

**SUPPLEMENT TO
PRELIMINARY SUMMARY OF LEGISLATION
2018 KANSAS LEGISLATURE**



This updated version of the April 2, 2018, publication contains summaries of bills enacted by the Legislature from April 2 to adjournment on April 8. 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 the end of the legislative day, March 29, 2018, was distributed on April 2, 2018. A final supplement will be mailed after the wrap-up session in May.

Highlights, a summary of major legislation in newsletter form, will be prepared and mailed to legislators as soon as possible after the Session. *The Summary of Legislation*, which accounts for all bills enacted by the 2018 Legislature, will be distributed at a later date.

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

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Table of Contents

AGRICULTURE AND NATURAL RESOURCES.....	1
Alternative Crop Research Act; SB 263.....	1
Pet Animal Act; HB 2477.....	3
CORRECTIONS AND JUVENILE JUSTICE.....	6
Juvenile Justice; Detention Hearings; Dispositional Hearings; Tolling of Probation Term and Case Length Limits; Oversight Committee Duties; HB 2454.....	6
CRIMES AND CRIMINAL MATTERS.....	7
Criminal Use of Weapons; HB 2145.....	7
Child Care Criminal Background and Fingerprinting Fund; Additional Prohibited Crimes; HB 2639.....	8
EDUCATION.....	9
K-12 School Finance; Amendments to the Kansas School Equity and Enhancement Act; Sub. for SB 423.....	9
Legislative Task Force on Dyslexia; Sub. for HB 2602.....	14
ELECTIONS AND ETHICS.....	17
Expanding the Definition of Lobbying to Include the Executive and Judicial Branches; SB 394.....	17
FEDERAL AND STATE AFFAIRS.....	20
Anti-Israel Boycott; HB 2482.....	20
FINANCIAL INSTITUTIONS AND INSURANCE.....	21
Expulsion of Credit Union Members; Terms of Service for Members of the Credit Union Council; SB 275.....	21
Captive Insurance Act; Regulation of Captive Insurance Companies; SB 410.....	21
HEALTH.....	35
Electronic Monitoring in Adult Care Homes; HB 2232.....	35
Nuclear Energy Development and Radiation Control Act; Maternal Deaths; Palliative Care; Senate Sub. for HB 2600.....	38
LOCAL GOVERNMENT.....	44
Urban Area, Mayors, and Election Commissioners; HB 2597.....	44
RETIREMENT.....	46
Repeal Obsolete Statutes Pertaining to Sudan Divestment; HB 2444.....	46
TAXATION.....	47
Native American Veterans’ Income Tax Refund; Sub. for HB 2147.....	47
TELECOMMUNICATIONS.....	49
Broadband Expansion Planning Task Force; Senate Sub. for HB 2701.....	49
TRANSPORTATION AND MOTOR VEHICLES.....	52
Vehicle Dealer Facilities, Performance Criteria, and Recall Repairs; SB 324.....	52
License Plates—Special Olympics, Choose Life, City of Wichita, Various Military Operations; HB 2599.....	53
Driver’s Licenses—Motorcycle License, Online Renewal, and Renewal of Commercial Driver’s License; HB 2606.....	55

AGRICULTURE AND NATURAL RESOURCES

Alternative Crop Research Act; SB 263

SB 263 enacts the Alternative Crop Research Act (Act), which allows the Kansas Department of Agriculture (KDA), either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. The bill allows individuals to participate in the research program under the authority of the KDA. Nothing in the Act is to be construed to authorize any person to violate state or federal law.

Research and Development; Pilot Program

Research and development of industrial hemp, under the provisions of the bill, means such things as analysis of industrial hemp growth, including required soils, growing conditions, and harvest methods; research on seeds most suitable for Kansas; and market analysis to determine the potential for an industrial hemp market in Kansas.

The bill authorizes the KDA to establish a pilot program in Russell County, and other counties determined by the KDA, for the purpose of economic development, research, cultivation, market analysis, manufacturing, and transportation of industrial hemp and industrial hemp products.

Advisory Board

If the KDA acts without coordination with a state institution of higher learning to cultivate industrial hemp grown from certified seed and to promote the research and development of industrial hemp, the Secretary of Agriculture (Secretary) is required to establish an advisory board within the KDA to review and recommend applications for pilot projects and research proposals to the Secretary. The Secretary is prohibited from approving any project or proposal without the recommendation of the advisory board.

Licensure and Fees

The KDA is required to annually license program participants and maintain oversight of all industrial hemp activities, including cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act.

In addition, the KDA is authorized to establish fees for licenses, license renewals, and other necessary expenses to defray the cost of implementing and operating the Act in the state on an ongoing basis. Licensing and renewal fees will be established by rules and regulations adopted by the Secretary under the Act.

The KDA will require all license holders to be fingerprinted and undergo a state and national criminal history check at the license holder's expense. The KDA is authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI), and the KBI is able to charge a reasonable fee for conducting a criminal history record check. The KDA shall not issue licenses to individuals who have been convicted of felonies involving controlled substances.

Fee Fund

The bill creates the Alternative Crop Research Act Licensing Fee Fund (Fund) in the State Treasury, which is to be administered by the Secretary. Moneys received from fees will be deposited in the State Treasury and will be credited to the Fund. All expenditures from the Fund will be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers signed by the Secretary or the Secretary's designee.

Rules and Regulations

The bill requires the KDA to promulgate rules and regulations by December 31, 2018, to carry out the provisions of the Act.

The rules and regulations of the KDA shall include, but not be limited to, a requirement that license holders keep in their possession at all times the license that they are engaged in cultivation, growth, research, oversight, study, analysis, transportation, processing, or distribution of certified seed or industrial hemp pursuant to the Act.

Report

The bill requires the KDA to report to the Senate Committee on Agriculture and Natural Resources and the House Committee on Agriculture by January 14, 2019, on the process by which the KDA will allow program participants to grow and process industrial hemp in Kansas and then sell it outside of Kansas. In addition, the KDA is required to send each committee an annual supplemental report on the continued progress on the process at the beginning of each regular legislative session for the next three years.

Legislative Review

The bill requires the Legislature to review the provisions of the Act prior to July 1, 2022.

Other Provisions

The bill amends KSA 2017 Supp. 21-5701, dealing with criminal law, excluding "industrial hemp" from the definition of "marijuana," when cultivated, possessed, or used for activities authorized by the Act.

The bill also amends KSA 2017 Supp. 65-4101, dealing with controlled substances, clarifying the definition of "marijuana" to exclude "industrial hemp" as defined in the bill, when cultivated, possessed, or used for activities authorized by the Act.

In addition, the bill amends KSA 2017 Supp. 65-4105, dealing with controlled substances included in schedule I, excluding tetrahydrocannabinols (THC) obtained from industrial hemp as it is defined in the bill, when cultivated, possessed, or used for activities authorized by the Act.

Effective Date

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

Pet Animal Act; HB 2477

HB 2477 makes several changes to the Kansas Pet Animal Act (Act) pertaining to licensure of those providing temporary care of dogs or cats, maximum license fees, notice of inspections, requested inspections, no-contact inspections, failed inspections, and license renewal dates.

Temporary Care of Dogs and Cats

The bill prohibits the Kansas Department of Agriculture from requiring the license of any individual who has written and signed an agreement to provide temporary care for one or more dogs or cats owned by an animal shelter licensed pursuant to the Act.

The bill requires animal shelters to keep a current list of individuals who have written and signed an agreement to provide temporary care.

Fee Maximums

The bill adjusts the maximum fees that may be prescribed by the Commissioner of Animal Health (Commissioner) for the license categories found in the Act. The actual fees charged will be set under rules and regulations adopted by the Secretary of Agriculture, the authority for which is current law. The adjustments to fee maximums are as follows:

- Fee maximums for animal distributors and breeders licensed under federal law (U.S. Department of Agriculture) increase from \$200 to \$450; and
- Fee maximums for research facilities and pet shops increase from \$405 to \$600.

In addition, the bill removes the license fee for an animal shelter or a pound and creates three new license fee categories for shelters in cities of the first, second, and third class. The new license fee categories and registration fee amounts are:

- Animal shelter, city of the first class: an amount not to exceed \$400;
- Animal shelter, city of the second class: an amount not to exceed \$335;
- Animal shelter, city of the third class: an amount not to exceed \$285; and
- Hobby breeder: an amount not to exceed \$250.

For premises that require more than one license under the conditions of the Act, the bill requires the premises pay for the most expensive license and a \$50 fee for each additional license.

A late fee of \$70 is assessed when a permit or license is not renewed prior to October 1. Currently, a late fee of \$70 is assessed if a license or permit renewal is more than 45 days late.

Inspections

Notice of Inspections

The bill requires that no notice be given to any person prior to an inspection. Current law states notice “need not be given prior to inspection.”

Requested Inspections

The bill allows the Commissioner to charge a fee of \$200 to cover the cost of an inspection requested by a licensee, permittee, or applicant for a license or permit of their premises.

No-contact Inspections

The bill also establishes fees for no-contact inspections. Each no-contact inspection results in a \$200 no-contact fee for the owner of the premises, the licensee, or other permittee. The Commissioner, or the Commissioner’s authorized representative, is required to make a second or subsequent attempt to inspect the premises.

A no-contact inspection is defined as the failure by the owner of the premises, a licensee or a permittee, or the designated representative to make a premises available for inspection within 30 minutes of the arrival of the inspector or the inspector’s authorized representative.

Failed Inspections

The bill requires a \$200 re-inspection fee for any subsequent re-inspection be paid by the premises’ owner, licensee, or permittee that has failed an inspection. The payment must be made prior to the re-inspection of the premises. Failure to pay the re-inspection fee results in the revocation of the licensee’s or permittee’s license or permit. The owner of the premises is then required to reapply for any revoked licenses or permits and complete the following:

- Pay the fee for the new permit or license application;
- Pass an initial inspection; and
- Pay any past due fees.

License Renewals

The bill changes the definition of “license or permit year” to mean the 12-month period ending on September 30. The current license year ends on June 30. The following licensees’ license periods change to end on September 30:

- Animal breeder;

- Animal distributor;
- Boarding or training kennel;
- Hobby breeder;
- Pet shop operator;
- Pound or animal shelter;
- Out-of-state distributor;
- Research facility; and
- Retail breeder.

Effective Date

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

CORRECTIONS AND JUVENILE JUSTICE

Juvenile Justice; Detention Hearings; Dispositional Hearings; Tolling of Probation Term and Case Length Limits; Oversight Committee Duties; HB 2454

HB 2454 amends various statutes related to juvenile offenders.

Detention Hearings

The bill amends the statute in the Revised Kansas Juvenile Justice Code (Code) governing detention hearings to expand the permitted use of two-way electronic audio-visual communication between the juvenile and the judge from detention hearings only to all hearings under the section, including the detention review hearings required every 14 days while the juvenile is in detention. The bill further amends law related to detention review hearings by adding a provision stating such hearings are not required for a juvenile offender held in detention awaiting case disposition. The bill amends the Code statute governing post-adjudication orders and hearings to require, if a juvenile offender is being held in detention, that a dispositional hearing for sentencing take place within 45 days after the juvenile has been adjudicated.

Tolling of Probation Term and Case Length Limits

The bill amends the statute governing probation term limits and overall case length limits in the Code to clarify that when such limits are tolled due to the offender absconding from supervision while on probation, the limits shall not begin to run again until the offender is located and brought back to the jurisdiction. The bill also clarifies, if the juvenile fails to appear for the dispositional hearing, such limits shall not apply until the juvenile is brought before the court for disposition.

Duties of Oversight Committee

The bill amends one of the statutory duties of the Kansas Juvenile Justice Oversight Committee (Juvenile Oversight Committee) to require the Juvenile Oversight Committee to “monitor,” rather than “calculate,” any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements. A corresponding requirement that a summary of such averted costs be included in the Juvenile Oversight Committee’s annual report is changed from “calculated by the committee” to “determined.”

CRIMES AND CRIMINAL MATTERS

Criminal Use of Weapons; HB 2145

HB 2145 amends the definition of “criminal use of weapons” by adding possession of a firearm by any of the following:

- Fugitives from justice;
- Aliens illegally or unlawfully in the United States;
- Persons convicted of a misdemeanor for a domestic violence offense within the past five years; and
- Persons subject to court orders restraining them from harassing, stalking, or threatening an intimate partner, child, or child of an intimate partner.

