary to increase the fee through rules and regulations when the Secretary determines there is a need to produce sufficient revenue to administer the program, and it requires $100 of any registration fee be credited to the State Water Plan Fund regardless of the registration fee imposed by the Secretary.

Dam Inspection Fees

The bill authorizes fees for inspection of Class 1 and Class 2 dams that are conducted by the Chief Engineer or an authorized representative in the amount of $1,500.

Milk, Cream, and Dairy Fees

The bill also extends the sunset to June 30, 2023, on several fees imposed by the Secretary in relation to milk, cream, and dairy businesses. The following table outlines the fee; the amount the fee would have reverted to on July 1, 2018; and the fee amount that is extended.

MODIFICATIONS TO KDA FEES: MILK, CREAM, AND DAIRY		
Fee	**Amount the Current Fee Would Have Reverted to on July 1, 2018**	**Fee Extended under Bill**
Dairy Manufacturing Plant License	$120	$200
Milk Distributor License	$120	$200
Milk Hauler License	$25	$35
Milk or Cream Transfer Station License	$50	$100
Single Service Manufacturing License	$50	$100
Grade A Inspection–Milk Producer	$.01 per 100 pounds of milk produced	$.015 per 100 pounds of milk produced
Grade A Inspection–Packaged Milk or Milk Products Sold in Kansas at Retail	$.01 per 100 pounds	$.02 per 100 pounds
Grade A Raw Milk for Pasteurization	$.01 per 100 pounds	$.02 per 100 pounds
Milk or Cream for Manufacturing Purposes–Produced by Milk Producers	$.01 per 100 pounds	$.015 per 100 pounds
Milk or Cream for Manufacturing Purposes–Delivered to Dairy Manufacturing Plant	$.0075 per 100 pounds	$.02 per 100 pounds
Kansas-Manufactured Frozen Dairy Dessert or Frozen Dairy Dessert Mix	$1 per 1,000 gallons	$2 per 1,000 gallons
Imported Frozen Dairy Dessert or Frozen Dairy Dessert Mix	$1 per 1,000 gallons	$2 per 1,000 gallons

The bill also amends two exemptions from inspection fees. Under current law, any manufacturing plant located on a dairy is exempted from paying the fees for delivering Grade A raw milk for pasteurization or for delivering milk or cream for manufacturing purposes. The bill amends that exemption to include only dairies where less than 7.0 million pounds of milk is processed annually. This revised exemption will go into effect on January 1, 2018.

The bill requires the Secretary, through rules and regulations, to also reduce any dairy license or inspection fee whenever it is determined the fee is yielding more revenue than is necessary for the administration of the registration program. It also allows the Secretary to increase the fee through rules and regulations when the Secretary determines there is a need to produce sufficient revenue to administer the program.

Paper Document Processing Fee

The bill authorizes the Secretary to charge and collect, by order, a fee necessary for administering and processing paper documents, but only if an electronic option is available for submitting the documents. The fee is in addition to any fee the Secretary is authorized to charge by law and is equal to 6.0 percent of the cost to obtain a specific license, not to exceed $50.

Department of Revenue—Employees; SB 96

SB 96 provides for the fingerprinting of Kansas Department of Revenue (KDOR) employees and also deals with the classification of that agency's driver's license examiners.

Fingerprinting of Employees

The bill authorizes the Secretary of Revenue (Secretary) to require, as a condition of initial or continued employment, the fingerprinting of contractors and employees having access to federal tax information received directly from the Internal Revenue Service. Such persons also will be subject to state and national criminal history record checks. The Secretary is authorized to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation. Local and state law enforcement agencies are required to assist the Secretary in the taking and processing of fingerprints and to release all records of arrests and convictions to the Secretary.

The Secretary may use information obtained under the bill only to verify the identification of persons and to determine their fitness for employment. Any other use or disclosure of the information is deemed a class A nonperson misdemeanor and constitutes grounds for removal from office, with the exception of certain information that may be shared with the Post Auditor in accordance with the provisions of the Legislative Post Audit Act.

The bill requires all costs be paid by KDOR or its contractors.

Driver's License Examiners

The bill also allows driver's license examiners within KDOR to have the choice to move from the classified to the unclassified service.

