Kansas Legislative Research Department May 11, 2018

SUPPLEMENT II TO
PRELIMINARY SUMMARY OF LEGISLATION
2018 KANSAS LEGISLATURE

This publication contains summaries of selected bills enacted by the Legislature from April 26, 2018 through adjournment sine die. Bills that have not yet been signed by the Governor are included.

The Preliminary Summary containing summaries of major bills that were enacted through the end of the legislative day on March 29, 2018 was distributed on April 2, 2018. An updated supplement to the Preliminary Summary was distributed on April 12, 2018.

Highlights, a summary of major legislation in newsletter form, will be prepared and distributed electronically to legislators as soon as possible. *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://kslegislature.org/klrd.

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AGRICULTURE AND NATURAL RESOURCES

State Parks—Additional Designations; SB 331

SB 331 adds to the list of designated state parks the Flint Hills Trail State Park located in Miami, Franklin, Osage, Lyon, Morris, and Dickinson counties and Little Jerusalem Badlands State Park located in Logan County.

In addition, the bill establishes the Flint Hills Advisory Council (Council), which will study and assess the development, staffing, maintenance, and promotion of the Flint Hills Nature Trail. The bill provides that consideration be given to appointing individuals who own land adjoining the Flint Hills Nature Trail. The 14 members of the Council will include:

- Two members of the Legislature who reside in a district adjoining the Flint Hills Nature Trail, or the members' designees, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

- Six county commissioners, or the commissioners' designees, with one appointed by each board of county commissioners of Miami, Franklin, Osage, Lyon, Morris, and Dickinson counties; and

- Six residents within each of Miami, Franklin, Osage, Lyon, Morris, and Dickinson counties, with each appointed by the governing body of the respective county seat.

The bill requires the Council to meet quarterly, at the call of the chairperson or upon request of a majority of the Council, and provide a quarterly report of its findings and recommendations to the Kansas Department of Wildlife, Parks and Tourism (KDWPT). The legislative member appointed by the Speaker of the House of Representatives will serve as the first chairperson of the Council and the legislative member appointed by the President of the Senate will serve as the first vice-chairperson. The positions of chairperson and vice-chairperson will alternate annually upon the first meeting of the Council each calendar year.

The bill also requires members of the Council to be appointed by August 1, 2018, and any vacancy on the Council is to be filled by appointment in the same manner as the original appointment. Members of the Council will be appointed for terms not to exceed three years and, with the exception of the chairperson and vice-chairperson, will not serve more than two consecutive terms. The initial terms for the members will be staggered according to the provisions of the bill. In addition, legislative members of the Council will receive compensation amounts provided in current law, subject to approval by the Legislative Coordinating Council.

All of the above provisions dealing with the Council will expire on July 1, 2021.

In addition, the bill removes the Prairie Spirit Rail Trail State Park and the Flint Hills Trail State Park from current setback requirements for swine-confined animal feeding operations.

The bill directs the KDWPT to carry out the requirements outlined in state law [KSA 58-3212(a)(1)-(a)(11)] regarding the duties of the responsible party, at all times, after a transfer of a deed for land or water recreational areas. This will apply to the state parks designated by the bill that are subject to federal law regarding interim use of railroad rights-of-way. Among the duties

required to be performed by the responsible party are safety, accessibility, litter control, and law enforcement.

Finally, the bill clarifies that property contained within or encumbered by any railroad rights-of-way that have been transferred or conveyed to the KDWPT for interim use as a rail trail under federal law and is part of a state park will be deemed to be acquired and used for state park purposes and will therefore be exempt from property or *ad valorem* taxation.

Deposit of Revenue in State Fair Capital Improvements Fund; SB 415

SB 415 diverts a portion of state sales tax collections by the Kansas State Fair (Fair) and retailers on the fairgrounds from the State General Fund (SGF) to the State Fair Capital Improvements Fund (SFCIF), effective July 1, 2018. Previously, 83.846 percent of such collections was allocated to the SGF and 16.154 percent to the State Highway Fund (SHF). The SFCIF will not receive the SHF's relative portion of the Fair-related collections. The diversion provisions expire if the Fair is to be located outside the city limits of Hutchinson.

The bill also repeals a statutory transfer from the SGF to the SFCIF. That transfer had been set at not more than $100,000 per year for FY 2018 and FY 2019 and not more than $300,000 per year in subsequent years.

Kansas Emergency Planning and Community Right-to-Know Act; HB 2577

HB 2577 requires all fees collected by the Right-to-Know Program (Program) within the Kansas Department of Health and Environment to be deposited into the State Treasury and credited to the Kansas Right-to-Know Fee Fund (Fund), which is created by the bill. Before this bill, these fees were deposited in the State General Fund. Expenditures from the Fund will be used for the administration of the Program, to provide and maintain the reporting system as necessary to comply with KSA 65-5704, and to provide training to the owners or operators of Kansas facilities, Kansas first responders, and Kansas emergency management officials on the existence, access, and use of the reporting system established pursuant to the Kansas Emergency Planning and Community Right-to-Know Act.

The bill establishes statutory maximum fees for the Program, as follows.