The bill also adds “throwing star” to the definition of criminal use of weapons by knowingly possessing with intent to use the same unlawfully against another, and removes “throwing star” from the definition of criminal use of weapons by knowingly selling, manufacturing, purchasing, or possessing certain items.

In addition, the bill clarifies that possession of a device or attachment designed, used, or intended for use in suppressing the report of any firearm will be exempt from the definition of “criminal use of weapons” if the device or attachment satisfies the description of a Kansas-made firearm accessory in current law. The provisions of this exemption apply to any violation of law pertaining to “criminal use of weapons” that occurred on or after April 25, 2013.

The bill specifies requirements for the issuance of court orders, after which the individual named in the order will be guilty of criminal use of weapons. The bill requires such court order to:

- Be issued after a noticed hearing where the individual had an opportunity to participate; and
- Include findings that such person is a credible threat to the safety of an intimate partner or child; or
- Explicitly prohibit the attempted, threatened, or actual use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury.

The bill defines “domestic violence,” “fugitive from justice,” and “intimate partner.”

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

**Child Care Criminal Background and Fingerprinting Fund; Additional Prohibited Crimes;
HB 2639**

HB 2639 requires local and state law enforcement officers and agencies to assist the Secretary of Health and Environment (Secretary) in taking and processing fingerprints of persons residing, working, or regularly volunteering in a child care facility and to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the Kansas Department of Health and Environment (KDHE). KDHE is required to adopt rules and regulations, by January 1, 2019, to fix a fee for fingerprinting such persons as required to reimburse KDHE for the cost of fingerprinting. The bill creates the Child Care Criminal Background and Fingerprinting Fund (Fund) in the State Treasury to be administered by the Secretary. All fingerprinting fees collected are to be deposited in the Fund for use in paying local and state law enforcement officers and agencies for the processing of fingerprints and criminal history background checks for KDHE.

The bill also updates the list of sex-related crimes that prohibit a person from residing, working, or regularly volunteering in a child care facility to include the crimes of commercial sexual exploitation of a child and the unlawful use of electronic means to commit human trafficking, commercial sexual exploitation of a child, and similar offenses.

EDUCATION

K-12 School Finance; Amendments to the Kansas School Equity and Enhancement Act; Sub. for SB 423

Sub. for SB 423 makes appropriations to the Kansas State Department of Education (KSDE) for FY 2019. This bill also creates a new pilot program for the Mental Health Intervention Team between school districts and community mental health centers (CMHCs). In addition, the bill makes several amendments to the Kansas School Equity and Enhancement Act (KSEEA), including amendments to the Base Aid for Student Excellence (BASE), preschool-aged at-risk students, the Local Option Budget (LOB), various weightings in the school finance formula, the State Board of Education's (KSBE) accreditation system, school district funding requirements, and the schedule for audits to be completed by the Legislative Division of Post Audit (LPA). The bill also amends statutes relating to capital outlay funds and school district capital improvements.

Introductory Statement

The bill includes an introductory statement stating the State's educational interests concern the areas of social-emotional learning, kindergarten readiness, individual plans of study, graduation, and post secondary success, and the State addresses such interests by providing support and services both in the classroom and in the community. Further, the introductory statement summarizes appropriations for K-12 education, as well as appropriations for support services provided by other state agencies and institutions for students from birth to graduation.

FY 2019 Appropriations

The bill appropriates \$26.0 million, all from the State General Fund (SGF), for increased State Foundation Aid payments. The bill also appropriates \$32.4 million for increased Special Education Services Aid payments and \$6.0 million for increased Supplemental State Aid (LOB State Aid) payments, all from the SGF.

The bill appropriates \$2.8 million, all from the SGF, to provide the ACT and three ACT WorkKeys assessments required to earn a national career readiness certificate to each student enrolled in grades 9-12. No such student is required to pay any fees or costs, and no school district is required to provide more than one exam and three assessments per student. Further, the bill appropriates \$500,000 for the mentor teacher program, all from the SGF.

The bill appropriates \$10.0 million, all from the SGF, for the first year of a Mental Health Intervention Team pilot program between school districts and CMHCs for FY 2019, including \$7.5 million for the operation of the pilot program and \$2.5 million for the one-time purchase of a database. Upon the certification of memorandums of understanding between participating school districts and CMHCs, the bill requires the transfer of \$1.5 million from KSDE to the Kansas Department for Aging and Disability Services (KDADS) to provide treatment and services for students under the pilot program who are uninsured or underinsured.

The bill appropriates \$15,000, all from the SGF, to implement the Jobs for America's Graduates-Kansas (JAG-K) pilot program for foster children in the Wichita school district (USD 259), the Topeka school district (USD 501), and the Kansas City school district (USD 500).

Mental Health Intervention Team Pilot Program

The bill creates the Mental Health Intervention Team pilot program between participating school districts and CMHCs for FY 2019. School districts will enter into memorandums of understanding with participating CMHCs and the appropriate state agencies. The mental health intervention teams will be composed of school liaisons employed by the school district, and clinical therapists and case managers employed by the CMHC.

The following will participate in the program:

- Twenty-three schools in the Wichita school district (USD 259);
- Twenty-eight schools in the Topeka school district (USD 501);
- Ten schools in the Kansas City school district (USD 500);
- Five schools in the Parsons school district (USD 503);
- Four schools in the Garden City school district (USD 457); and
- Nine schools served by the Central Kansas Cooperative in Education.

The bill requires the Director of the Division of Health Care Finance of the Kansas Department of Health and Environment to certify to the Director of the Budget and the Director of Legislative Research the aggregate amount of expenditures for FY 2019 for treatment provided to students under the pilot program, or provided based on a referral from such program.

Base Aid for Student Excellence

The bill amends the BASE for five years beginning in school year 2018-2019. The new BASE amounts are:

- School year 2018-2019, \$4,900;
- School year 2019-2020, \$5,061;
- School year 2020-2021, \$5,222;
- School year 2021-2022, \$5,384; and
- School year 2022-2023, \$5,545.

Beginning in school year 2023-2024, the BASE will increase by the average percentage increase in the Consumer Price Index for all urban consumers in the Midwest region during the three immediately preceding school years. SB 19 (2017) provided for inflationary increases beginning in school year 2019-2020.

Preschool-Aged At-Risk

The bill amends the definition of “preschool-aged at-risk student” to allow districts to expand their programs to include three-year-old children.

Local Option Budget*Use of LOB*

The bill requires each school district to adopt an LOB equal to 15.0 percent of the school district’s Total Foundation Aid. The amount, along with the LOB State Aid attributable to that required LOB, will be included in a district’s Local Foundation Aid. The required LOB dollars will be included in the BASE amount, and the bill revises the BASE to reflect this increase.

Beyond the required LOB amount, school districts may adopt an LOB up to 27.5 percent of a district’s Total Foundation Aid on the action of local school boards. The maximum LOB amount a school district may adopt is 30.5 percent of Total Foundation Aid, which is subject to a protest petition.

The Total Foundation Aid amount used for LOB purposes divides the total Special Education Services Aid received by a school district by 85.0 percent of the BASE. The resulting quotient is then used to calculate a school district’s Total Foundation Aid.

Further, the bill requires school districts to transfer from the LOB an amount proportional to the amounts of its Total Foundation Aid attributable to the at-risk and bilingual weightings to their at-risk and bilingual funds.

LOB Authority

The bill voids any resolution providing LOB authority in excess of 30.0 percent that was adopted by a local school board prior to July 1, 2017, under the provisions of the Classroom Learning Assuring Student Success Act and not submitted to the electors of the school district for approval. Any school district affected by this provision will be required to adopt a new resolution subject to protest petition to adopt an LOB above 27.5 percent.

The bill increases the protest petition requirements to challenge an LOB increase above 27.5 percent from 5.0 percent of a school district’s qualified voters in 30 days to 10.0 percent of voters in 40 days.

The bill requires any school board seeking to raise its LOB authority for the succeeding school year to notify KSBE of the intended percentage increase in its LOB authority by April 1 of the current school year. School boards are prohibited from adopting an LOB in excess of the authority stated in its notice submitted to KSBE. KSBE is required to submit all such notifications to the Legislature. The notification requirement takes effect for any planned increases in LOB authority during school year 2019-2020.

LOB State Aid

The bill changes the process for calculating LOB State Aid from a school district's LOB for the immediately preceding school year to a school district's current-year LOB.

Formula Weightings

Transportation Weighting

The bill amends the transportation weighting in the KSEEA. The transportation weighting will be calculated based on a per capita allowance based on a school district's density figure, which is the area of a school district in square miles divided by the number of transported students. The bill also provides for a statutory minimum level of transportation funding; provides for per capita allowances based on a cost factor of 5.0 for students more than 2.5 miles away from their school (prior law provided for a cost factor of 2.8); and limits the proportion of a school district's State Foundation Aid attributable to the transportation weighting to being no more than 110.0 percent of a school district's total transportation expenditures for the immediately preceding school year.

At-Risk and Other Weightings

The bill removes language that provides for a 10.0 percent minimum for the at-risk student weighting. The bill also delays to July 1, 2020, the sunset on the provision in the high-density at-risk weighting that allows for calculation of the weighting at the school-building level.

The bill changes the use of the preceding year's data to use of the current year's data for the bilingual and career and technical education (CTE) weightings and repeals the July 1, 2019, sunset for the CTE weighting.

KSBE Accreditation System

The bill requires KSBE to establish rigorous accountability measures in the areas of social-emotional learning, kindergarten readiness, individual plans of study, graduation, and postsecondary success. The bill requires such accountability measures to be applied at the school district level and the school building level, and both KSBE and local school boards are required to publish such accountability measures on their websites.

The bill also requires any corrective action plan required by KSBE for a school district not meeting accreditation requirements, and any subsequent reports regarding the implementation of such a corrective action plan, to be published on the websites of KSDE and such school district. In addition, the bill requires the superintendent, or the superintendent's designee, of any school district not meeting accreditation requirements to appear before the House Committee on Education and the Senate Committee on Education during the same school year in which the school district is not accredited. Such school district is required to provide a report to the House and Senate education committees on the challenges to the district regaining accreditation.

School District Funding Reporting Requirements

The bill requires KSDE to include the following in the annual school district funding reports:

- Expenditures and fund transfers from the LOB for the following:
 - At-risk education programs and services;
 - Preschool-aged at-risk education programs and services;
 - Bilingual education programs and services;
 - CTE programs and services;
 - Special education and related services; and
 - Virtual school programs and services; and
- Each school district's total bonded indebtedness.

Performance Audit Schedule—Legislative Post Audit

The bill makes several changes to the schedule for the performance audits to be completed by LPA. The new schedule is:

- FY 2019, special education and related services;
- FY 2020, at-risk education funding;
- FY 2021, cost-function analysis of statewide education performance;
- FY 2022, bilingual education funding;
- FY 2023, virtual school programs; and
- FY 2024, cost-function analysis of statewide education performance.

The bill removes from the schedule a cost-function analysis that was to be performed in 2019. The remaining cost-function analyses will not include special education and related services. The bill also removes two performance audits to identify best practices in successful schools that were to be performed in 2021 and 2026.

Use of Capital Outlay Funds

The bill eliminates the provision of current law that allows school districts to expend capital outlay funds on utilities and property and casualty insurance.

School District Capital Improvements

The bill amends current provisions that allow KSBE to approve an application for a bond election only if approval does not result in the aggregate amount of all general obligation bonds approved by the KSBE for such school year exceeding the aggregate principal amount of bonds retired by districts in the state in the preceding year (aggregate principal amount). The bill provides that for an application in excess of \$175.0 million, KSBE will apply an amount of \$175.0 million when determining whether the aggregate principal amount has been exceeded. Additionally, commencing in school year 2017-2018, KSBE is required to determine the aggregate principal amount by adjusting the aggregate principal amount by the five-year compounded producer price index industry data for new school buildings as reported by the Bureau of Labor Statistics.

Effective Dates

The bill takes effect upon publication in the *Kansas Register*. However, all provisions other than the use of current year data for the bilingual and CTE weighting will be effective on and after July 1, 2018.