Attorney General—Appellate Briefs; Legal Representation Charges; Scrap Metal Theft Reduction Act—Enforcement Delay; Civil Penalties; Office of the Inspector General—Transfer; SB 149

SB 149 creates and amends law related to the Attorney General, the Scrap Metal Theft Reduction Act, and the Office of the Inspector General within the Kansas Department of Health and Environment (KDHE), as follows.

Attorney General—Appellate Briefs

The bill creates law concerning criminal matters or postconviction cases in the Kansas Supreme Court or the Kansas Court of Appeals. Specifically, the bill requires a copy of each brief to be served on the Kansas Attorney General and prohibits briefs from being filed by or on behalf of the State or any officer or agent of the State unless the approval of the Attorney General or a member of the Attorney General's staff is endorsed on the brief.

Attorney General—Legal Representation Charges

The bill creates law allowing the Attorney General to determine, fix, establish, and collect legal representation charges for legal services provided to state agencies, as defined by the bill. The Attorney General may determine the charges to any agency based on a schedule of fees and costs published by the Attorney General or by agreement with the state agency. Any schedule of fees adopted by the Attorney General may not exceed the limits established in KSA 22-4507, which relates to compensation and reimbursement for legal services provided to indigent defendants.

The bill creates the Attorney General's State Agency Representation Fund (Fund) and requires charges collected under the provisions of the bill be placed in the Fund. Moneys in the Fund may be used by the Attorney General only for operations of the Office of the Attorney General (AG's Office).

The bill specifies it does not obligate the Attorney General to provide legal services to any state agency. The Attorney General is authorized to adopt rules and regulations as necessary to implement the provisions of the bill.

The bill defines several terms, including the following:

- "Legal representation charges" means costs, fees, expenses, or other financial liability incurred by the Attorney General, including, but not limited to, attorney fees, to provide legal services to a state agency;

- "Legal services" means any form of legal advice, representation, or counseling involving an attorney-client relationship, including, but not limited to, general counsel services and representation of a state agency in an administrative law matter. It includes services provided at the discretion of the Attorney General and legal services required to be provided by the Attorney General. It does not include any representation provided pursuant to the Kansas Tort Claims Act or the defense of civil rights claims pursuant to KSA 75-6116; and

- "State agency" means any department of state government, or any agency thereof, that collects fees for licensing, regulating, or certifying a person or profession.

Scrap Metal Theft Reduction Act Amendments

The bill amends the Scrap Metal Theft Reduction Act (Act) to delay, from July 1, 2016, until January 1, 2019, a requirement for the Attorney General to establish and maintain a database as a central repository for information required to be provided under the Act. The Act also declares certain provisions of the Act unenforceable until January 1, 2019. The delayed provisions include:

- The statute allowing imposition of a civil penalty of $100-$5,000 on any scrap metal dealer who violates any of the provisions of the Act;

- A provision requiring scrap metal dealers to forward information to the database described above;

- A provision changing the permissible range of scrap metal dealer registration fees from $100-$400 to $500-$1,500; transferring the authority to set such fees from the board of county commissioners or governing body of the city to the Attorney General; and requiring the fee be paid for each particular place of business;

- A provision changing the permissible range of renewal fees from $25-$50 to "not more than $1,500" and transferring the authority to set such fees from the governing body of a city or board of county commissioners to the Attorney General;

- A provision disqualifying a person for registration if the person does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license; and

- A provision allowing a criminal history records check for applicants for registration, including fingerprinting provisions.

The bill amends a provision requiring a dealer to photograph the seller and the item(s) being sold and to keep such photographs with the record of the transaction by removing the requirement that the seller be photographed. The bill further amends this provision to allow the Attorney General to impose a civil penalty of $100-$5,000 for each failure to comply with these requirements between the effective date of the bill and January 1, 2019. The bill adds the same civil penalty provision for a failure to comply with a continuing paragraph requiring a scrap metal dealer to include a copy of the seller's identification card or document containing such identifying number in the register of information the dealer is required to maintain. Finally, the bill adds the same civil penalty provision to a continuing statute prohibiting certain actions by a scrap metal dealer or employees or agents of the dealer. [*Note*: These penalties could have been imposed under the general civil penalty provision in previous law that was delayed by the bill.]

Transfer of the Office of the Inspector General

The bill enacts and amends law to transfer the Office of the Inspector General (IG's Office) within KDHE to the IG's Office within the AG's Office. The powers, duties, functions, records, and property of the IG's Office within KDHE are transferred to the IG's Office within the AG's Office. References to the IG's Office within KDHE in statute, contract, or other document are deemed to apply to the IG's Office within the AG's Office. The bill replaces references to the Secretary of Health and Environment or KDHE regarding the IG's Office with the Attorney General or AG's Office, as applicable. Additional details follow.