Sum of the Maximum Daily Amounts of all Extremely Hazardous Substances reported (in pounds) on the Kansas Tier II Form	Annual Fee
1-9,999	$25
10,000-999,999	$50
1.0 million or greater	$150
Sum of the Maximum Daily Amounts of all Hazardous Chemicals reported (in pounds) on the Kansas Tier II Form	**Annual Fee**
10,000-99,999	$25
100,000-999,999	$50
1.0 million-9,999,999	$150
10.0 million or greater	$300

Sum of the Total Chemical Releases reported (in pounds) on the Federal Form R	Annual Fee
100-19,999	$250
20,000-99,999	$700
100,000-999,999	$1,700
1.0 million or greater	$3,000

The bill also gives the Secretary of Health and Environment (Secretary) the authority to reduce the fees by adopting administrative rules and regulations if the Secretary determines such fees are yielding more than is necessary for the purposes of the Program outlined in the bill. In addition, the bill gives authority to the Secretary to increase the fees by adopting administrative rules and regulations if the Secretary finds an increase is necessary to produce sufficient revenue for purposes of the Program. The bill prohibits fee increases in excess of the total cost of operation of the Program.

Noxious Weed Act; HB 2583

HB 2583 creates the Noxious Weed Act (Act) and repeals current noxious weeds law.

Definitions [New Section 1]

For purposes of the Act, the bill defines various terms, including "Act," "certified weed free," "control," "governing body," "governmental agency," "noxious weed plant material," "person," "political subdivision," "secretary," "state advisory committee," and "weed supervisor." The term "noxious weed" means any species of plant the Secretary of Agriculture (Secretary) determines to be a noxious weed in rules and regulations adopted and promulgated pursuant to the Act.

Emergency Declaration of Noxious Weeds [New Section 2]

The bill authorizes the Secretary to make an emergency declaration of noxious weeds by order if a new, potentially harmful, verified species of plant is discovered growing in the state or the state is facing a potential influx of harmful species of plants as the result of a natural disaster.

Once the Secretary makes an emergency declaration, the Secretary will be required to consider the species of plant as noxious and take every action and use any means available to control or eradicate the noxious weed. The Secretary will not be allowed to make an emergency declaration for the same species of plant more than once in a five-year period without the recommendation of the State Noxious Weed Advisory Committee. The declaration will remain in effect for the earlier of the following:

- 18 months;

- Until action can be taken by the Secretary to declare the species a noxious weed by rules and regulations; or

- Until the Secretary rescinds the declaration.

State Noxious Weed Advisory Committee [New Section 3]

The bill creates the State Noxious Weed Advisory Committee (Committee), which will consist of 13 voting members and the Secretary as a non-voting *ex officio* member. Members will reflect the different geographic areas of the state equally, to the greatest extent possible, and receive no compensation for serving on the Committee, but will receive subsistence allowances, mileage, and other expenses as provided in law.

Membership

The following 13 voting members will be appointed by the Secretary:

- One member, natural resource management professional, Kansas Department of Wildlife, Parks and Tourism;

- Two members, weed specialists from Kansas State University, College of Agriculture, or Kansas State Research and Extension, with one member having knowledge of non-chemical methods of weed control, appointed upon recommendation of the Dean of the College of Agriculture and the Director of Kansas State Research and Extension;

- One member, county commissioner, appointed on recommendation of the Kansas Association of Counties;

- Four members shall be private landowners involved in agricultural production, including
  - One who is a Kansas producer of traditional Kansas crops, meaning wheat, corn, soybeans, milo, peanuts, cotton, hay, or oats;
  - One who is a Kansas producer who grows non-traditional Kansas crops; and
  - One who shall be a certified organic farmer;

- Two members, weed supervisors, appointed upon recommendation of the Board of Directors of the County Weed Director's Association of Kansas;

- One member, representing agricultural industries in the state, appointed upon recommendation of the Board of Directors of the Kansas Agribusiness Retailers Association;

- One member, appointed by the Kansas Biological Survey; and

- One member, appointed upon recommendation of the Board of Directors of the Kansas Cooperative Council.

Term of Office; Vacancies

The term of office for each Committee member will be four years, with initial appointments for six members for two years, four members for three years, and three members for four years, as designated by the Secretary. Committee members will be limited to serving two full terms and will hold office until expiration of the term, a successor has been duly appointed, or removal from the Committee for misconduct, incompetence, or neglect of duty. When a vacancy occurs, the recommending body of the vacating member will make a recommendation to the Secretary for a replacement, with the Secretary making the appointment as soon as reasonably possible to fill the vacancy.

Quorum; Meeting Frequency

A quorum of the Committee will be a majority of the members appointed to the Committee, which will elect or appoint a chairperson and vice-chairperson each year. The Committee is required to meet at least once a year, but not more than four times per year.

Duties of the Committee

The Committee will be assigned with the following duties, among other duties assigned by the Secretary:

- Review the State Weed Management Plan every five years and recommend changes and updates to the Secretary;

- Recommend the designation and classification of noxious weeds in the state through the use of a risk assessment designated by the Secretary;

- Review the Act and the rules and regulations of the Secretary declaring species of plants to be noxious weeds at least every four years and recommend changes to the Secretary;

- Review the official methods for the control and eradication for each species of plant declared a noxious weed and recommend changes to the Secretary that includes both chemical and non-chemical options for control and eradication; and

- Before January 1 of each odd-numbered year, report to the Secretary on the amount and manner of State funds spent on noxious weeds, the status of state and county noxious weed control programs, recommendations for the continued best use of state funds for noxious weed control, and recommendations on long-term noxious weed control needs.