Legislative Task Force on Dyslexia; Sub. for HB 2602

Sub. for HB 2602 establishes the Legislative Task Force on Dyslexia (Task Force), which will advise and make recommendations to the Governor, Legislature, and the Kansas State Board of Education (KSBE) regarding matters concerning the use of evidence-based practices for students with dyslexia. Recommendations and resource materials must:

- Research and recommend evidence-based reading practices to address dyslexia or characteristics of dyslexia for use by schools;
- Research and recommend high quality pre-service and in-service professional development activities to address reading difficulties like dyslexia, including identification of dyslexia and effective reading interventions to be used in schools and applicable degree programs;
- Study and examine current state and federal law, rules and regulations, and the implementation of such laws and rules and regulations that affect students with dyslexia; and
- Identify valid and reliable screening and evaluation assessments and protocols that can be used, as well as the appropriate personnel to administer such assessments, in order to identify children with reading difficulties, such as dyslexia or the characteristics of dyslexia.

The Task Force will be composed of the following 16 voting members:

- One Senate member and one elementary school classroom teacher appointed jointly by the chairperson and ranking minority member of the Senate Committee on Education;

- One House member and one elementary school classroom teacher appointed jointly by the chairperson and ranking minority member of the House Committee on Education;
- One member from the KSBE appointed by the KSBE, who would serve as the Task Force chairperson;
- One professor employed by a state educational institution with specialized expertise in effective evidence-based reading practices for dyslexia appointed by the President of the Kansas Board of Regents;
- One public school principal appointed by the United School Administrators of Kansas;
- Four parents of children with a diagnosis of dyslexia to be individually appointed by Keys for Networking, Inc.; Families Together, Inc.; Decoding Dyslexia Johnson County; and the International Dyslexia Association Kansas Missouri Branch, who should be appointed with an effort to provide statewide representation, if possible;
- One member appointed by the Kansas Association of Special Education Administrators;
- One elementary school building-level reading specialist appointed by the KSBE;
- One elementary school special education teacher appointed by the KSBE;
- One licensed psychologist or speech-language pathologist who diagnoses dyslexia as a part of such person's practice appointed by the Task Force chairperson; and
- One member identified as a non-profit service provider for children diagnosed with dyslexia appointed by the chairperson of the Task Force.

The Task Force will also include the following three *ex officio*, non-voting members:

- One Kansas Department of Education (KSDE) licensed attorney appointed by the KSDE;
- One licensed attorney familiar with dyslexia appointed jointly by the chairpersons of the House Committee on Education and Senate Committee on Education; and
- One member appointed by the Disability Rights Center of Kansas.

The Task Force chairperson will call an organizational meeting of the Task Force on or before July 15, 2018. At such organizational meeting, members will elect a vice-chairperson from the membership of the Task Force and consider dates for future meetings, the agendas for such meetings, and the need for electing a facilitator to assist in discussions. The Task Force is

limited to meeting no more than six times in 2018; may hold meetings by telephone or video conference, if necessary; and may meet at any time and place within the state on the call of the chairperson. A quorum of the Task Force is nine members, and all actions of the Task Force must be by motion adopted by a majority of those members present when there is a quorum. The Task Force's work will be completed by January 2, 2019, and a report prepared and submitted to the Governor, the Legislature, and the KSBE by January 30, 2019.

If approved by the Legislative Coordinating Council, members of the Task Force attending meetings authorized by the Task Force will be paid amounts for expenses, mileage, and subsistence, as provided by law. Additionally, staff of the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Division of Legislative Administrative Services are required to provide assistance as may be requested by the Task Force.

ELECTIONS AND ETHICS

Expanding the Definition of Lobbying to Include the Executive and Judicial Branches; SB 394

SB 394 expands the definition of “lobbying” to include lobbying of the executive and judicial branches and makes related changes.

The bill amends law to:

- Expand the definition of lobbying to include lobbying of the executive and judicial branches;
- Equalize the treatment of meals provided by lobbyists between the legislative and executive branches;
- Change lobbyist reporting and registration requirements in accordance with the above; and
- Require a lobbyist to report the date on which a gift, entertainment, or hospitality was provided.

Definition of Lobbying [Sections 1 and 2]

The bill adds any independent contractor compensated by an executive agency for the purpose of evaluation, management, consulting, or acting as a liaison for the executive agency and who engages in lobbying to the definition of “lobbyist.” Attorneys and law firms representing the agency in any legal matter are not included in the definition.

The bill includes promoting or opposing any action or inaction of any executive agency on any executive administrative matter or judicial agency on any judicial administrative matter to the definition of lobbying.

Exemptions from Lobbying Definition [Section 2]

The following are exempted from the definition of lobbying:

- Written communications from an employee of a private business attempting to sell, or preparing a bid or proposal related to a contract, agreement, or lease;
- Communications by an attorney regarding an executive administrative matter or judicial administrative matter, communication between parties in litigation, witness testimony in an administrative hearing, and investigation communications;
- Communications between and among members of the Legislature or executive or judicial officials or employees;

- Providing written information at the written request of an executive agency, or from a judicial agency regarding a procurement;
- Communications regarding a contract, lease, or agreement of \$5,000 or less;
- Communications made by or on behalf of a private business for the purpose of securing a grant, loan, or tax benefit under a Kansas economic development program; and
- Communications made by officers or employees of a certified business or disabled veteran business, as defined in a statute governing competitive bids.

Additional Definitions [Section 2]

The bill also defines the following terms:

- “Executive administrative matter” means any rule and regulation; utility ratemaking decision; any agreement, contract, bid, or bid process; or any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, any lease, grant, award, loan, bond issue, certificate, license, permit, administrative order, or any other matter that is within the official jurisdiction or cognizance of the executive agency;
- “Judicial administrative matter” means any administrative matter regarding an agreement, contract, bid, or bid process; any procurement decision, including, but not limited to, any financial services agreement, software licensing, servicing or procurement agreement, or lease; or any other administrative procurement or contractual matter;
- “Executive agency” means any state agency, state office or state officer, state officer elect, or employee of the executive branch including, but not limited to, the Board of Regents and State Board of Education but excluding local boards of education of school districts or municipalities or other political subdivisions;
- “Judicial agency” means any department, institution, office, officer, employee, commission, board or bureau, or any agency, division, or unit thereof, of the judicial branch of government including any justice or commissioner of the Supreme Court or judge or judge elect of the judicial branch, or any member of a board, council, or commission who is appointed by the Supreme Court or who is elected and is performing a function or duty of the judicial branch that constitutes a judicial administrative matter; and
- “Written communications or written information” includes e-mail or other electronic forms of communication that are retained as a record by the executive agency or judicial agency.

Gifts and Meals [Sections 3 and 4]

The bill includes a member, member elect, or employee of the judicial branch among those who shall not be given or paid hospitality in the form of recreation having an aggregate value of \$40 or more, or in the form of food and beverages given to influence the performance of official duties pertaining to a judicial administrative member.

The bill extends to members, members elect, and employees of the judicial branch a provision that hospitality in the form of food and beverages is presumed not to be given to influence an official matter; in current law, state officers and employees, candidates for state office, and state officers are included.

The bill increases the value of a meal that may be accepted by any member of the executive branch from \$25 to \$40 per occurrence. A lobbyist may provide a meal, except when a particular official action must be taken as a condition of accepting the meal.

Receipt of a meal by a member of the executive branch from a lobbyist who is not registered or fails to report providing the meal is not considered a violation, unless the recipient knew the lobbyist was not registered or requested the lobbyist not report the meal.

Lobbyist Reporting and Registration Requirements [Sections 5-7]

The bill requires a lobbyist registration to show the name of each executive and judicial agency, office, and any agency, division, unit, department, institution, office, commission, board, bureau, or other division. Lobbyists are also required to note whether they will lobby the legislative branch on the form as well. [Section 5]

A lobbyist currently is required to disclose the aggregate value of gift, entertainment, or hospitality provided when the lobbyist expends \$100 or more for lobbying in any reporting period. Lobbyists are also required to disclose the full name of the legislator, member of the judicial branch, or legislative or judicial employee who received the gift, entertainment, or hospitality, and the amount expended. The bill extends these requirements to include state officers, state officers elect, state employees, members elect of the judicial branch, and legislators elect, and requires the lobbyist also report the date the gift, entertainment, or hospitality was provided. [Section 6]

The bill requires a lobbyist to report expenditures for any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service to any officer or candidate for office or employee of the judicial branch, as well as to the legislative branch as in current law. [Section 7]

FEDERAL AND STATE AFFAIRS

Anti-Israel Boycott; HB 2482

HB 2482 amends law related to contracts between the State and persons or companies that are actively engaged in a boycott of Israel.

The bill amends the definition of “company” to include an organization, association, corporation, partnership, venture, other entity, or its subsidiary or affiliate that exists for profitmaking purposes or to otherwise secure economic advantage.

The bill defines “contract” as a written agreement between the State and a company to acquire or dispose of goods or services with an aggregate price of more than \$100,000. It does not include a written agreement between the State and an individual to acquire or dispose of goods or services, including employment or consultant services.

The bill provides the State will not enter into a contract with a company unless such company submits written certification that the company is not engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State.

FINANCIAL INSTITUTIONS AND INSURANCE

Expulsion of Credit Union Members; Terms of Service for Members of the Credit Union Council; SB 275

SB 275 amends provisions in law relating to the expulsion of credit union members and the terms of service for members of the Credit Union Council (Council).

Authorization and Notice of Expulsion

The bill authorizes the president, general manager, or any other credit union employee designated by the board of directors to expel a credit union member from the credit union under certain circumstances. The bill specifies a member can be expelled for failure to comply with the credit union's adopted policy regarding expulsion. The bill requires the president or general manager to report such expulsion at the next regularly scheduled board meeting.

Additionally, the bill eliminates the requirement that the board of directors provide notice to the member not less than 30 days prior to the effective date of the member's expulsion from the credit union. The bill also eliminates the appeals process before the credit union membership. The bill instead requires the expelled member to be informed of the reason for expulsion, and the expelled member is permitted to appeal the expulsion to the board of directors within 30 days of the expulsion.

Credit Union Council—Terms of Service

The bill specifies a Council member cannot serve more than two consecutive full three-year terms. The bill requires the Governor, in the event of vacancy on the Council, to appoint a new member to fill the unexpired term, but this mid-term appointment of a new Council member is not considered a full term for purposes of the two-term limit. The bill also deletes language relating to the original appointment of Council members.

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

Captive Insurance Act; Regulation of Captive Insurance Companies; SB 410

SB 410 creates the Captive Insurance Act (Act) under the Insurance Code by amending law and creating law related to captive insurance companies. The bill creates two new captive insurance types—branch captive insurance company and special purpose insurance captive—and specifies the regulatory structure for each.

[*Note:* A captive is an insurance company created and wholly owned by one or more non-insurance companies to insure the risks of its owner (or owners).]

Creation of the Act [New Section 1]

The bill establishes the Act by creating 35 sections of law, updating 14 statutes from the original set of statutes regulating captive insurance companies, integrating 2 statutes into the Act without amendments (related to trade practices and specifying no requirement to join a

rating organization), and repealing 2 statutes (related to certain surplus and product liability requirements).

Captive Insurance Companies

Definitions Under the Act [Section 36]

The bill amends the definition of “captive insurance company” to mean any pure captive insurance company or association captive insurance company; for purposes of the Act, a branch captive insurance company is a pure captive insurance company with respect to operations in Kansas, unless otherwise permitted by the Commissioner of Insurance (Commissioner) of the Kansas Insurance Department (Department).

The bill also amends various definitions, specifies definitions for additional terms, removes certain definitions, and integrates the amended statute into the Act.

Certificate of Authority, Requirements, Application, Fees [Section 37]

The bill amends law related to the certificate of authority for captive insurance companies, requirements in order to do business and prohibitions, the application process, fees for the application and annual renewal fee, and provisions for confidentiality and disclosure of materials.

The bill authorizes any captive insurance company, when permitted by its organizational documents, to apply to the Commissioner for a certificate of authority to do any and all insurance related to the issuance of life or accident and health insurance policies, when certain requirements are met. The bill authorizes a pure captive insurance company to insure any controlled unaffiliated business up to 5.0 percent of total written premium, upon prior approval of the Commissioner.

The bill removes certain references; specifies insurance and exposure to risk; specifies captive insurance companies are prohibited from providing personal lines of insurance, long-term care coverage, critical care coverage, surety, title insurance, and credit insurance; prohibits a captive insurance company from providing accident and health insurance, life insurance, or annuities on a direct basis; states no captive insurance company authorized as a life insurance company is able to transact business other than life insurance; and prohibits a captive insurance company authorized to transact business related to fire insurance or casualty, surety, and fidelity from engaging in the business of life insurance.

The bill amends the requirements for meetings and specifies the materials the applicant captive insurance company is required to file with the Commissioner before receiving a certificate of authority.