Transfer of Inspector General's Office

The orders and directives of the IG's Office within KDHE existing on the effective date of the bill shall continue in effect and be deemed to be those of the IG's Office within the AG's

Office until revised, amended, repealed, or nullified. All unexpended balances of appropriations of the IG's Office within KDHE on the effective date of the bill shall be transferred to the AG's Office for use by the IG's Office within the AG's Office to carry out the powers, duties, and functions transferred under the bill. The transfer will not abate any suit, action, or other proceeding, judicial or administrative, lawfully commenced or which could have been commenced by or against any existing agency mentioned in the bill or against any state officer in the officer's official capacity or in relation to the discharge of the officer's official duties. No criminal actions commenced or which could have been commenced by the State will be abated by effect of this bill. The Governor shall resolve any conflicts arising as to the disposition of any power, function, or duty or the unexpended balance of any appropriation as a result of any abolishment, transfer, attachment, or other change made by the bill or under the bill's authority, with the Governor's decision being final.

Definitions

The bill clarifies the definition of "attorney general" by referencing the State of Kansas. The definition of "department" referencing KDHE is deleted.

Inspector General Position

Change in classification, salary, and appointment. The Inspector General position, upon transfer to the AG's Office, will change from classified to unclassified, with an annual salary in an amount equal to the annual salary paid by the State to a district court judge. The Inspector General shall be appointed by the Attorney General, instead of KDHE, and the appointment will continue to be subject to Senate confirmation. The bill allows the Attorney General to remove the Inspector General from office for cause prior to the expiration of the Inspector General's term of office. The Inspector General shall report to the Attorney General.

Duties. The bill clarifies the duties of the Inspector General extend to oversight, audits, investigations, performance reviews, and independent and ongoing evaluations of the State's programs for Medicaid, MediKan, and the Children's Health Insurance Program or their successor programs. The bill deletes references to programs administered by KDHE, clients of KDHE, or the department and replace the language with "such a program or programs" or "state agency or agencies which administer such program or programs."

The bill clarifies the Inspector General is required to conduct independent and ongoing evaluation of these programs or their successor programs over which the Inspector General has oversight as follows:

- Investigate fraud, waste, abuse, and illegal acts directly relating to such programs;

- Audit state programs (not only KDHE), contractors, vendors, and health care providers related to ensuring appropriate payments are made for services rendered and to the recovery of overpayments;

- Investigate fraud, waste, abuse, or illegal acts committed by clients of the programs or by consumers of services of such programs; and

- Monitor the adherence to the terms of any contract between a state agency (not only KDHE) and any organization with which the state agency has entered into a contract to make claims payments.

Access to information. The bill clarifies the Inspector General, among other authorized access, shall be required to have access to all pertinent information, confidential or otherwise, and to all personnel and facilities of a state agency (not only KDHE) and state vendors necessary to perform the duties of the IG's Office as directly related to the programs over which the Inspector General has oversight.

Reporting and investigation requirements. If credible evidence of fraud, waste, abuse, or illegal acts are found, the Inspector General is required to report the findings to the Attorney General.

The Inspector General is required to report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to any agency contracting with or responsible for licensing or regulating those persons or entities. In addition to other entities to which the provision of a report is required, the Inspector General is required to make annual reports, findings, and recommendations regarding the IG's Office's investigations into reports of fraud, waste, abuse, and illegal acts relating to any such programs to the appropriate state agency and the Attorney General.

The bill adds civil actions to the list of those actions for which the Inspector General is required to conduct investigations in a manner that ensures preservation of evidence. The Inspector General is required to notify the Attorney General if the Inspector General determines a possible false claim relating to fraud in the provision or administration of the programs over which the Inspector General had oversight has occurred.

KDHE Closed Meeting with Inspector General

Language relating to KDHE recessing for a closed, executive meeting to discuss with the Inspector General any information, records, or other matters involved in any investigation or audit is deleted, as this language is no longer applicable. The bill adds that all information and records of the Inspector General made, maintained, or kept under any investigation or audit under the provisions of the bill shall also be confidential, except as required or authorized under the bill.