Recommendations by the Committee may be made only by a majority vote of the members.

Certification [New Section 4]

The bill requires any and all alfalfa, grass, hay, or other forage, straw, or mulch carried onto or used within the boundaries of any lands owned or managed by the State and its agencies to be certified weed free.

Noxious Weeds Listing [Sections 5-7]

The bill requires the Secretary to adopt rules and regulations to declare species of plants as noxious weeds. The Secretary cannot declare any species of plant to be a noxious weed without the recommendation of the Committee, except under emergency declaration. The bill also clarifies law to reflect the Secretary's noxious weed authority proposed by the bill.

Once a species of plant has been declared a noxious weed, it will be considered a noxious weed in every county. The bill declares it is the duty of persons to control the spread of and to eradicate all noxious weeds on the land owned or supervised by them and to use official methods for control and eradication, at such times that are approved and adopted by the Secretary.

Before adopting rules and regulations on noxious weeds, the Secretary will be required to prepare a report on the proposed changes to the official list of noxious weeds and submit the report to the Legislature.

A board of county commissioners (Board) will be authorized, with the approval of the Secretary, to publish a list of species of plants to be controlled in the county; any species so listed will be considered a noxious weed within the county boundaries. The Board will be required to submit official methods for control and eradication of that noxious weed to the Secretary, provided no other county has submitted information for that noxious weed. If the noxious weed is later declared a noxious weed by the Secretary, the methods for control and eradication adopted by the Secretary will control over any methods adopted by the Board. In addition, chemical materials will be available for control and eradication of the noxious weed listed by the Board, pursuant to continuing law. The Board will be permitted to submit additional control methods to the Secretary for approval. If the Secretary approves the additional control methods, the methods shall be added to the official control methods and be made available to all counties as a control method.

The current list of noxious weeds in statute will expire on December 31, 2020. In addition, the option for counties to declare the multiflora rose (*Rosa multiflora*) or bull thistle (*Cirsium vulgare*) as noxious weeds will expire on December 31, 2020. In addition, the bill eliminates the Secretary's ability to designate any county as a *sericea lespedeza* disaster area.

Enforcement [Section 8]

The bill will vest the responsibility for enforcement of the Act, unless otherwise provided for, in the Board regarding all lands within a county's boundaries. The Board can enter into agreements with cities and townships to transfer the enforcement responsibility; however, the Board can revoke the agreement and resume the responsibility for enforcement if the city or township is unable or unwilling to fulfill the responsibilities.

County, Township, City, or District Weed Supervisor

The bill will modify the position of a county, township, city, or district weed supervisor (supervisor). The bill requires the supervisor to consult and cooperate with the Secretary regarding noxious weeds and to render every possible assistance and direction for control and eradication of noxious weeds in the supervisor's jurisdiction. In addition, the bill will continue to require the supervisor to investigate or aid in the investigation of any violation of the Act and report the results to the county attorney. The bill also adds language to require that before the supervisor applies any chemical control to public or private land, the supervisor must determine whether the lands or adjacent lands are registered on the registry or registries identified by the Secretary to provide location information about organic, sensitive, or specialty crops.

The salary of the supervisor will be paid out of the county noxious weed fund or, if the noxious weed program is funded primarily through county general funds, the salary will be paid from the county general funds. The bill also mandates that if the noxious weed program is funded from more than one source, the salary will be paid from each source in proportion to its contribution to the noxious weed program.

In addition, the supervisor is required to make findings and submit information each year:

- No later than October 31—annual surveys of noxious weed infestations and ascertain the approximate amount of land and highways infested with each kind of noxious weed and its location in the county;

- By March 15—annual weed eradication progress report for the preceding calendar year, consisting of compiled data on eradicated and treated areas and any other data deemed necessary by the Secretary, submitted to the Secretary for review; and

- By March 15—management plan for the coming year, submitted to the Board and Secretary for review.

Confer with Governing Bodies and Representatives [Section 9]

The bill requires the Secretary and supervisor to confer at times necessary and advisable with designated governing bodies and representatives regarding noxious weed infestation on their lands and eradication and control measures, and remove certain reporting requirements to the Secretary.

Costs and Funding [Sections 10-12]

The bill replaces terms such as "highways," "roads," "streets," and "alleys" with "right-of-ways."

The bill also authorizes the tax levying body of each county, township, or incorporated city, based on the annual surveys of infestation required by law, to either make a tax levy each year for the purpose of paying the cost of control and eradication as provided in the Act or set aside a portion of the county general fund equivalent to the budget of the noxious weed

program. In addition, in the case of cities and counties, a portion of the tax levy may be used to pay a portion of the principal and interest on bonds issued under current law. The bill also allows moneys remaining in the noxious weed eradication fund at the end of any year for which a levy is made shall either be transferred to the noxious weed capital outlay fund or remain in the noxious weed eradication fund for use in the next year.