Further, the bill specifies each captive insurance company not in existence on January 1, 2018, will be required to pay a nonrefundable fee of \$10,000 for examining, investigating, and processing its application for a certificate of authority and authorizes the Commissioner to retain certain services from outside the Department. The bill sets the renewal fee for each year thereafter at \$10,000. [Note: Current law specifies the initial application fee to be \$500 and the renewal fee to be \$110.] The bill states each captive insurance company already in existence on

January 1, 2018, will pay an annual renewal fee of \$110 until January 1, 2028, after which the fee increases to \$10,000.

Additionally, the bill changes the end date of each year of the certificate of authority to March 1 and specifies confidential treatment for materials submitted to the Commissioner and exceptions for disclosure.

Name of Company [Section 38]

The bill amends law related to the name of a captive insurance company by removing reference to an aircraft captive insurance company.

Capital Requirements [Section 39]

The bill specifies the requirements for maintaining capital and surplus; changes the amount, from \$100,000 to \$250,000, a pure captive insurance company must possess and maintain; changes the amount, from \$200,000 to \$500,000, an association captive insurance company must possess and maintain (the bill changes “industrial insured” to “association”); authorizes the Commissioner to prescribe additional minimum capital surplus based upon the type, volume, and nature of the insurance business transacted; prohibits loans of minimum capital and surplus funds; and prohibits a pure captive insurance company from making a loan or an investment in its parent company or affiliates without prior written approval of the Commissioner, and such loan or investment needs evidence of Commissioner-approved documentation.

Incorporation or Formation and Membership [Section 40]

The bill amends the formation possibilities of a pure captive insurance company to include incorporation as a nonstock corporation or formation as a limited liability company, partnership, or limited partnership; states an association captive insurance company can be incorporated as a stock corporation or nonstock corporation, or formed as a limited liability company, partnership, or limited partnership; specifies incorporator and organizer requirements for a captive insurance company; states member, manager, or partner requirements for a captive insurance company formed as a corporation, limited liability company, partnership, or limited partnership; describes the quorum for a captive insurance company formed as a corporation; and specifies the applicability of laws.

Reports of Financial Condition [Section 41]

The bill amends law related to the annual report of financial condition of captive insurance companies to describe the requirements for the report and filing deadlines, requires the filing of a report of financial condition on a quarterly basis to be designated by the Commissioner, specifies confidential treatment for all reports, and requires the Commissioner to adopt rules and regulations related to forms.

Financial Examination [Section 42]

The bill amends law related to the financial examination of captive insurance companies. The bill updates language related to the timing of such examination; permits the Commissioner to engage in continuous analysis for the preparation of examination; specifies the considerations for scheduling and determining the nature, scope, and frequency of examinations of financial condition; specifies the Commissioner's ability to access information from books, records, reports, and other documents; authorizes the Commissioner to examine or investigate any person, or the business of any person, related to and necessary or material to the examination or investigation; specifies appointment of examiners under provided guidelines; and specifies the Commissioner may retain certain groups to make such examination.

The bill also states the time line for the examiner to file a verified written report of examination with the Department, specifies transmission of the report to the examined company and provides opportunity for rebuttal, provides the circumstances for the Commissioner to enter an order and discuss the requirements for all orders, describes the terms of privacy and confidentiality for such reports, and specifies the bill does not limit the Commissioner's authority to terminate or suspend any examination to pursue other legal or regulatory action pursuant to Kansas insurance laws.

Additionally, the bill specifies confidential treatment of documents, access of information, and provides a sunset of July 1, 2023, for confidentiality of certain documents unless the Legislature reviews and reenacts the provision.

Suspension or Revocation of the Certificate of Authority [Section 43]

The bill specifies additional reasons why the certificate of authority of a captive insurance company can be suspended or revoked. These reasons include the captive insurance company is financially impaired, insolvent, or otherwise deemed to be in a hazardous financial condition; failure to comply with the provisions of its organizational documents; and failure to pay any tax or fee or submit to pay the cost of an examination or any legal obligation.

Further, the bill requires a procedure for notice and hearing before the captive insurance company's suspension or revocation of the certificate of authority; requires the delivery of the suspended, revoked, or terminated certificate to the Commissioner; specifies the period of time for suspension; and prohibits the captive insurance company from soliciting or writing new business during the suspension period, but the company will still be required to file annual statements, pay fees and taxes, and service its business already in force.

Investments [Section 44]

The bill amends law related to allowable investments and limitations on such investment. The bill specifies investments of association captive insurance companies will be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners (NAIC), except for those procedures inconsistent with the accounting standards in use by the company and approved by the Commissioner.

Assumption of Risks [Section 45]

The bill amends law related to the assumption of risk by captive insurance companies to specify the captive insurance company is permitted to assume all or any part of an individual risk or all or any part of a particular class of risks by affiliated insurers, authorizes the company to take a credit or reduction from liability for reinsurance of risks or portions of risks ceded to a reinsurer, and removes reference to aircraft captive insurance companies.

Guaranty or Insolvency Fund [Section 46]

The bill specifies, prior to insuring a risk or hazard of an association member, the association captive insurance company is required to notify the association member it does not participate in any guaranty or insolvency fund in Kansas.

Premium Tax [Section 47]

The bill amends the law related to companies subject to premium taxes. The bill specifies the tax rate for direct premiums and assumed reinsurance premiums, and the maximum tax for each year, and requires the tax to be calculated annually unless prorated for multi-year policies or contracts.

Exemption from Provisions or Rules and Regulations [Section 48]

The bill authorizes the Commissioner to issue an order exempting a captive insurance company from provisions of the bill or rule or regulation adopted by the Commissioner under certain circumstances.

Applicability of Law Related to Insurance Holding Companies and Impaired or Insolvent Insurers [Section 49]

The bill specifies provisions related to insurance holding companies continue to apply to insurers, as applicable, and provisions related to impaired or insolvent insurers apply to captive insurance companies.

Rules and Regulations [New Section 2]

The bill permits the Commissioner to adopt rules and regulations establishing standards to ensure a pure captive insurance company's parent or any of its affiliated companies is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. However, the Commissioner may approve the coverage of risks by a pure captive insurance company on a case-by-case basis until such time as rules and regulations are adopted.

Prior Approval Required for Certain Acts [New Section 3]

The bill specifies certain acts cannot be taken regarding a captive insurance company without the prior approval of the Commissioner. These acts include dissolution; sale, exchange,

lease, mortgage, assignment, pledge, or other transfer of or granting of a security interest; making of a loan, investment, or extension of credit exceeding 3.0 percent of assets; distributions or dividends out of the capital and surplus; merger or consolidation; conversion to another business form; transfer to or domestication in any jurisdiction; and any amendment of the organizational documents.

Inspection of Records and Civil Penalties [New Section 4]

The bill requires a captive insurance company to maintain its books, records, documents, accounts, vouchers, and agreements in Kansas. The bill specifies these items must be available for inspection by the Commissioner; must be kept in such manner that its financial condition, affairs, and operations can be readily ascertained and the Commissioner can readily verify financial statements; and all originals must be preserved and kept available in Kansas for examination and inspection until the Commissioner approves of destruction or other disposition. The bill specifies the accessibility of electronic documents and the storage and reproduction of electronic documents.

Additionally, the bill specifies civil penalties under this section. Upon notice and opportunity for hearing, the bill authorizes the Commissioner to impose a civil penalty of up to \$5,000 for each violation or act, along with a penalty of up to \$1,000 for each week that such report or document is not provided. A violation of this section will be grounds for suspension, refusal, or non-renewal of a certificate of authority held by the captive insurance company. The bill specifies any proceeding for suspension, refusal, or revocation will be made in accordance with the Kansas Administrative Procedure Act (KAPA).

Captive Insurance Regulatory and Supervision Fund [New Section 5]

The bill creates the Captive Insurance Regulatory and Supervision Fund (Fund) within the State Treasury, to be administered by the Commissioner. The bill requires all moneys credited to the Fund to be expended only for the purpose of providing administration of the Act. The bill specifies the process for receipt, remittance, and deposit of fees in the State Treasury to the credit of the Fund.

The bill further specifies all expenditures from the Fund will be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Commissioner. The bill requires all amounts received by the Department pursuant to the Act to be credited to the Fund.

Dormant Captive Insurance Company [New Section 6]

The bill specifies a “dormant captive insurance company” (dormant captive) is a captive insurance company that has ceased transacting the business of insurance, including the issuance of insurance policies, and there are no remaining liabilities associated with insurance business transactions or insurance policies issued prior to the filing of its application for a certificate of dormancy. A certificate will be revoked if the dormant captive no longer meets this criteria.

A captive insurance company domiciled in Kansas meeting the aforementioned criteria may apply to the Commissioner for a certificate of dormancy. The certificate is subject to

renewal every five years. The bill requires a dormant captive that has been issued a certificate of dormancy to possess and maintain unimpaired, paid-in capital and surplus of not less than \$25,000, submit to the Commissioner a report on its financial condition prior to March 15 of each year, and pay a \$500 license renewal fee.

Additionally, a dormant captive will not be liable for payment of certain premium tax, a dormant captive is required to apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting insurance business prior to issuing any insurance policies, and the Commissioner is authorized to promulgate rules and regulations related to dormant captives.

Material Change to Financial Condition [New Section 7]

The bill requires the captive insurance company to notify the Commissioner in writing within ten days of any material change in financial condition or management. The Commissioner is required to designate material changes through rules and regulations.

Branch Captive Insurance Companies [New Sections 8-14]

The bill establishes a branch captive insurance company (branch captive) as a new type of captive insurance company and specifies the regulatory scheme for such company.

Establishment of Branch Captives [New Section 8]

The bill authorizes the establishment of branch captives, specifies applicability of the Insurance Code, and states the Act takes precedence over the Insurance Code. The bill describes the requirements of maintaining a principal place of business and appointing a Kansas resident as principal representative in order to conduct insurance business in Kansas.

Definitions [New Section 9]

The bill establishes definitions applicable to New Sections 8-14 of the bill related to branch captives. The bill defines "branch captive insurance company" as any alien captive insurance company that has been issued a certificate of authority by the Commissioner to transact the business of insurance in Kansas through a business unit with a principal place of business in Kansas, and has not otherwise been issued a certificate of authority by the Commissioner to transact insurance under the Act. The bill also defines additional terms.

Securities [New Section 10]

The bill specifies no branch captive will be issued a certificate of authority unless it possesses and maintains, as security for the payment of liabilities attributable to the branch operations, the following:

- Minimum capital and surplus of an amount equal to the amount set forth in KSA 40-4304 as the minimum capital requirement for a pure captive insurance company; and

- Reserves on such insurance policies or reinsurance contracts as may be issued or assumed by the branch captive through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations, unless the Commissioner permits a branch captive to credit against reserve equipment under KSA 40-221a.

The bill specifies the form of holding for such security and authorizes the Commissioner to issue an order exempting a branch captive from any or all of these requirements, provided the Commissioner finds satisfactory evidence of the branch captive's financial stability.

Captive Insurance Company Authorized as Branch Captive [New Section 11]

The bill outlines the requirements of a captive insurance company authorized as a branch captive for petitioning the Commissioner for a certificate and the issuance of such a certificate by the Commissioner. Upon issuance of the certificate, the bill permits the branch captive to register to do business in the state.

Required Filing of Reports and Statements [New Section 12]

The bill specifies the requirements of a branch captive to file reports and statements with the Commissioner, authorizes the Commissioner to waive the requirement of an annual report, and provides for confidentiality treatment for reports.

Examination of a Branch Captive [New Section 13]

The bill states the examination of a branch captive will be of the branch business and branch operations only, as long as the branch captive insurance company provides an annual certificate of compliance to the Commissioner or its equivalent and demonstrates it is operating in sound financial condition. Further, a branch captive is required to grant authority to the Commissioner for examination of affairs of a branch captive in a specified jurisdiction, as a condition of the issuance of a certificate of authority, and all reports will be given confidential treatment.

Premium Tax [New Section 14]

The bill specifies a premium tax applies only to the branch business of a branch captive insurance company.

Special Purpose Insurance Captive [New Sections 15-35]

The bill establishes a special purpose insurance captive (special captive) as a new type of captive insurance company and specifies the regulatory scheme for such company.

Definitions [New Section 15]

The bill establishes definitions applicable to New Sections 15-35 of the bill related to special captives. A “special purpose insurance captive” means a captive insurance company that has received a certificate of authority from the Commissioner for the limited purposes specified in New Section 17.