Employment Security Law—Access to Information; Kansas Sentencing Commission—Data Sharing; Law Enforcement Training Act—Definition of "Conviction"; Requests for Law Enforcement Assistance—Department of Corrections; Fee Funds—Notification of Transfer; HB 2054

HB 2054 amends provisions in the Employment Security Law (Law) regarding access to information, law related to the Kansas Sentencing Commission, law related to law enforcement, and law regarding fee funds.

Employment Security Law

The bill amends a provision in the Law regarding information obtained by the Secretary of Labor pursuant to administration of the Law to allow disclosure of such information to public officials or the agents or contractors of a public official in the performance of their official duties. A provision prohibiting further disclosure of information disclosed under the Law is amended to permit further disclosure for use in the performance of a party's official duties. Those persons subject to penalties for violating the disclosure provisions are broadened from "the secretary or any officer or employee of the secretary" to "any individual."

The bill defines "performance of official duties" to include the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local official; collection of debts owed to courts; enforcement of child support on behalf of a state or local official; or research related to the law administered by the public official. The definition specifies it does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

Kansas Sentencing Commission

The bill amends law related to the Kansas Sentencing Commission (Commission) to require the Commission to gather data and information from state agencies to carry out its duties and functions. It also requires state agencies to provide data or information requested by the Commission for the above purpose, unless otherwise prohibited by law. "State agency" is defined for purposes of this provision.

[*Note:* The bill makes a technical amendment removing a reference to the Juvenile Justice Authority (Authority), which was abolished by 2013 Executive Reorganization Order (ERO) No. 42. The Authority's duties were transferred by the ERO to the Kansas Department of Corrections.]

Law Enforcement Training Act Definitions

The bill amends the definition of "conviction," as used in the section of the Kansas Law Enforcement Training Act setting forth the requirements for applicants for certification under the Act, to include any deferred judgment agreement entered into for a misdemeanor crime of domestic violence, or any such agreement entered into on or after July 1, 1995, for a felony. The bill also adds to this definition any diversion or deferred judgment agreement entered into for a misdemeanor offense that the Kansas Commission on Peace Officers' Standards and Training (CPOST) determines reflects on the honesty, trustworthiness, integrity, or competence of the applicant as defined by rules and regulations by CPOST. Under continuing law, the definition includes judgments by military court martial or state or federal courts, whether or not expunged; any diversion agreement for a misdemeanor crime of domestic violence; or any diversion agreement entered into on or after July 1, 1995, for a felony.

Requests for Law Enforcement Assistance

The bill amends law regarding requests for law enforcement assistance from other jurisdictions. Specifically, the bill adds a department of corrections in another jurisdiction to the

list of agencies from whom assistance may be requested and adds the Secretary of Corrections (Secretary), or the Secretary's designee, to those persons who may request such assistance.

Fee Funds

The bill amends a statute pertaining to the revenues placed in the State General Fund (SGF) to specify that certain funds, identified in section 1(b), and any other fund in which fees are deposited for licensing, regulating, or certifying a person, profession, commodity, or product, must be used for the purposes set forth in statute and for no other government purpose.

The bill defines "fee agency" as state agencies specified in KSA 2016 Supp. 75-3717(f) and any other state agency that collects fees for licensing, regulating, or certifying a person, profession, commodity, or product.

Under the bill, a fee agency is required to provide notice if moneys received pursuant to statutory provisions for a specific purpose by such agency are proposed to be transferred to the SGF or any other special revenue fund to be expended for general government services and purposes in the Governor's Budget Report or any introduced House or Senate bill. The fee agency must notify, within 30 days of such proposed transfer, the person or entity that paid such moneys to the fee agency within the preceding 24-month period. The notice may be sent electronically if the fee agency has an electronic address on record for the person or business entity. If no electronic address is available, the fee agency must send written notice by first class mail. However, if the agency receives fees from a tax, fee, charge, or levy paid to the Insurance Commissioner, the agency must post the required notification on the agency's website, rather than send notice *via* electronic or first class mail.

The bill states the provisions of the statute will not apply to the 10.0 percent credited to the SGF to reimburse the SGF for accounting, auditing, budgeting, legal, payroll, personnel, purchasing, and other governmental services.

Beginning January 8, 2018, the bill requires the Director of the Budget to prepare a report listing the unencumbered balance of each fund included in the bill on June 30 of the previous fiscal year and January 1 of the current fiscal year. The bill requires this report be delivered to the Secretary of the Senate and the Chief Clerk of the House of Representatives on or before the first day of the regular legislative session each year.