The bill requires all records relating to funds received into and spent from both the noxious weed eradication fund and the noxious weed capital outlay fund to be retained by the county for at least five years and shall be made available to the Secretary, upon request.

The bill requires all moneys collected be paid into the county noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

In addition, the bill provides that, if the governing body of any political subdivision owning or supervising lands invested with noxious weeds within its jurisdiction fails to control the noxious weeds, the county will provide a 15-day notice to the political subdivision directing the submission of a plan and timeline to the Board. In instances where the Board determines the plan is unacceptable, the bill requires the Board to notify the political subdivision of requested changes to the plan and timeline. If the political subdivision fails to control the noxious weeds within 15 days or according to an accepted plan and timeline, the bill directs the Board to proceed to have official methods used for the control and eradication of the noxious weeds.

Purchase of Chemical Materials by Counties [Section 13]

The bill allows the Board or governing body of a city to apply chemical materials purchased under current law upon right-of-ways or county-owned or -managed property.

The bill requires all moneys collected from the sale of chemical materials and charges for use of machinery be deposited into the noxious weed eradication fund, or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

The bill provides that, except as provided in continuing law, the Board will be required to sell chemical materials to landowners in its jurisdiction who have been assessed a tax by the county at a price fixed by the Board. Currently, the law includes additional requirements for the cost that may be recovered by the Board. To clarify the role of the Board, the bill amends these requirements to clarify “them” means the “board of county commissioners” and replace “tax levy of” with “appropriated a budget equivalent to.”

In addition, the bill authorizes a Board that funds its noxious weed program from the county general fund to sell chemicals to landowners in its jurisdiction who have been assessed a tax by the county at a price fixed by the Board in an amount equal to not less than 50.0 percent and not more than 75.0 percent of the total cost incurred by the county in purchasing, storing, and handling of the chemical materials. The Board will be authorized to charge for the use of machines or other equipment and the operators to sufficiently cover the actual cost of operation. Once the tax levying body of a county, city, or township has appropriated a budget equivalent to 1.5 mills or more, the Board can collect from the landowners in its jurisdiction an

amount equal to 75.0 percent, but not more than 100.0 percent, of the total cost incurred by the county in purchasing, storing, and handling of chemical materials.

Violations [Section 14]

The bill makes it a class C nonperson misdemeanor with a punishment of a $100 fine for each day up to a maximum fine of $1,500 for non-compliance by any person, association, corporation, county, city, or other official who knowingly violates or fails to comply with any provisions of the Act, or the rules and regulations adopted pursuant to the Act.

Entrance onto Lands [Section 15]

The bill amends law relating to authorized personnel entering private land to inspect real and personal property in connection with administration of the Act to stipulate that such personnel shall be able to do so without interference or obstruction, and entry upon such premises in accordance with the Act shall not be deemed a trespass.

The bill also requires any individual conducting an inspection on such premise to do the following before entering:

- Attempt to notify, if practicable, the owner, operator, or lessee of the premises intended to be inspected; and

- Allow any present and notified owner, operator, or lessees of the premises, or any representative, to accompany the individual conducting the inspection.

Notification, Methods for Control and Eradication, and Funding [Sections 16-17]

The bill amends notification requirements sent by a county weed supervisor to include official methods adopted by the Secretary for the control and eradication of the noxious weeds that the county weed supervisor found on the land. The cost of this publication will be paid from the noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion to its contribution.

The bill also amends a provision of law that allows a supervisor who has found musk thistle plants that have reached a stage of maturity where the official methods of control would not have satisfactory results to give legal notice requiring fall treatment to be performed. The amendment provides that this language will expire December 31, 2020.

The bill requires the county weed officer, after completion of the weed control operation, notify by certified mail the owner with an itemized statement of the cost of treatment. Funds collected will be deposited into the noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion, except not more than 25 percent of the cost of treating the portion of the entire contiguous tract of land as described in the legal notices provided by current law can be recorded on the tax rolls against such land in any one year.

The Board may develop a payment plan for the payment of the full amount after it has engaged in discussions with the landowner. If the landowner fails to fulfill the terms of the repayment agreement, the Board may collect the remainder of the amount owed. All moneys collected through a payment plan or sale of land subject to a lien under provisions of the Act will be deposited with the county treasurer for credit to the county noxious weed eradication fund or, if the noxious weed program is funded primarily through the county general fund, the moneys will be deposited into the county general fund. If the noxious weed program is funded from more than one source, moneys will be placed into each source in proportion.

Repeal of Current Laws [Section 18]

In addition to the statutes amended, the bill repeals other law governing noxious weeds and weed control programs (KSA 2-1316a and KSA 2-1334).

ALCOHOL AND DRUGS

Uniform Controlled Substances Act; Definition of Marijuana; SB 282

SB 282 amends the Uniform Controlled Substances Act (Act) and certain statutes pertaining to crimes involving controlled substances. The bill amends the definition of "marijuana" to exempt cannabidiol.