Applicability of Laws [New Section 16]

The bill states no provision of Kansas insurance laws, other than New Sections 15-35, are applicable to a special captive. However, the bill specifies Chapter 40, Article 33, of the Kansas statutes (relating to insurance holding companies) continues to apply, as applicable.

Further, the bill states New Sections 15-35 take precedence over the Insurance Code. The bill authorizes the Commissioner to exempt a special captive from rules and regulations and orders, under certain circumstances.

Transacting Business [New Section 17]

The bill specifies the requirements a special captive must meet to transact business in Kansas. The special captive is required to obtain a certificate of authority from the Commissioner authorizing the special captive to conduct reinsurance business in Kansas, hold at least one meeting of its board of directors each year in Kansas, maintain its principal place of business in Kansas, authorize the Commissioner to accept service of process on its behalf, maintain unimpaired paid-in capital and surplus of not less than \$5,000,000, maintain a risk-based capital of at least 200.0 percent, and pay all applicable fees as required by the Act.

The bill also permits a special captive to apply to the Commissioner for a certificate of authority to conduct reinsurance and describes reinsurance and ceded reinsurance agreements.

The bill specifies the requirements a special captive must meet to obtain a certificate of authority to transact business in Kansas. These requirements include filing an application, including certain documents, descriptions, statements, and affidavits; depositing specified securities with the Commissioner; demonstrating the minimum surplus required is established and held in Kansas; providing copies of any filings made by the ceding company with the ceding company’s domiciliary insurance regulator and any letters of approval or disapproval received from the insurance regulator (but this requirement does not apply to a ceding company that is not required to make filings with its domiciliary insurance regulator, provided the applicant provides certification of such); revising plan of operation and meeting requirements imposed by a revised plan of operation, as may be required by the Commissioner; and paying a nonrefundable application fee of \$10,000.

Further, the bill specifies the time line for the Department to act on the completed application and states a certificate of authority under this section continues until March 1 of each year and is renewable at the discretion of the Commissioner.

Requirements of a Plan of Operation [New Section 18]

The bill requires a special captive to file a plan of operation as part of its application. The plan of operation includes a description of the contemplated financing transaction and a detailed description of transaction documents to which the special captive is a party, including the special captive contract, and specifies other required documents, including *pro forma* balance sheets.

The bill specifies *pro forma* balance sheets and income statements filed must be updated by the special captive and filed with the Commissioner in the event of material deviation from the original or most recently filed plan of operation. The plan of operation must specify which deviations are to be considered material and any other documents or descriptions the Commissioner deems appropriate to explain such material deviation.

Findings by the Commissioner Prior to Issuing a Certificate of Authority to a Special Captive [New Section 19]

The bill describes the required findings of the Commissioner before approving an application and issuing a certificate of authority to a special captive. The Commissioner will be required to find the proposed plan of operation provides a reasonable and expected successful operation, the terms of the transactions proposed in the plan of operation to which the special captive is a party comply with the Act, and the Commissioner of the domiciliary state of each ceding company has notified the Commissioner in writing or the applicant has provided satisfactory assurance to the Commissioner that the regulator has approved or granted a disapproval of the special captive contract. The bill also specifies considerations by the Commissioner in evaluating the expectation of a successful operation of a special captive.

Incorporation or Formation [New Section 20]

The bill permits a special captive to be incorporated as a stock insurer or nonstock corporation, or formed as a limited liability company, partnership, or limited partnership.

Activities, Name, Number of Incorporators, and Capital Stock [New Section 21]

The bill specifies activities of a special captive are limited to those necessary to accomplish its purpose, as outlined in the plan of operation; the name of the special captive cannot be deceptively similar or likely to be confused with another business name registered in the state; the special captive must have at least three incorporators or organizers, at least one being a Kansas resident; and requires the issuance of capital stock not less than par value for a special captive incorporated as a stock.

Entering into a Contract with a Ceding Company [New Section 22]

The bill specifies the requirements for a special captive to enter into a special captive contract with a ceding company. The special captive must have been granted a certificate of authority to transact business as a special captive, and the special captive must provide the Commissioner with approval or disapproval from the ceding company's regulatory official, but provides an alternative if the ceding company's regulatory official does not customarily provide evidence of such approval or disapproval.

Securities and Surplus Notes [New Section 23]

The bill authorizes a special captive to issue approved securities, subject to and in accordance with applicable law, the approved plan of operation, and organizational documents. Further, the special captive is permitted to enter into and perform all of its obligations under any required contract to facilitate the issuance of the securities.

Additionally, the bill authorizes the Commissioner to approve the use of surplus notes. If the Commissioner approves of such use, the special captive will be required to account for proceeds of surplus notes as a surplus and not a debt and submit, for prior approval of the Commissioner, periodic written requests for payments of interest on and repayments of principal of surplus notes. The bill notes the obligation to repay principal, interest, or both on the securities issued by the special captive is required to reflect the risk associated with the reinsurance obligations assumed by the special captive.

Investment Management Agreement [New Section 24]

The bill requires the special captive's assets to be managed in accordance with an investment management agreement filed with and approved by the Commissioner. The special captive is required to invest at least 90 percent of its assets in cash and securities that are investment grade at the time of acquisition. The balance may be invested in cash, securities, or other assets otherwise permitted in the Insurance Code.

Recognition of Admitted Assets; Orders by the Commissioner [New Section 25]

The bill specifies the admitted assets of the special captive must include permitted investments, proceeds from securitization (the term's definition is established in New Section 15), premium and other amounts payable by a ceding insurer to the special captive, and any other assets approved by the Commissioner. Additionally, with prior approval of the Commissioner, letters of credit and guarantees of a parent may be recognized as an admitted asset. The bill includes a method for the Commissioner to reduce the amount of admitted assets previously approved if the Commissioner has determined the value of those assets has decreased. Such method requires an order, time for remedy, notifications, a resolution period, and the special captive's right to an administrative hearing.

Prohibitions [New Section 26]

The bill prohibits a special captive from entering into a special captive contract with a person that is not authorized to transact insurance or reinsurance in at least its state or country of domicile, or to lend, invest, place assets, or borrow money or receive a loan, other than according to the plan of operation.

Dividends and Distributions [New Section 27]

The bill prohibits a special captive from declaring or paying dividends or distributions in any form to its owners other than in accordance with transaction agreements or the plan of operation. The bill specifies dividends and distributions cannot decrease the capital of the special captive below the minimum capital requirements; all dividends and distributions must be approved by the Commissioner; and declaration of dividends and distributions must be provided for by the management of the special captive under certain circumstances.

Material Change to a Plan of Operation [New Section 28]

The bill requires prior written approval of the Commissioner for any material changes to the plan of operation. The plan of operation is required to specify which deviations are considered material.

Affiliated Agreements [New Section 29]

The bill specifies copies of all completed affiliated agreements to which the special captive is a party, including special captive contracts and reinsurance agreements, be filed with the Commissioner for prior approval.

Reporting of Financial Conditions [New Section 30]

The bill requires each captive insurance company to submit a report of its financial condition to the Commissioner prior to March 1 of each year. The bill requires the special captive to report using certain accounting principles; requires the Commissioner to establish the form and content of the annual report by rules and regulations; specifies certain annual and biennial actuarial reports; provides for the filing of an annual report on a fiscal year basis, upon written application; requires a special captive to maintain books, records, and other items in Kansas for inspection by the Commissioner; and outlines the requirements for preservation of original books, records, and other items.

Financial Examinations and Reports [New Section 31]

The bill specifies a financial examination of a special captive will occur at least once every five years or whenever the Commissioner deems such examination necessary. The bill authorizes the Commissioner to engage in continuous analysis for the preparation of the examination; permits the Commissioner to make or direct to be made a market regulation examination of any insurance company doing business in the state; requires the Commissioner to make certain considerations when scheduling and determining the nature, scope, and frequency of examinations of financial condition; authorizes the Commissioner to have free access to books and paper relating to business for the purpose of making such examination or analysis; authorizes the Commissioner to require reports and documents to be filed with the Commissioner; permits the Commissioner to examine or investigate any person or the business of any person if deemed by the Commissioner to be necessary or material to the financial examination; specifies the appointment of examiners; and permits the Commissioner to retain certain persons when making an examination, to be paid for by the company subject to examination.

Additionally, the bill requires the examiner to file a verified written report of examination with the Department. The report must be filed no later than 30 days following the completion of the examination, or at an earlier time prescribed by the Commissioner. The Department will then be required to transmit the report to the examined company within 30 days of receipt of the verified report and a notice of opportunity for rebuttal.

The bill gives the examined company a reasonable opportunity of not more than 30 days to make a written submission or rebuttal. Then, within 30 days of the end of the period for written submissions and rebuttals, the Commissioner is required to fully consider and review the report and any written submissions or rebuttals.

Upon review, the Commissioner enters an order either adopting or rejecting the examination report, or calls for and conducts a fact-finding hearing for purposes of obtaining additional information. The bill specifies the requirements for all orders describes the terms of privacy and confidentiality for such reports, and specifies the bill does not limit the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to Kansas insurance laws.

Reinsurance Premium Tax [New Section 32]

The bill requires each special captive to pay the Commissioner, on or before May 1 of each year, a premium tax at the rate of 0.214 of 1 percent on the first \$20,000,000 of the assumed reinsurance premium; 0.143 of 1 percent on the next \$20,000,000; 0.048 of 1 percent on the next \$20,000,000; and 0.024 of 1 percent of each dollar thereafter.

Additionally, the bill specifies no reinsurance premium tax is payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities in certain circumstances; specifies the premium tax constitutes all taxes collectible under Kansas law from any special captive, except *ad valorem* taxes on real and personal property used in the production of income could be collected; specifies the requirements of the special captive submitting a return by February 1 of each year stating the amount of all direct premiums and assumed reinsurance premiums received; specifies the requirements of the Commissioner to notify the company of taxes due; and specifies a special captive failing to make returns as required or failing to pay within the time required subjects the special captive to the interests and penalties prescribed in KSA 40-2806.

Confidentiality of Documents [New Section 33]

The bill specifies all documents, materials, or other information obtained by or disclosed to the Commissioner related to special captives is confidential and privileged, but exceptions apply, and such information is not subject to disclosure under the Kansas Open Records Act, but sunsets on July 1, 2023, unless the Legislature reviews and reenacts the provision prior to that date. The bill describes requirements of prior written consent and circumstances requiring notice and opportunity to be heard under KAPA, and specifies the Commissioner or other persons receiving such documents are not permitted or required to testify in any private civil action regarding confidential materials.

The bill outlines the authority of the Commissioner to share and receive documents and materials with federal and international regulatory agencies and the NAIC and its affiliates, and includes a sunset provision of July 1, 2023, for exclusion from the Kansas Open Records Act for

documents received. The bill outlines the requirements for sharing agreements, including specifying procedures and protocols for confidentiality and security, specifying ownership of information shared with NAIC remains with the Commissioner; requires prompt notice to the insurer and affiliates; requires the NAIC to consent to intervention by an insurer under certain circumstances; and specifies a sunset provision of July 1, 2023, for confidentiality provisions.

The bill states the sharing of information by the Commissioner is not a delegation of regulatory authority and no waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information occurs as a result of disclosure to the Commissioner or under a sharing agreement.

Conservation, Rehabilitation, or Liquidation [New Section 34]

The bill authorizes the Commissioner, after notice and hearing, to issue an order, subject to KAPA, to conserve, rehabilitate, or liquidate a special captive domiciled in the state on one or more of the following grounds: embezzlement, wrongful sequestration, dissipation, or diversion the special captive's assets; the special captive is financially impaired, insolvent, or otherwise deemed to be in a hazardous financial condition; or the holders of a majority in outstanding principal amount of each class of special captive securities or surplus notes request or consent to conservation, rehabilitation, or liquidation.

The bill also describes the requirements of the receiver to manage assets and liability and specifies the amount recoverable under the special captive contract by the receiver cannot be reduced or diminished as a result of the entry of an order with respect to the ceding company, unless provided for in the contract or other governing document.

Rules and Regulations [New Section 35]

The bill authorizes the Commissioner to promulgate rules and regulations related to special captives.