State Use Law; New and Revised Definitions; HB 2353

HB 2353 revises the definition section of the State Use Law by redefining the term "qualified vendor" and including a new definition for "persons who are disabled." "Qualified vendor" means a Kansas business that employs Kansans who are blind or disabled, excluding employees hired by third-party entities. Previously, the definition was silent on the extent of employment and the location of operations. The bill defines "persons who are disabled" as an individual of employable age whose physical or mental condition is a substantial barrier to employment.

State Bidding Process; Revised Definitions; HB 2356

HB 2356 revises provisions of the State's bidding process as it relates to the definitions of "certified business" and "individual with a disability." Under current law, most contracts are awarded to the lowest responsible bidder. However, a contract may be awarded to a certified business (or a disabled veteran business) whose bid is not more than 10 percent greater than the lowest competitive bid. A certified business must conduct most of its operations in Kansas, employing at least 10 percent of its workforce with individuals that have disabilities, contributing at least 75 percent of their health insurance premium costs, and not paying a subminimum wage, which is allowable under federal law. The Department of Administration certifies businesses every three years instead of annually.

An individual is certified as having a disability by either the Kansas Department for Aging and Disability Services (KDADS) or the Kansas Department for Children and Families (DCF), using the disability standards established by the U.S. Social Security Administration as determined by the Kansas Disability Determination Services within DCF. Under previous law, KDADS certified disability using a clinical assessment.

Transfers of Property to the State; HB 2407

HB 2407 prohibits transfers of real estate to the State of Kansas or any agency, *via* a probate proceeding or otherwise without consideration, unless written consent is provided by the Secretary of Administration and the Attorney General. The Attorney General is authorized to bring a civil action to declare any violation of the bill. The bill excludes state educational institutions, community colleges, and the Kansas Department of Transportation from the definition of "agency."

The bill also permits the Kansas Department of Wildlife, Parks and Tourism to purchase a specific parcel of land in Sherman County, encompassing approximately 1,078 acres. This land purchase is subject to the provisions of KSA 2016 Supp. 32-833, which requires the purchased land comply with regulations regarding control and management of noxious weeds and the Secretary of Wildlife, Parks and Tourism develop a management plan for the property.

The bill exempts this purchase from KSA 2016 Supp. 75-3739, which includes specific requirements for competitive bidding procedures.

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

Anti-Israel Boycott; HB 2409

HB 2409 prohibits the State from entering into a contract with any individual or company engaged in a boycott of Israel. The definition of "boycott" includes the refusal to engage in commercial relations with persons and entities engaged in business with Israel and Israeli-controlled territories. The State must require written certification from all individuals and companies with which it enters into contracts for services, supplies, information technology, or construction that the individual or company is not engaged in a boycott of Israel. The bill prohibits the State from adopting a procurement, investment, or other policy that effectively requires or induces the boycott of the government of Israel or a person conducting business in Israel. The Secretary of Administration (Secretary) has the authority to waive application of this prohibition if the Secretary determines the prohibition is not practicable.

Reconciliation Bill; HB 2426

HB 2426 reconciles amendments to statutes that were amended more than once during the 2017 or prior legislative sessions. For such statutes, the bill repeals one version and amends the continuing version to create a single version of the statute containing all non-contradictory amendments.

TAXATION

Individual Income Tax—Reform and Restructuring; SB 30

SB 30 makes a number of changes in the Kansas individual income tax structure and several adjustments to statutory provisions in relation to Sales Tax and Revenue (STAR) Bonds.

Individual Income Tax Provisions

The bill repeals, effective for tax year 2017, the exemption for non-wage business income that has been in effect since tax year 2013. Taxpayers also may begin claiming certain non-wage business income losses in conformity with federal treatment (but are not be able to file amended returns for previous tax years when such losses were not eligible to be claimed for Kansas income tax purposes). Special subtraction modification provisions relating to net gains from certain livestock and Christmas tree sales are repealed.

The bill allows as an itemized deduction for individual income tax purposes 50.0 percent of medical expenses currently allowed under federal law for tax year 2018. The amount is increased to 75.0 percent of the federal allowable amount for tax year 2019 and to 100.0 percent in tax year 2020 and thereafter. Itemized deductions for mortgage interest and property taxes paid, currently set at 50.0 percent of the federal allowable amounts, are increased to 75.0 percent for tax year 2019 and to 100.0 percent beginning in tax year 2020.