Drugs and Drug Classes

The bill amends the Act to add several drugs and modify drug classes in the schedules of controlled substances. Specifically, the bill adds several synthetic opioid fentanyl compounds and an opioid analgesic drug to Schedule I; updates several cannabinoid classes in Schedule I to include new synthetics and substitutes; adds oral solutions of dronabinol and 4-anilino-N-phenethyl-4-piperidine (immediate precursor to fentanyl) to Schedule II; and updates the list of anabolic steroids in Schedule III.

Definitions

The bill amends the definition of "marijuana" in the Act and in statutes pertaining to crimes involving controlled substances. The bill exempts cannabidiol from the definition of "marijuana."

Effective Date

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

Microbreweries Production; Alcoholic Candy; Domestic Beer in Refillable Containers; Hours of Sale for Alcohol; Self-service Beer from Automated Devices; HB 2470

HB 2470 allows microbreweries in Kansas to contract with other microbreweries for production and packaging of beer and hard cider, creates and amends law related to the sale of alcoholic candy and to the sale of domestic beer in refillable containers, allows licensed microbrewers in the state to produce beer containing up to 15.0 percent alcohol by weight, increases the length of time that certain businesses may serve or sell alcohol, and allows self-service beer from automated machines.

Microbreweries Production and Packaging

The bill allows microbreweries in Kansas to contract with other microbreweries for production and packaging of beer and hard cider.

The contracting Kansas microbrewery will be held to all applicable state and federal laws concerning manufacturing, packaging, and labeling and will be responsible for payment of all state and federal taxes on the beer or hard cider.

Production of beer or hard cider will count toward production limits in continuing law for both of the microbreweries involved in such a contract. The bill allows the beer or hard cider to

be transferred to the microbrewery on whose behalf the beer or hard cider was produced, after production and packaging.

Sale of Alcoholic Candy; Adulterated Foods

The bill defines “alcoholic candy” as follows:

- For purposes of manufacturing, “alcoholic candy” means any candy or other confectionery product with an alcohol content greater than 0.5 percent alcohol by volume; and
- For purposes of sale at retail locations, “alcoholic candy” means any candy or other confectionery product with an alcohol content greater than 1.0 percent alcohol by volume.

The term will be included in the definition of “alcoholic liquor.” Alcoholic candy will be subject to regulation by the Alcoholic Beverage Control Division (ABC) of the Kansas Department of Revenue (KDOR), and a retailer will be required to have a liquor license to sell such products.

In addition, the bill amends law regarding adulterated food. Current law states confectionery containing more than 0.5 percent alcohol by volume derived solely from the use of flavoring extracts is considered an adulterated food. The bill exempts confectionery containing not more than 1.0 percent alcohol by volume from the definition of adulterated food.

Sale of Domestic Beer in Refillable Containers

The bill amends the definition of “domestic beer” to allow licensed microbrewers in the state to produce beer containing up to 15.0 percent alcohol by weight. Current law prohibits microbrewers from producing beer with more than 10.0 percent alcohol by weight.

The bill allows a microbrewery licensee to sell beer manufactured by the licensee in refillable and sealable containers to consumers for off-premises consumption. Such containers may not contain less than 32 fluid ounces or more than 64 fluid ounces of beer. Licensees will be required to affix labels to all containers sold, which will include the licensee’s name and the name and type of beer in such container.

[*Note:* Enacted 2017 House Sub. for SB 13 amended provisions of the Liquor Control Act and Cereal Malt Beverage Act. Certain provisions of the 2017 bill were delayed in implementation until April 1, 2019. References to such date are to reconcile the provisions of the 2017 and 2018 legislation.]

Hours of Sale and Service for Alcohol

The bill increases the length of time that certain businesses may serve or sell alcohol. Establishments licensed to serve alcohol will be allowed to sell drinks starting at 6:00 a.m. Under current law, establishments may not sell drinks between the hours of 2:00 a.m. and 9:00 a.m.

Farm wineries, microbreweries, and microdistilleries will be allowed to sell their respective alcoholic products in their original containers between 6:00 a.m. and 12:00 a.m. on any day. Current law limits the hours these establishments may sell alcohol on Sundays, between 12:00 p.m. and 6 p.m. for farm wineries and between 11:00 a.m. and 7:00 p.m. for microbreweries and microdistilleries.

"Day" means 6:00 a.m. until 2:00 a.m. the following calendar day.

Self-service Beer from Automated Devices

The bill allows licensed public venues, clubs, and drinking establishments to provide self-service beer to customers from automated devices in the same manner as is permitted for wine under current law, so long as the licensee monitors the dispensing of beer and can control such dispensing.

Definitions

The bill defines an "automated device" as any mechanized device capable of dispensing wine or beer directly to a customer in exchange for compensation that a licensee has received directly from a customer. "Day" means 6:00 a.m. until 2:00 a.m the following calendar day.

Notice

A licensee will be required to provide written or electronic notice to the Director of ABC of a licensee's intent to use an automated device at least 48 hours before the automated device is used on the licensed premises.

Video Monitoring

The bill requires any licensee offering self-service beer or wine from any automated device to provide constant video monitoring of the automated devices at all times the licensee is open to the pubic. The licensee will be required to maintain the recorded footage for at least 60 days and, if requested, provide the footage to any agent of the Director of ABC or other authorized law enforcement agent.