HEALTH

Electronic Monitoring in Adult Care Homes; HB 2232

HB 2232 allows a resident of an adult care home, or a resident's guardian or legal representative, to conduct authorized electronic monitoring (monitoring) in the resident's room subject to requirements set out in the bill. The bill defines applicable terms; provides protections for the residents and adult care homes; establishes guidelines for monitoring, including the required notification and the content of the notification form; addresses the responsibilities of an adult care home and a resident or a resident's guardian or legal representative; addresses the privacy rights of a resident and any other person sharing a room with the resident; addresses the terms under which a tape or recording could be admitted into evidence or considered during any proceeding; establishes penalties for violations related to permissible electronic monitoring; and requires the Secretary for Aging and Disability Services (Secretary) to adopt rules and regulations necessary to administer the provisions of the bill.

Definitions

The bill defines the following terms:

- "Adult care home" to have the same meaning as in the Adult Care Home Licensure Act, and amendments thereto;
- "Authorized electronic monitoring" means the placement of one or more electronic monitoring devices (device) in the room of an adult care home resident and making recordings with such devices after notifying the adult care home of the resident's intent to conduct electronic monitoring;
- "Electronic monitoring device" means a surveillance instrument used to broadcast or record activity or sound occurring in a room, but not to intercept wire or electronic communications; and
- "Resident's room" means a room in an adult care home that is used as a resident's private living quarters.

Resident's Rights

A resident is allowed to conduct monitoring in the resident's room subject to the requirements outlined in the bill. The bill prohibits an adult care home from discharging, refusing to admit, or otherwise retaliating against a resident or person based on conducting or consenting to monitoring.

Requirements of Monitoring Notification Form

A resident, or a resident's guardian or legal representative, who desires to conduct monitoring is required to use a form prescribed by the Secretary to notify the adult care home. The form is to be maintained in the resident's file at the adult care home and requires the resident, or the resident's guardian or legal representative, to:

- Release the adult care home from civil liability for a violation of the resident's privacy rights with regard to the use of the device;
- Be informed of the proper complaint reporting procedures, as outlined by the Kansas Department for Aging and Disability Services (KDADS);
- Choose, if the device is a video surveillance camera, whether the camera will always be unobstructed or will be obstructed in specific circumstances to protect the resident's dignity; and
- Obtain, if the resident resides in a multi-resident room, the consent of the other residents in the room on a form prescribed for this purpose by the Secretary.

An adult care home is required to provide a copy of the completed form to the resident, any resident or residents with whom the resident shares a room, and the Office of the State Long-Term Care Ombudsman.

Physical Accommodations for Monitoring

The bill requires an adult care home to make reasonable physical accommodations for monitoring, including:

- Providing a reasonably secure place to mount the device;
- Providing access to power sources for the device;
- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but a resident or residents who share the room with the resident wishing to conduct monitoring do not consent to the monitoring, including offering to move the resident who wishes to conduct monitoring to another shared room that is or becomes available; and
- Making reasonable accommodations if a resident in a multi-resident room wishes to conduct monitoring but another resident who begins residing in the room does not consent to the monitoring, before moving the resident wishing to conduct monitoring.

A resident, or the resident's guardian or legal representative, is required to pay all costs associated with installing and maintaining a requested device.

Consent

New Roommate Consent

The bill requires a resident who previously conducted monitoring to obtain consent from any new roommates before resuming monitoring. The adult care home is allowed to turn off the device if the new roommate does not consent to monitoring and the resident conducting monitoring does not remove or disable the device.

Withdrawal of Consent

The bill allows consent to be withdrawn by a resident, a resident's guardian or legal representative, or any roommate at any time, and the withdrawal of consent is to be documented in the resident's clinical record. The adult care home is allowed to turn off the device if a roommate withdraws consent to monitoring and the resident conducting monitoring does not remove or disable the device.

Posting of Notice and Monitoring in Plain View

Each adult care home is required to post a conspicuous notice at the entrance to the adult care home and at the entrance of each resident's room stating the rooms of some residents may be monitored electronically by or on behalf of the room's resident or residents.

An adult care home is allowed to require a resident, or the resident's guardian or legal representative, to conduct monitoring in plain view.

Form Addressing Monitoring Guidelines

On or before a person's admission to an adult care home, the person is required to complete and sign a form prescribed by the Secretary, and such form is to be maintained in the person's resident file. The form is to state the following:

- That a person who places a device in a resident's room or discloses a recording made on such device may be civilly liable for any unlawful violation of the privacy rights of another person;
- That a resident, or a resident's guardian or legal representative, is entitled to conduct monitoring as authorized in the bill;
- The basic procedures required to request monitoring;
- Who may request monitoring;
- Who may consent to monitoring;
- Restrictions a resident may elect to place on monitoring conducted in the resident's room, including, but not limited to:
 - Prohibiting video recording; or
 - Prohibiting audio recording;
- Turning off the device or blocking the visual recording component in the following instances: during an exam or procedure administered by a health care professional; while the resident is dressing or bathing; or during a resident's visit with a spiritual adviser, ombudsman, attorney, financial planner, intimate partner, or other visitor; and

- Any other information related to monitoring the Secretary deems necessary or appropriate to include on the form.

Device Requirements

The bill requires a device installed or operated pursuant to the bill to comply with the requirements of the National Fire Protection Association 101 Life Safety Code, or other standards determined by the Secretary to have substantially equivalent requirements.

Tape or Recording Requirements

No court or state agency is allowed to admit into evidence or consider during any proceeding any tape or recording created using an electronic monitoring device, or take or authorize action based on such tape or recording, unless:

- The tape or recording shows the time and date when the event occurred; and
- The contents of the tape or recording have not been edited or artificially enhanced.

Interference with Monitoring and Penalties

The bill prohibits a person from knowingly hindering, obstructing, tampering with, or destroying a device installed in a resident's room in accordance with this bill or a video or audio recording obtained in accordance with this bill, without the consent of the resident or individual who authorized the monitoring.

A person violating these provisions is guilty of a class B nonperson misdemeanor. Such violations done with the intent to commit or conceal the commitment of a misdemeanor offense is a class A nonperson misdemeanor; if done with the intent to commit or conceal the commitment of a felony offense, it is a severity level 8, nonperson felony.

Rules and Regulations Authority

The Secretary is required to adopt rules and regulations necessary to administer the provisions of the bill on or before January 1, 2019.

Nuclear Energy Development and Radiation Control Act; Maternal Deaths; Palliative Care; Senate Sub. for HB 2600

Senate Sub. for HB 2600 amends the Nuclear Energy Development and Radiation Control Act, provides for the study and investigation of maternal deaths by the Secretary of Health and Environment (Secretary), and creates the Palliative Care and Quality of Life Interdisciplinary Advisory Council (Council) and the State Palliative Care Consumer and Professional Information and Education Program (Program) within the Kansas Department of Health and Environment (KDHE).

Nuclear Energy Development and Radiation Control Act

The bill requires the assessment of an additional fee up to 50.0 percent of the maximum annual licensing fee for each noncontiguous site where radioactive material is stored or used under the same license, per category. “Noncontiguous site” means a location more than one mile away from the main safety office where licensure records are maintained.

Study and Investigation of Maternal Deaths

The bill provides for the study and investigation of maternal deaths by the Secretary; defines “maternal death”; provides for access to records related to maternal death and addresses the confidentiality of those records; and establishes a July 1, 2023, expiration date for provisions addressing confidentiality of the records, unless the provisions are reenacted by the Legislature prior to their expiration. The Legislature is required to review the confidentiality provisions prior to the expiration date established in the bill. Additionally, the bill requires reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to further study the causes and problems associated with maternal death.

Definition of “Maternal Death”

“Maternal death” means the death of any woman from any cause while pregnant or within one calendar year of the end of any pregnancy, regardless of the duration of the pregnancy or the site of the end of the pregnancy.

Access to Records by the Secretary

The bill requires the Secretary to have access to all law enforcement investigative information regarding a maternal death in Kansas, any autopsy records and coroner’s investigative records relating to the death, any medical records of the mother, and any records of the Kansas Department for Children and Families or any other state social service agency that has provided services to the mother.

The bill authorizes the Secretary to apply to the district court for, and the court may issue, a subpoena to compel the production of any books, records, or papers relevant to the cause of any maternal death being investigated by the Secretary. Any books, records, or papers received by the Secretary through a subpoena are confidential and privileged information and are not subject to disclosure.

The provisions related to the confidentiality of the records received by the Secretary pursuant to a subpoena expire on July 1, 2023, unless reenacted by the Legislature. The Legislature is required to review these confidentiality provisions prior to the expiration date.

Duties of the Secretary

The bill requires the Secretary to identify maternal death cases; review medical records and other relevant data; contact family members and other affected or involved persons to collect additional relevant data; consult with relevant experts to evaluate the records and data collected; make determinations regarding the preventability of maternal deaths; develop

recommendations and actionable strategies to prevent maternal deaths; and disseminate findings and recommendations to the Legislature, healthcare providers, healthcare facilities, and the general public.

Access to Medical Records

The bill requires the following to provide reasonable access to all relevant medical records associated with a maternal death case under review by the Secretary:

- Healthcare providers licensed pursuant to Chapters 65 and 74 of the Kansas statutes [*Note*: Examples of licensed healthcare providers include advanced practice registered nurse, practical nurse, and professional nurse; dentist and dental hygienist; optometrist; pharmacist; podiatrist; individual licensed to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic; physician assistant; physical therapist; mental health technician; occupational therapist and occupational therapy assistant; respiratory therapist; professional counselor and clinical professional counselor; licensed dietitian; baccalaureate social worker, master social worker, and specialist clinical social worker; marriage and family therapist and clinical marriage and family therapist; speech-language pathologist and audiologist; addiction counselor, master's addiction counselor, and clinical addiction counselor; naturopathic doctor; radiologic technologist; behavior analyst and assistant behavior analyst; licensed acupuncturist; psychologist and master's level psychologist; and individual with licensure to practice fitting and dispensing of hearing instruments.];
- Medical care facilities licensed pursuant to Article 4 of Chapter 65 of the Kansas statutes (hospital, ambulatory surgical center, or recuperation center);
- Maternity centers licensed pursuant to Article 5 of Chapter 65 of the Kansas statutes; and
- Pharmacies licensed pursuant to Article 16 of Chapter 65 of the Kansas statutes.

When making good-faith efforts to provide access to medical records as required under the bill, these providers are exempt from liability for civil damages and are not subject to criminal or disciplinary administrative action.

Information, records, reports, statements, notes, memoranda, or other data collected are privileged and confidential and are not admissible as evidence in any court action or before another tribunal, board, agency, or person. Exhibition of this information or disclosure of the contents in any manner by any officer or representative of KDHE or any other person is prohibited, except when necessary to further the investigation of the related case. Anyone participating in the investigation is prohibited from disclosing the information obtained. The confidentiality provisions related to these records expire on July 1, 2023, unless reenacted by the Legislature. The bill requires the Legislature to review the confidentiality provisions prior to their expiration.

Confidentiality of Records Resulting from KDHE Review

The following are confidential records and are not subject to the Kansas Open Records Act or Kansas Open Meetings Act, or subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding:

- Proceedings, activities, and the resulting opinions of the Secretary or the Secretary's representatives; and
- Records obtained, created, or maintained, including records of interviews, written reports, and statements procured by the Secretary or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The bill specifies the right to discover or use in any civil or criminal proceeding any document or record that is available and entirely independent of the proceedings and activities of the Secretary or the Secretary's representatives is not limited or otherwise restricted.

The bill prohibits the Secretary or the Secretary's representatives from being questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of an investigation. The Secretary or the Secretary's representatives are allowed to testify to information that is public or obtained independently of investigations, activities, and proceedings by the Secretary or the Secretary's representatives or any other person, agency, or organization acting jointly or under contract with KDHE in connection with investigating maternal death.

The provisions regarding the confidentiality of this information expire on July 1, 2023, unless reenacted by the Legislature prior to their expiration.

Compilation and Distribution of Aggregate Reports

In an effort to further study the causes and problems associated with maternal death, the bill requires reports of aggregate non-individually identifiable data to be compiled on a routine basis for distribution to healthcare providers, medical care facilities, and other persons necessary to reduce the maternal death rate.

Palliative Care

The Council is responsible for developing recommendations and advising KDHE on matters related to the establishment, maintenance, operation, outcomes evaluation of palliative care initiatives in the state, and effectiveness of the Program. The Program's purpose is to maximize the effectiveness of palliative care initiatives in the state by ensuring comprehensive and accurate information and education about palliative care is available to the public, healthcare providers, and healthcare facilities. The bill also defines "palliative care."