A child and dependent care tax credit that had been repealed in 2012 is restored in stages. The credit is set at 12.50 percent of the allowable federal amount for tax year 2018, 18.75 percent for tax year 2019, and 25.00 percent (the level that had been utilized prior to the 2012 repeal) for tax year 2020 and thereafter.

Starting in tax year 2018, the low-income exclusion threshold (below which any positive income tax liability is otherwise eliminated) is reduced from $12,500 to $5,000 for married filers and from $5,000 to $2,500 for single filers.

Individual income tax rates are increased beginning in tax year 2017 utilizing a three-bracket system with rates of 2.9 percent, 4.9 percent, and 5.2 percent. For tax year 2018 and all years thereafter, a three-bracket system with rates of 3.1 percent, 5.25 percent, and 5.7 percent is used. Additional formulaic provisions that could have provided for rate reductions in certain future years based on growth in selected State General Fund (SGF) tax receipts are repealed.

STAR Bond Provisions

The bill extends the sunset date for the STAR Bond Financing Act from July 1, 2017, to July 1, 2020. For the first year of that extension, there is a moratorium on the approval of new STAR Bond districts, but cities or counties with existing districts may continue to develop projects.

The bill is expected to increase SGF receipts as follows:

- FY 2018—$591.0 million;
- FY 2019—$633.0 million;

- FY 2020—$617.4 million;
- FY 2021—$584.4 million; and
- FY 2022—$590.3 million.

Sales, Property, and Income Tax—Various Provisions; HB 2212

HB 2212 amends sales, property, and income tax provisions.

Sales Tax Provisions

In the Kansas Retailers' Sales Tax Act, the bill replaces a reference to the North Central Association of Colleges and Schools with a reference to its relevant successor organization, the Higher Learning Commission.

The bill also increases, as of January 1, 2018, the threshold filing amounts for retailers to submit sales taxes to the Department of Revenue. The bill increases the threshold amounts from $80 to $400 for annual filing, from $3,200 to $4,000 for quarterly filings, and from $32,000 to $40,000 for monthly filings.

The bill authorizes Marion County to impose, subject to the approval of voters, an additional local sales tax of 0.5 percent earmarked for property tax relief, economic development initiatives, and certain public infrastructure projects. Any such tax imposed is granted an exception from the normal countywide sales tax distribution formula that requires receipts to be shared with cities in the respective county.

Property Tax Provisions

The bill authorizes a property tax exemption for not more than ten calendar years for certain land, buildings, and personal property owned by a redevelopment authority and located within a former federal enclave when such property is leased to a business and used exclusively for manufacturing, research and development, or warehousing purposes. Qualified redevelopment authorities are authorized to file requests for exemption only with the approval of a board of county commissioners.

The bill expands a list of certain types of tax-exempt property whose owners are not required to seek approval from the State Board of Tax Appeals to include property acquired by a land bank, recreational vehicles owned by full-time members of the military, and most property belonging to the federal government (other than any such federal property otherwise expressly declared by Congress to be subject to state and local taxation).

Additionally, the bill stipulates a property tax exemption for certain qualifying pipelines will not be applicable unless owners have filed an exemption request within two years of the date construction has commenced. This restriction applies to all requests for exemptions filed after June 30, 2017.

Income Tax Provision

The bill changes the due date for filing certain annual withholding tax forms from the last day of February to January 31.

Fiscal Effect of the Bill

The deceleration of certain sales tax remittances is expected to reduce sales tax receipts in FY 2018 by $3.200 million. Of this amount, $2.683 million is attributable to a reduction in State General Fund receipts, and $0.517 million is attributable to a reduction in State Highway Fund receipts.

Compliance with Master Settlement Agreement; Tax Rate on Electronic Cigarettes; Sub. for HB 2230

Sub. for HB 2230 makes a number of amendments to the Cigarette and Tobacco Products Act relating to definitions, licenses and permits, bonds, suspension or revocation of licenses, tax stamps, redemption of stamps, records required of dealers, penalties, license fees, and administrative fines designed to keep Kansas in compliance with the Master Settlement Agreement (MSA).

Additional provisions of the bill delay the effective date and reduce the rate of the tax on electronic cigarettes.

MSA Provisions

The bill makes individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed if the cigarettes do not have the required tax stamp.