Access Card

Under the bill, compensation will be in the form of a prepaid access card containing a fixed monetary amount that can be directly exchanged for beer or wine from an automated device. The access cards may be sold, used, or reactivated only during the business day. The cards will be purchased from the licensee by a customer and a licensee could issue only one active card to a customer. An access card will be considered active if the access card contains monetary credit or has not yet been used to dispense 15 ounces of wine or 32 ounces of beer. The purchase of an access card will be subject to the liquor drink tax.

A customer will be required to show a valid driver's license, identification card, or other government-issued document that contains a photograph of the customer and indicates the customer is at least 21 years of age. The bill will require each access card to be programmed to

require the customer show identification before the access card could be used for the first time during any business day or for any subsequent reactivation.

The bill requires that access cards become inactive at the end of each business day. The access card will become inactive if it is used to dispense 15 ounces of wine or 32 ounces of beer. A customer will be able to reactivate the access card to allow an additional 15 ounces of wine or 32 ounces of beer by showing identification to the licensee or licensee's employee.

Service Hours

The bill amends the prohibited service period to last from 2:00 a.m. to 6:00 a.m. Current law prohibits public venues, clubs, or drinking establishments from allowing the serving, mixing, or consumption of alcohol on its premises between 2:00 a.m. and 9:00 a.m.

Other Provisions

The bill requires the Secretary of Revenue to adopt rules and regulations to implement the provisions of the bill by January 1, 2019. The bill also states that all current laws and rules and regulations concerning the sale of alcohol to individuals under 21 years of age will apply to the sales transaction of the access card.

Effective Date

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

Juvenile Crisis Intervention Centers; Amendments to Revised Kansas Code for Care of Children; House Sub. for SB 179

House Sub. for SB 179 creates and amends law to establish juvenile crisis intervention centers (intervention centers) and procedures for admission of juveniles to such centers. The bill also makes additional amendments to the Revised Kansas Code for Care of Children (CINC Code) and the Newborn Infant Protection Act (Act) within the CINC Code.

Establishment of Intervention Centers

The bill creates law describing an intervention center as a facility that provides short-term observation, assessment, treatment, and case planning, and referral for any juvenile who is experiencing a mental health crisis and is likely to cause harm to self or others. The bill describes required parameters for intervention centers in several areas, including access to various services, construction and environmental features, and policies and procedures for operation and staff monitoring for intervention center entrances and exits.

The bill requires intervention centers to provide treatment to juveniles admitted to the centers, as appropriate while admitted.

An intervention center may be on the same premises as another licensed facility, but the living unit of the intervention center must be maintained in a separate, self-contained unit. An intervention center may not be located in a city or county jail or a juvenile detention facility.

A juvenile may be admitted to an intervention center when:

- The head of the center determines the juvenile is in need of treatment and is likely to cause harm to self or others;
- A qualified professional from a community mental health center (CMHC) has given written authorization for the juvenile to be admitted to an intervention center; and
- No other more appropriate treatment services are available and accessible to the juvenile at the time of admission.

A juvenile may be admitted to an intervention center for not more than 30 days, and a parent with legal custody or a legal guardian of the juvenile can remove the juvenile from the center at any time. If the removal could cause the juvenile to become a child in need of care pursuant to the CINC Code, the head of the intervention center may report such concerns to the Department for Children and Families (DCF) or may request the county or district attorney to initiate proceedings under the CINC Code. If the head of the intervention center determines such a request to the county or district attorney is the most appropriate action, the head of the intervention center shall make the request and keep the juvenile in the intervention center for an additional 24-hour period to initiate the appropriate proceedings.

Upon a juvenile's release from an intervention center, the managed care organization (MCO), if the juvenile is a Medicaid recipient, and the CMHC serving the area where the juvenile is being discharged must be involved with discharge planning. The head of the intervention center must give written notice of the date and time of discharge, within seven days prior to discharge, to the patient, the MCO (if the juvenile is a Medicaid recipient), the CMHC serving the area where the juvenile is being discharged, and the patient's parent, custodian, or legal guardian.

If a juvenile is a Medicaid recipient, upon admission to an intervention center, the bill requires the MCO to approve services as recommended by the head of the intervention center. Within 14 days after admission, the head of the intervention center must develop a plan of treatment for the juvenile in collaboration with the MCO.

The bill does not prohibit the Kansas Department of Health and Environment (KDHE) from administering or reimbursing state Medicaid services to any juvenile admitted to an intervention center pursuant to the waiver granted under Section 1915(c) of the federal Social Security Act, provided that such services are not administered through a managed care delivery system, or from reimbursing any state Medicaid services that qualify for reimbursement and that are provided to a juvenile admitted to an intervention center. The bill states it would not impair or otherwise affect the validity of any contract in existence on July 1, 2018, between an MCO and KDHE to provide state Medicaid services. On or before January 1, 2019, the Secretary of Health and Environment must submit to the Centers for Medicare and Medicaid Services (CMS) any approval request necessary to implement these provisions.

On or before January 1, 2019, the Secretary for Children and Families, in consultation with the Attorney General, must promulgate rules and regulations to implement the law created by the bill.