Council Composition, Appointment, Terms, and Compensation

The Council consists of 13 members appointed on or before October 1, 2018, with appointments as follows:

- Two members by the Governor;
- Two members by the Speaker of the House of Representatives;
- One member by the Majority Leader of the House of Representatives;
- One member by the Minority Leader of the House of Representatives;
- Two members by the President of the Senate;
- One member by the Minority Leader of the Senate;
- One member of the House Committee on Health and Human Services by the chairperson of the House Committee;
- One member of the Senate Committee on Public Health and Welfare by the chairperson of the Senate Committee;
- One member by the Secretary to represent KDHE; and
- One member by the Secretary for Aging and Disability Services to represent the Kansas Department for Aging and Disability Services (KDADS).

Council members serve for three years and at the pleasure of their respective appointing authorities. The Council members appoint the chairperson and vice-chairperson, whose duties are established by the Council. KDHE is required to fix the time and place for regular Council meetings, with at least two meetings required annually.

Council members serve without compensation but are reimbursed for actual and necessary expenses incurred in the performance of their duties.

Council Member Qualifications

The bill requires Council members to be individuals with experience and expertise in interdisciplinary palliative care medical, nursing, social work, pharmacy, and spiritual guidance. The bill specifies the Council membership must include healthcare professionals with palliative care work experience or expertise in palliative care delivery models in a variety of settings and with a variety of populations. The Council is required to have a minimum of two members who are board-certified hospice and palliative medicine physicians or nurses and at least one member who is a patient or caregiver.

Definition of Palliative Care

Palliative care means an approach that improves the quality of life of patients and their families facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial, and spiritual. Palliative care:

- Provides relief from pain and other distressing symptoms;
- Affirms life and regards dying as a normal process;
- Intends neither to hasten or postpone death;
- Integrates psychological and spiritual aspects of patient care;
- Offers a support system to help patients live as actively as possible until death;
- Offers a support system to help the family cope during the patient's illness and their own bereavement;
- Uses a team approach to address the needs of patients and their families, including bereavement counseling, if indicated;
- Enhances the quality of life, and may also positively influence the course of illness; and
- Applies early in the course of illness, in conjunction with other therapies intended to prolong life, such as chemotherapy or radiation, and includes investigations needed to better understand and manage distressing clinical complications.

KDHE's Program Responsibilities

With regard to the Program, KDHE is required to publish information and resources on its website, including links to external resources, about palliative care for the public, healthcare providers, and healthcare facilities; develop and implement any other initiatives regarding palliative care services and education KDHE determines would further the Program's purposes; and consult with the Council. The information to be published on the KDHE website includes, but is not limited to, healthcare provider continuing education opportunities, information about palliative care delivery in home and other environments, and consumer educational materials and referral information for palliative care, including hospice. Palliative care has the meaning as described in the section regarding the Council.

LOCAL GOVERNMENT

Urban Area, Mayors, and Election Commissioners; HB 2597

HB 2597 amends law regarding designation as an urban area; when a mayor is considered a member of a governing body; and the compensation, supervision, personnel, and budgeting policies of election commissioners.

Designation as an Urban Area

The bill designates Sedgwick County as an urban area as permitted by Article 2, Section 17 of the *Kansas Constitution*. The designation allows the Kansas Legislature to pass laws specific to those areas.

The bill also clarifies a provision exempting certain cemeteries from requirements related to cemetery maintenance funds to specify any cemetery owned and operated by a nonprofit corporation located in a county designated as urban on or before March 1, 1968, is exempt.

Mayor as a Member of a Governing Body

Based on the form of government utilized by a city, a mayor is considered a member of a governing body, as follows:

- In commission and commission-manager cities, the mayor is considered part of the city governing body in all matters; and
- In mayor-council, modified mayor-council, and mayor-council-manager cities, the mayor is considered part of the city governing body for the purpose of voting on the passage of charter ordinances:
 - In order to be considered part of the governing body for purposes of voting on any other matter in mayor-council, modified mayor-council, and mayor-council-manager cities, an ordinance needs to be adopted by a two-thirds majority of the council establishing the matters on which a mayor may vote.

All current ordinances and charter ordinances relating to a mayor being considered part of the city governing body remain in effect until amended or repealed by such city.

County Election Commissioners

The bill amends law regarding the supervision of election commissioners and their budgetary and personnel policies and procedures.

Compensation

The bill allows a board of county commissioners (Board) to decide the amount and method used to compensate an election commissioner (Commissioner). A Commissioner is

allowed to appoint more than one assistant election commissioner and other staff, as necessary, and set the salaries for these positions. (Under current law, in a county with a population exceeding 200,000, the election commissioner shall appoint two assistant election commissioners.) The bill authorizes the Commissioner to hire additional staff as needed to effectively operate the office and conduct elections as required by law. The Commissioner sets the salaries of the additional staff, but is required to comply with the compensation policies and pay plan adopted by the Board.

Supervision

The Commissioner is required to operate under the general supervision of the Secretary of State and comply with the statutes, rules, regulations, standards, and directives relating to registration of voters and conduct of elections.

Personnel and Budgeting Policies

The bill requires actions taken in the administration of the office of the Commissioner be subject to the same personnel, compensation and benefits, purchasing, budgeting, financial, and auditing policies and procedures applicable to all county departments, agencies, and officials.

The bill removes provisions requiring the election commissioner to certify, by each July 15, to the Board an itemized statement showing the amount necessary to pay the expenses of the office, including salaries, and for county commissioners to include that amount in the county budget for the subsequent year.

The bill requires the Commissioner to submit a budget request to the Board each year, specifying the funding necessary to pay salaries of the office's employees, including the Commissioner, and projected costs and expenses of the office for the next budget year. The Board is required to consider the budget request in the same manner as it considers budgets of other county departments and agencies. The bill requires the Board to adopt, as part of the county budget, a budget for the office of the Commissioner in an amount the Board determines is sufficient and adequate for the performance of the Commissioner's duties and conduct of elections as required by law.

RETIREMENT

Repeal Obsolete Statutes Pertaining to Sudan Divestment; HB 2444

HB 2444 repeals language that had prohibited the Kansas Public Employees Retirement System (KPERs) from investing in companies with operations in Sudan and related reporting requirements to the Legislature. The bill also repeals the associated indemnification for the KPERs Board of Trustees and its employees, research firms, and investment managers.

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

TAXATION

Native American Veterans' Income Tax Refund; Sub. for HB 2147

Sub. for HB 2147 creates a process by which certain Native American military veterans may apply for a refund of state personal income taxes improperly withheld from such veteran's federal military income in the amount of income taxes paid plus interest.

Findings and Declarations

The bill states the following findings and declarations:

- Native Americans have a long history of serving their country through active duty in the armed forces of the United States during periods of both war and peace and have made great sacrifices in fulfilling such duty;
- Native American veterans domiciled on their tribal lands during their periods of active military service may have been exempt from paying state income taxes on their military income, but may have had state income taxes improperly withheld from their military income; and
- Native American veterans are now barred by the statute of limitations from claiming refunds of state income taxes that may have been improperly withheld from their military income and, even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that such veterans are entitled to a refund of improperly withheld state income taxes.

Refund

The bill provides that on and after October 1, 2018, any Native American veteran domiciled within the boundaries of tribal lands in Kansas during the period of active military duty from tax years 1977 through 2001, and who had Kansas personal income taxes withheld from the veteran's federal military income, may apply to receive a refund of such income tax. The refund is equal to the amount of the tax actually paid by the veteran, plus interest accrued during the period from the original due date of the return through September 30, 2018. No application for refund is allowed after June 30, 2020.

Eligible Applicants Other Than Veteran

When a person eligible to receive a refund under this bill is deceased, the bill allows an application to be made on behalf of the estate of the deceased by a surviving spouse or by any heir-at-law.

Fund

The Native American Veterans' Income Tax Fund (Fund) is created by the Director of Taxation (Director) within the Kansas Department of Revenue. The Fund comprises moneys

collected under the Kansas Income Tax Act in an amount determined by the Director as necessary to meet refund requirements provided by the bill. Any additional moneys required for the Fund are transferred from the State General Fund and reported to the State Treasurer.

Report

On or before February 1, 2019, and February 1, 2020, the Secretary of Revenue is required to report to the House Committee on Veterans and Military, the House Committee on Appropriations, and the Senate Committee on Ways and Means how the provisions of the bill are being administered, including the number of claimants receiving refunds and moneys expended.

“Native American” Defined

A Native American eligible to receive refunds under this bill is defined as a member of the Prairie Band Potawatomi Nation of Kansas, the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, or the Sac and Fox Nation of Missouri in Kansas and Nebraska.

“Tribal Lands” Defined

Persons eligible to receive refunds under this bill are defined as those domiciled within the following boundaries:

- *Iowa Tribe of Kansas and Nebraska.* Land as established by the treaty between the United States and the Tribe dated May 17, 1854, that is within the boundaries of the State of Kansas and does not include any land affected by the treaty between the United States and the Sauk and Foxes Tribes. No lands that have been or may be taken into trust by the United States may be included;
- *Kickapoo Tribe in Kansas.* Land granted in the treaty between the United States and the Tribe dated June 28, 1862;
- *Sac and Fox Nation of Missouri in Kansas and Nebraska.* Land granted in the treaty between the United States and the Tribe dated March 6, 1861, and ratified on February 6, 1863; or
- *Prairie Band Potawatomi Nation.* Land granted in Article 4 of the treaty with the Nation ratified on July 22, 1846, as modified by the treaties with the Nation ratified on April 15, 1862, and July 25, 1868.

Rules and Regulations

The Secretary of Revenue has the authority to adopt rules and regulations as necessary to administer the provisions of the bill.

TELECOMMUNICATIONS

Broadband Expansion Planning Task Force; Senate Sub. for HB 2701

Senate Sub. for HB 2701 establishes the Statewide Broadband Expansion Planning Task Force (Task Force).

Mission

The mission of the Task Force is to:

- Work collaboratively to develop an approach that includes, but is not limited to, the development of criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas citizens, business, industries, institutions, and organizations;
- Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and to develop any corresponding risk mitigation strategies where appropriate;
- Consider any recent actions by the Federal Communications Commission (FCC) relating to broadband services including, but not limited to:
 - The 2018 Broadband Deployment Report;
 - Recommendations of the Broadband Deployment Advisory Committee; and
 - Any actions to implement broadband initiatives using the Connect America Fund Phase II, the Mobility Fund II, or the Remote Areas Fund;
- Identify opportunities and potential funding sources to:
 - Expand broadband infrastructure and increase statewide access to broadband services;
 - Remove barriers that may hinder deployment of broadband infrastructure or access to broadband services; and
 - Consider options for the deployment of new advanced communication technologies;
- Develop criteria for prioritizing the expansion of broadband services across Kansas;
- Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment; and
- Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state

of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

The bill also requires the Task Force to submit an initial report to the House Committee on Energy, Utilities and Telecommunications and the Senate Committee on Utilities regarding its initial work and progress prior to January 15, 2019. Unless all work is completed and reported in the initial report, the Task Force is required to submit a final report outlining its recommendations to the Legislature prior to January 15, 2020.

Task Force Composition

The Task Force is composed of 17 voting members. The membership is as follows:

- The chairperson, vice-chairperson, and ranking minority member of the House Standing Committee on Energy, Utilities and Telecommunications;
- The chairperson, vice-chairperson, and ranking minority member of the Senate Standing Committee on Utilities;
- One member appointed by the Kansas Association of Counties;
- One member appointed by the Kansas League of Municipalities;
- One member appointed by the Kansas Rural Independent Telephone Coalition;
- One member from the Kansas Cable Telecommunications Association;
- One member appointed by the Cellular Telecommunications Industry Association representing a wireless carrier;
- One member representing an electing carrier;
- One member representing an incumbent local exchange carrier that is price-cap regulated and a recipient of Kansas Universal Service Fund moneys and serves a rural service area;
- One member appointed by the Kansas Electric Cooperatives;
- One member appointed by the State Independent Telephone Association;
- One member appointed by the Kansas Municipal Utilities; and
- One member appointed by the Kansas Independent Fiber Association.

In addition, the bill requires the Task Force to include the following five non-voting *ex officio* members:

- The Secretary of Transportation, or the Secretary's designee;
- The Commissioner of Education, or the Commissioner's designee;
- The chairperson of the State Corporation Commission, or the chairperson's designee;
- One member appointed by the Kansas Hospital Association; and
- One member at-large, appointed by the Governor.