The bill clarifies what would be considered a first, second, third, or subsequent conviction for the purposes of sentencing. The fine for a first conviction of trafficking in counterfeit or illegal cigarettes and tobacco products is at least $1,000, but no more than $2,500. Subsequent convictions result in fines of up to $100,000 and possible jail time after the third conviction.

The bill defines when certain cigarettes and tobacco products are considered contraband.

Counterfeit or illegal cigarettes and tobacco products and property used in the trafficking is subject to seizure and sale. The bill outlines the procedure and process the Kansas Department of Revenue (KDOR) follows to effectuate the sale and disbursement of any funds.

Any packages of cigarettes bearing *indicia* of tax payment pursuant to compacts signed between the Governor and the Prairie Band Potawatomi Nation, the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, and the Sac and Fox Nation of Missouri in Kansas and Nebraska, each approved by the Legislature, are not contraband.

It is unlawful to possess, transport, import, distribute, wholesale, or manufacture more than 1,000 cigarettes, cigarettes without Kansas stamps being affixed, or cigarettes or tobacco

products otherwise in violation of the MSA. Transportation of cigarettes not bearing tax stamps to a retailer is also unlawful.

The bill requires tobacco distributors to file their reports electronically on forms and in a manner prescribed by KDOR.

All moneys received from license fees, fines, and forfeiture proceedings shall be used exclusively for assisting in funding diligent enforcement as required by the MSA.

An additional provision requires wholesale dealers to be in good standing with the Director of Taxation (at KDOR) in order to receive a discount on stamps purchased. KDOR may suspend, deny, or non-renew license applications under certain circumstances.

The bill clarifies that its provisions apply to the sale of tobacco products over the Internet and telephone and through mail order transactions. The bill revises outdated language related to vending machines, allowing KDOR to divulge information related to vending machines to contracting entities.

The bill requires any retailer selling cigarettes to Kansas consumers without a tax stamp to file an annual statement for each consumer with KDOR. The statement shall include the name and address of the consumer, the date of the purchase, and the total number of packs of cigarettes purchased by the consumer.

Electronic Cigarette Provisions

The bill delays the effective date and reduces the rate of the tax on electronic cigarettes. Under previous law, a tax at the rate of $0.20 per milliliter of consumable material in electronic cigarettes was imposed as of January 1, 2017. The bill delays the effective date of the tax to July 1, 2017, and reduces the rate to $0.05 per milliliter.

The bill defines “consumable material” to mean any liquid solution or other material that is depleted as an electronic cigarette is used.

Registration Fee Collection and Remittance; Seat Belt Violation Fines; SB 89

SB 89 amends law relating to the collection of certain vehicle title and registration fees and the remittance of such fees. The bill also increases fines for certain seat belt violations and directs related moneys to the Seat Belt Safety Fund created by the bill.

Collection and Remittance of Certain Vehicle Registration Fees

Service fee for a title application to a lienholder. The bill authorizes the Division of Vehicles (Division) or a contractor, as well as a county treasurer, to collect a $1.50 service fee for processing and mailing a copy of a title application to a lienholder when the vehicle is subject to a lien. (The bill does not amend the amount of the fee.)

Payment for fees for registration and certificates of title. The bill authorizes the Division or a contractor of the Division, as well as a county treasurer, to be paid fees for registration and certificates of title. Formerly, only the county treasurer of the county in which the applicant for registration resides or has an office or principal place of business within Kansas had collected these fees. The bill removes the specific requirements of the county treasurer to issue and deliver copies of receipts and instead specifies the Division, contractor, or country treasurer is required to issue a receipt for such fees paid.

Deposits to a special operating fund. The bill requires the Division or contractor, in addition to the county treasurer, to deposit $0.75 out of each license application, $0.75 out of each application for transfer of a license plate, and $2.00 out of each application for a certificate of title, collected under the bill, in a special fund. The special fund is appropriated for use of the Division or contractor, in addition to the county treasurer, in paying for necessary help and expenses incidental to the administration of duties pursuant to the bill. The bill also specifies that the county treasurer will receive extra compensation for services performed in administering certain registration-related duties. (The bill does not amend the duties or the amounts of that compensation.)

Remittance of fees to the Secretary of Revenue. The bill requires the Division or contractor, in addition to the county treasurer, to remit the remainder of all registration and certificates of title fees collected, together with the original copy of all applications, to the Secretary of Revenue.