The Secretary for Children and Families must provide an annual report of information regarding outcomes of juveniles admitted into intervention centers to the Joint Committee on Corrections and Juvenile Justice Oversight, the House Committee on Corrections and Juvenile Justice, and the Senate Committee on Judiciary. The bill requires the report to include the number of admissions and releases and the lengths of stay for juveniles admitted to intervention centers; services provided to admitted juveniles; needs of admitted juveniles determined by evidence-based assessment; and success and recidivism rates, including information on the reduction of involvement of the child welfare system and juvenile justice system.

The Secretary of Corrections may enter into memoranda of agreement with other cabinet agencies to provide funding, not to exceed $2,000,000 annually, from the Evidence-based Programs Account of the State General Fund (SGF) or other available appropriations for juvenile crisis intervention services.

The bill defines "juvenile" as a person less than 18 years of age. It also provides definitions of "head of a juvenile crisis intervention center," "likely to cause harm to self or others," "treatment," and "qualified mental health professional."

Amendments to Law

The bill amends various statutes to incorporate use of intervention centers.

CINC Code amendments. The bill amends the statute governing when a law enforcement officer (LEO) may take a child into custody to require a LEO to take a child under 18 years of age into custody when the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others.

The bill amends the statute governing delivery of a child taken into custody by a LEO to allow a LEO to deliver a child taken into custody without a court order to an intervention center after written authorization by a CMHC. The bill also non-substantively restructures the list of delivery alternatives in this section.

The bill requires, when a LEO takes a child into custody because the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others, the LEO place the child in protective custody. The LEO may deliver the child to an intervention center after written authorization by a CMHC, but the child may not be placed in a juvenile detention facility or other secure facility.

The bill amends the statutes governing *ex parte* protective custody orders and temporary custody orders to allow placement, after written authorization by a CMHC, with an intervention center. The circumstances justifying an entry of a temporary custody order are amended to include probable cause to believe the child is experiencing a mental health crisis and is in need of treatment.

Throughout the amended CINC Code statutes, the term “forthwith” is replaced with “promptly.”

Juvenile Justice Code amendment. The bill amends the statute in the Revised Kansas Juvenile Justice Code governing taking juveniles into custody to allow an officer, when a juvenile cannot be delivered to the juvenile’s parent or custodian, to (in addition to continuing options) deliver the juvenile to an intervention center, if the juvenile is determined to not be detention eligible based on a standardized detention risk assessment tool and is experiencing a mental health crisis, after written authorization by a CMHC.

Account amendments. The bill amends the statute establishing the Evidence-based Programs Account of the SGF to allow expenditures from the account for the development and implementation of evidence-based community programs and practices for juveniles experiencing mental health crises, including intervention centers.

Additional Amendments to CINC Code and the Newborn Infant Protection Act

In addition to the provisions related to juvenile crisis intervention centers, the bill further amends the CINC Code and the Newborn Infant Protection Act (Act) within the Code.

Definitions

The bill amends the following definitions in the CINC Code:

- “Extended out of home placement” specifies removal from the home means from the child’s home;

- "Kinship care" changed to "kinship care placement," means the placement of a child in the home of an adult with whom the child or the child's parent already has close emotional ties; and

- "Relative" removes language indicating the term does not include the child's other parent when referring to a relative of a child's parent.

Interested Parties

The bill clarifies, in addition to the parties, interested parties would also be entitled to notice of the time and place of the dispositional hearing.

Placement of a Child

The term "extended out of home placement" is deleted and replaced in various sections in the CINC Code with the specific time frame defined as when a child has been in the custody of the Secretary for Children and Families and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which the child was removed from the child's home. In continuing law, this time frame is considered when a court is determining whether reintegration is a viable alternative and when a court is making a determination of unfitness.

Permanency Plan

If a child's permanency plan is either adoption or appointment of a custodian, prior to a hearing to consider the termination of parental rights, either or both parents may relinquish parental rights to the child to the Secretary for Children and Families, consent to an adoption, or consent to appointment of a permanent custodian with the approval of the guardian *ad litem* and the acceptance and approval of the Secretary. Prior law required consent from both the guardian *ad litem* and the Secretary for Children and Families for the parental decision.

Adoption

The bill revises adoption provisions to clarify the process for a child in the custody of the Secretary for Children and Families to proceed to adoption. If a child is in the custody of the Secretary for Children and Families and the parental rights of both parents have been terminated or one parent has had parental rights terminated or has relinquished parental rights of the child to the Secretary, adoption may be allowed by persons approved by the Secretary and the court. The bill also adds language to specify that, if a child is no longer in the custody of the Secretary for Children and Families, the court is authorized to approve adoption of a child by persons who both parents consent to adopt or one parent consents to adopt, if the parental rights of the other parent have been terminated.

Newborn Infant Protection Act

The bill adds language to state the purpose of the Act is to protect newborn children from injury and death caused by abandonment by a parent and to provide safe and secure alternatives to such abandonment.

Definitions. The following definitions are added and references throughout the Act are updated:

- "Non-relinquishing parent" means the biological parent of an infant who does not leave the infant with any person specified in accordance with the Act; and
- "Relinquishing parent" means the biological parent or person having legal custody of an infant who leaves the infant with any person in accordance with the Act.