All members must be appointed no later than 45 days from the effective date of the bill and membership must represent the 4 congressional districts in Kansas. In addition, the bill requires members to reside or work in Kansas. Any vacancy on the Task Force will be filled by appointment in the same manner as the original appointment.

Legislative members of the Task Force attending authorized meetings will be paid amounts provided in continuing law. Non-legislative members may be reimbursed by their appointing authority.

Committee Structure and Meetings

The bill stipulates one of the legislative members appointed by the Speaker of the House of Representatives and one member appointed by the President of the Senate serve as co-chairpersons of the Task Force. The Task Force may meet in an open meeting at any time upon call of either co-chairperson. A majority of the voting members of the Task Force constitutes a quorum. In addition, any action taken by the Task Force must be by motion adopted by a majority of voting member present with a quorum.

Staff

The bill requires staff from the Division of Legislative Administrative Services, the Kansas Legislative Research Department, and the Office of Revisor of Statutes to provide assistance as requested by the Task Force.

Sunset

The Statewide Broadband Expansion Task Force sunsets on June 30, 2020.

Effective Date

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

TRANSPORTATION AND MOTOR VEHICLES

Vehicle Dealer Facilities, Performance Criteria, and Recall Repairs; SB 324

SB 324 adds two sections to the Vehicle Dealers and Manufacturers Licensing Act (Act) on improvements to dealer facilities, dealer performance criteria, and recall repairs.

Improvements to dealer facilities. The bill prohibits a manufacturer (as defined in the bill) from coercing or requiring any vehicle dealer to construct improvements to facilities or install new signs that replace or substantially alter improvements or signs completed within the previous ten years that were required and approved by the manufacturer or one of its contractors or affiliates, notwithstanding the terms and conditions of any franchise agreement or related document. The ten-year period begins for a dealer, including that dealer's successor and assigns, when the manufacturer gives final written approval of the facility, improvements, or signs or the dealer receives a certificate of occupancy, whichever is later.

The bill prohibits a manufacturer from requiring a dealer to purchase goods or services for improvements from vendors selected, identified, or designated by the manufacturer without allowing the dealer to obtain goods or services of substantially similar kind, quality, and design from a vendor chosen by the dealer. The bill requires manufacturer approval of an alternate vendor and specifies approval by the manufacturer may not be unreasonably withheld. The option to choose an alternate vendor is not available if the manufacturer provides substantial reimbursement (as defined in the bill) for the goods or services. The bill specifies the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to the intellectual property rights of the manufacturer.

The bill states this section is not intended to prohibit a manufacturer from requiring changes or updates to signs more frequently than every ten years if the manufacturer offers the dealer compensation for the sign or pays for the sign if the sign changes are required more than every five years.

Dealer performance criteria. The bill prohibits a manufacturer from using criteria that are unfair, unreasonable, arbitrary, or inequitable or that do not consider local and state or regional criteria, data, and facts presented by the dealer in writing to evaluate any dealer's sales or service performance. The prohibited criteria cannot be used for purposes of canceling, terminating, or non-renewing a franchise agreement with a dealer or assigning the dealership to another person. The bill requires prevailing economic or other conditions affecting sales or service performance to be taken into account by the manufacturer and state relevant and material criteria, data, or facts include, but are not limited to, dealerships of comparable size in comparable markets, geographic and market characteristics in the new vehicle dealer's area, proximity to the motor vehicle manufacturing facilities, buying patterns and consumer preferences, and customer drive time and distance. If any performance measurement criteria are based in whole or in part on a survey, the bill requires the survey be based on a statistically significant and valid random sample or survey a majority of customers if the survey measures customer satisfaction.

Recall repairs. The bill requires a manufacturer to provide reasonable compensation to its new vehicle dealers for all labor and parts required to perform recall repairs. A manufacturer is required to compensate a dealer in one of two ways:

- At the prorated rate of at least 1.0 percent of the value of the vehicle per month if, after 30 days, parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a vehicle dealer authorized to sell and service the same line-make of new vehicles and the manufacturer has issued a stop-sale or do-not-drive order on the vehicle; the period ends the date the parts are made available or the date the dealer sells, trades, or otherwise disposes of the vehicle; or
- Under a national recall compensation program, provided the compensation under the program is equal to or greater than the compensation outlined above, or as the manufacturer and dealer otherwise agree.

The bill defines both stop-sale and do-not-drive orders. The recall repair provisions apply only to used vehicles subject to safety or emissions recalls that are held by dealers of new vehicles and only to vehicles in inventory when the order is issued or taken into inventory as a trade-in incident to new vehicle purchases after the order was issued.

The bill states it will be a violation of this section for a manufacturer to reduce compensation to a new vehicle dealer or otherwise retaliate solely because the dealer has made a claim for reimbursement under this section, but it excludes an action by a manufacturer applied uniformly among all dealers of the same line-make in the state.

The bill authorizes a manufacturer to direct the manner and method in which a dealer must demonstrate the inventory status of a vehicle affected by a stop-sale or do-not-drive order, provided the manner and method are not unduly burdensome or require information that is unduly burdensome to provide.

The bill states a manufacturer will not be required to provide total compensation to a dealer for any single unit that exceeds the total average trade-in value of the affected used vehicle.

The bill states any remedy provided under this section is exclusive and may not be combined with any other recall compensation remedy. Also, it will not supersede or otherwise replace provisions in continuing law regarding liability of manufacturers and distributors for defects in equipment.

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

License Plates—Special Olympics, Choose Life, City of Wichita, Various Military Operations; HB 2599

HB 2599 authorizes the following distinctive license plates for issuance on and after January 1, 2019: Special Olympics, Choose Life, City of Wichita, veteran of the Korean War, veteran of Operation Desert Storm, veteran of Operation Iraqi Freedom, and veteran of Operation Enduring Freedom.

Special Olympics License Plate

The bill authorizes a Special Olympics license plate to be issued to the owner or lessee of a passenger vehicle or truck registered for a gross weight of 20,000 pounds or less. The bill allows any owner or lessee to apply for the new plate after paying annual vehicle registration fees and a logo use royalty fee of between \$25 and \$100 to the organization Special Olympics Kansas. Royalties will be deposited into the Special Olympics Kansas Royalty Fund, which the bill creates. Payments from the Special Olympics Kansas Royalty Fund will be made monthly to the appropriate designee of Special Olympics Kansas. Special Olympics Kansas will pay initial costs and work with the Director of Vehicles (Director), Department of Revenue, to design the plate.

Choose Life License Plate

The bill authorizes a Choose Life license plate to be issued to the owner or lessee of a passenger vehicle or truck registered for a gross weight of 20,000 pounds or less, a motorcycle, or a travel trailer. No logo use royalty fee is associated with this license plate. Provisions requiring a sponsoring organization to pay a nonrefundable amount to defray Division of Vehicles (Division) costs to develop a new license plate do not apply, but the Division will delay the manufacturing and issuance of this license plate until the Division has received at least 1,000 orders for such plate.

City of Wichita License Plate

The bill authorizes a City of Wichita license plate to be issued to the owner or lessee of a passenger vehicle or truck registered for a gross weight of 20,000 pounds or less. The bill allows any owner or lessee to apply for the new plate after paying annual vehicle registration fees and a logo use royalty fee of between \$25 and \$100 to the City of Wichita. The bill specifies any royalty payment received shall be used to support physical assets identified by the Wichita Parks Foundation (Foundation) and for license plate administrative costs incurred by the Foundation. Royalties will be deposited into the City of Wichita Royalty Fund, which the bill creates. Payments from the City of Wichita Royalty Fund will be made monthly to the appropriate designee of the City of Wichita. The City of Wichita will pay initial costs and work with the Director to design the plate. The City of Wichita will also be responsible for establishing a toll-free number applicants can call for information concerning the application process or the status of an application.

License Plates for Veterans of Specified Military Operations

The bill authorizes separate license plates for veterans of the following conflicts and military operations:

- The Korean War;
- Operation Desert Storm;
- Operation Iraqi Freedom; and
- Operation Enduring Freedom.

[*Note:* Continuing law provides additional license plates related to military service, e.g., Vietnam War veteran in KSA 2017 Supp. 8-1,163.]

For each of those four license plates, the bill authorizes one license plate to be issued to the owner or lessee of a passenger vehicle, a truck registered for a gross weight of 20,000 pounds or less, or a motorcycle if the owner or lessee submits satisfactory proof to the Director, in accordance with rules and regulations adopted by the Secretary of Revenue, that the person is a veteran of the military action for which the veteran is requesting a license plate. The bill also specifies application and registration requirements. No registration or distinctive plate issued under the bill will be transferable to any other person. In the event of the death of any person issued a distinctive license plate under the bill, the surviving spouse, or other family member if there is no surviving spouse, will be entitled to possess, but not display on a vehicle, the distinctive license plate.

The bill exempts these license plates from requirements for payment of a distinctive license plate fee by the veteran requesting the plate; the number of requests required before issuance; and payments to cover costs of the design, manufacture, and issuance of such plates.

Driver's Licenses—Motorcycle License, Online Renewal, and Renewal of Commercial Driver's License; HB 2606

HB 2606 amends law related to testing for a Class M (motorcycle) driver's license, online driver's license renewal, and the length of time a commercial driver's license is valid.

Class M Driver's License Testing

The bill exempts applicants for Class M driver's licenses who have completed motorcycle safety training in accordance with the Motorcycle Safety Foundation (MSF) instruction from completing further written and driving testing by the Division of Vehicles (Division). The bill requires an applicant seeking exemption from the written and driving tests to provide a copy of the MSF completion form to the Division prior to receiving a Class M license. The bill clarifies the driving examination required for licensure shall be administered by the Division, the U.S. Department of Defense, or as part of a curriculum recognized by the MSF.

Vision Tests for Online Driver's License Renewal

The bill specifies vision test requirements for qualifying applicants for electronic online driver's license renewal. A requirement in continuing law that a driver's license examiner administer an eyesight exam prior to renewal of a driver's license will be waived under the conditions listed below:

- The electronic online renewal applicant must be at least 21 years old but less than 50 years old;
- The applicant must certify under penalty of law the applicant's vision meets requirements in continuing law (20/40 or better in at least one eye as tested by the driver's license examiner, 20/60 or better in at least one eye if the applicant submits a vision report from an ophthalmologist or optometrist);
- The applicant must certify under penalty of law the applicant has undergone an examination by a licensed ophthalmologist or a licensed optometrist within the previous year;

- The applicant must authorize the exchange of vision and medical information between the Division and the applicant's ophthalmologist or optometrist; and
- The ophthalmologist or optometrist will have four business days to confirm or deny the vision and medical information of the applicant. The Division will be required to accept the vision and medical information provided for processing the renewal application if the Division does not receive a response from the applicant's ophthalmologist or optometrist within the specified time frame.

The bill states the provisions allowing waiver of vision examination expire July 1, 2022, and the bill requires the Division to report to the House and Senate Committees on Transportation by February 1, 2022, regarding the online renewal process and its effects to safety on the state's roads and highways.

The bill requires, rather than authorizes as in current law, the Secretary of Revenue to adopt and administer rules and regulations regarding electronic online renewal of a driver's license and specify those rules and regulations shall include, but not be limited to, requirements that an electronic online renewal applicant has previously provided documentation of identity, lawful presence, and residence to the Division for electronic scanning.

Commercial Driver's License Renewal

The bill extends from four years to five years the period of time an original commercial driver's license (CDL) issued on and after July 1, 2018, will be valid. The bill extends from four years to five years the period of time before expiration of a CDL. The bill also makes conforming amendments to law.

**NUMERICAL INDEX OF BILLS
House Bills and Resolutions**

<u>Bill</u>	<u>Page</u>	<u>Bill</u>	<u>Page</u>
HB 2145.....	7	HB 2597.....	44
Sub. for HB 2147.....	47	HB 2599.....	53
HB 2232.....	35	Senate Sub. for HB 2600.....	38
HB 2444.....	46	Sub. for HB 2602.....	14
HB 2454.....	6	HB 2606.....	55
HB 2477.....	3	HB 2639.....	8
HB 2482.....	20	Senate Sub. for HB 2701.....	49

**NUMERICAL INDEX OF BILLS
Senate Bills and Resolutions**

<u>Bill</u>	<u>Page</u>	<u>Bill</u>	<u>Page</u>
SB 263.....	1	SB 394.....	17
SB 275.....	21	SB 410.....	21
SB 324.....	52	Sub. for SB 423.....	9