Certificate of title fee for a repossessed vehicle. The bill directs $3 charged for each certificate of title for a repossessed vehicle to the contractor or county treasurer who processes the application. The fee has been remitted to the Secretary of Revenue and deposited into the Repossessed Certificates of Title Fee Fund. (The bill does not amend the amount of the fee.) The bill directs moneys remaining in the Repossessed Certificates of Title Fee Fund to the Division of Vehicles Operating Fund and abolishes the Repossessed Certificates of Title Fee Fund.

Commercial motor vehicle fees to the Division. Fees collected by the Division for transfer of ownership and for registration of commercial motor vehicles or vehicles that are part of any commercial fleet will be remitted to the State Treasurer, who will be required to credit such amounts to the Commercial Vehicle Administrative Fund.

Additional service fee. In addition to the annual vehicle registration fees, any applicant for vehicle registration or renewal will be required to pay a service fee in the amount of $5 to the Division or contractor of the Division, as well as to the county treasurer under continuing law. The bill requires the Division or contractor, as well as the county treasurer, to deposit all amounts received in a special fund to be used for all purposes for which the fund has been appropriated by law.

Seat Belt Fines and Seat Belt Safety Fund

The bill increases the fine from $10 to $30 for a person 18 years and older who is not wearing a seat belt in a passenger car when that car is in motion. (Continuing law prohibits court costs from being associated with this fine.) The bill directs $20 from each $30 fine for violation of a city ordinance requiring seat belt use by those 18 and older to the Seat Belt Safety Fund, which is established by the bill and will be administered by the Secretary of Transportation. The bill also directs 2.20 percent of all fines, penalties, and forfeitures received from clerks of the district court to the Seat Belt Safety Fund and adjusts percentages to certain other specified funds also receiving such distributions by amounts ranging from 0.05 percent to 0.24 percent.

All expenditures of moneys in the Seat Belt Safety Fund are to be used for the promotion of and education on occupant protection among children, including, but not limited to, programs in schools in Kansas. These expenditures will be made in accordance with appropriations acts. The Secretary of Transportation is authorized to accept gifts, grants, donations, and bequests to the Seat Belt Safety Fund. The Secretary of Transportation will remit all moneys received to the State Treasurer, who will deposit the entire amount to the credit of the Seat Belt Safety Fund.

Transit Bus Operations; Eldon K Miller Memorial Highway; HB 2096

HB 2096 authorizes certain operations of transit buses and designates a memorial highway.

Transit Bus Operation on Certain Highway Shoulders

The bill allows the Secretary of Transportation (Secretary) to authorize operation of transit buses on the right shoulders of state highways in Wyandotte County. Current law limits such operation to Johnson County.

The bill replaces the reporting requirement in current law with a requirement the Secretary and persons designated by the boards of commissioners of Johnson and Wyandotte counties report to the Legislature on the implementation and operation of the program on or before March 1 in 2018, 2019, and 2020. Under current law, the Secretary and persons designated by the Johnson County Board of County Commissioners must report annually, before the tenth day of each regular session.

Eldon K Miller Memorial Highway

The bill designates a portion of US-75, in Woodson County north of Yates Center, as the Eldon K Miller Memorial Highway. The bill removes that portion of US-75 from designation as the Purple Heart/Combat Wounded Veterans Highway.

According to testimony, Sergeant Miller, a native of Yates Center, served in the U.S. Army Corps during World War II and was a Kansas Highway Patrol trooper starting in 1953. He was killed in the line of duty in Overland Park in 1968.

Under continuing law, the Secretary is required to place suitable signs to indicate such designation. However, the Secretary is precluded from placing these signs until the Secretary has received sufficient moneys from gifts and donations to reimburse the Secretary for the cost of placing such signs, plus an additional 50 percent of the initial cost to defray future maintenance or replacement of the signs. The Secretary may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

Consumer Protection Act, Active Duty Military; SB 201

SB 201 amends the Kansas Consumer Protection Act (Act) by adding members of the military to the definition of "protected consumer" in the Act. With the addition, the Act applies to elder persons, persons with disabilities, veterans, surviving spouses of veterans, members of the military, and immediate family members of members of the military.

Bob Grant Bison Herd; HB 2098

HB 2098 names the bison herd at the Mined Land Wildlife Area in Crawford County the "Bob Grant Bison Herd."

NUMERICAL INDEX OF BILLS
House Bills and Resolutions

NUMERICAL INDEX OF BILLS
Senate Bills and Resolutions