The bill changes the defined age of an infant for purposes of the Act from 45 days old or younger to 60 days old or younger and states that provisions of the Act would be applicable to persons purporting to be an infant's parent.

Relinquishment of infant at a facility. An employee of a facility where an infant was left is allowed to take physical custody of the child without a court order. References to "person or facility" throughout the Act are amended to clarify when provisions are applicable to employees of any facility specified in the Act, any facility specified, or both.

When an infant is delivered to a facility pursuant to the Act that is not a medical care facility, the employee taking physical custody of the infant must make arrangements for the immediate transportation of the infant to the nearest medical care facility. The medical care facility, its employees, agents, and medical staff are required to perform treatment in accordance with the prevailing standard of care as necessary to protect the physical health and safety of the infant.

Immunity. Provisions regarding a specified facility's civil and criminal immunity are amended to clarify the immunity applied to employees of such facilities. Administrative immunity is added for facilities specified in the Act and employees of such facilities. Such immunity does not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of the infant.

Any medical care facility receiving the infant from another facility pursuant to the Act is immune from administrative, civil, and criminal liability for treatment performed consistent with standards as specified in the Act.

The bill also adds provisions providing immunity from civil or criminal liability for a relinquishing parent if the following conditions are met:

- The relinquishing parent voluntarily delivered the infant safely to the physical custody of an employee at a facility specified in the Act;

- The infant was no more than 60 days old when delivered by the relinquishing parent to the physical custody of an employee at a facility specified in the Act; and

- The infant was not abused or neglected by the relinquishing parent prior to such delivery.

Parental rights to relinquished infant. A relinquishing parent's voluntary delivery of an infant in accordance with the Act shall constitute the parent's implied consent to the adoption of the infant and a voluntary relinquishment of such parent's parental rights.

The bill establishes notice by publication requirements for termination of parental rights proceedings initiated after relinquishment of an infant pursuant to the Act. The bill requires a non-relinquishing parent seeking to establish parental rights to notify the court where the proceeding is filed of the parent's intentions regarding the infant within 30 days after publication of such notice. The court must initiate proceedings to establish parentage if no person notifies the court within 30 days. An examination of the putative father registry is required in order to determine previous attempts to preserve parental rights to the infant and, if such attempts were made, the State must make reasonable efforts to provide notice of the abandonment of the infant to such putative father.

A non-relinquishing parent seeking to preserve parental rights to an infant relinquished pursuant to the Act must take necessary steps to establish parentage within 30 days after the published notice and, if the non-relinquishing parent fails to do so, the bill allows for the termination of such parent's rights with respect to the child. If a non-relinquishing parent inquires at a facility specified in the Act regarding an infant whose custody was relinquished pursuant to the Act, such facility must refer the non-relinquishing parent to the DCF and the court exercising jurisdiction over the child.

Technical Amendments

The bill makes technical amendments to remove outdated terms and language throughout the CINC Code and other statutes pertaining to children and minors, clarifies that references to "children in need of care" means children in need of care as defined within the Code, updates statutory references, and reconciles effective dates with current law.

Adoption Protection Act; Amendments to Kansas Adoption and Relinquishment Act; SB 284

SB 284 creates the Adoption Protection Act and amends several provisions of the Kansas Adoption and Relinquishment Act.

Adoption Protection Act

The bill creates the Adoption Protection Act, which states, notwithstanding any other provision of state law and to the extent allowed by federal law, no child placement agency (CPA), as defined by the bill, shall be required to perform, assist, counsel, recommend, consent

to, refer, or otherwise participate in any placement of a child for foster care or adoption when the proposed placement of such child violates such CPA's sincerely held religious beliefs.

The bill also prohibits taking the following actions against a CPA, if taken solely because of the CPA's objection to providing any of the services described above on the grounds of such religious beliefs:

- Denial of a license, permit, or other authorization, denial of renewal of the same, or revocation or suspension of the same by any state agency or political subdivision;
- Denial of participation in any program operated by the Department for Children and Families (DCF) in which CPAs are allowed to participate;
- Denial of reimbursement for performing foster care placement or adoption services on behalf of an entity that has a contract with DCF as a case management contractor; or
- Imposition of a civil fine or other adverse administrative action or any claim or cause of action under any state or local law.

The bill requires the CPA's sincerely held religious beliefs to be described in the CPA's organizing documents, written policies, or such other written document approved by the governing body of the CPA.

The provisions of the bill do not apply to any entity while the entity has a contract with DCF as a case management contractor.

Kansas Adoption and Relinquishment Act Amendments

The bill amends various provisions within the Kansas Adoption and Relinquishment Act (KARA).

Definitions

The bill amends the definition of “residence of a child” and “place where a child resides” to mean the residence of any parent. The previous definition stated the residence of a child was the residence of the child's mother if the child's parents are not married or if the child's mother has established a separate, legal residence and the child resides with the mother or, alternatively, the residence of the child's father if the child's parents are married or, if not married, if the father has custody.

The bill adds a definition of “party in interest,” which means:

- A parent whose parental rights have not been terminated;
- A prospective adoptive parent;

- An adoptive parent;
- A legal guardian of a child;
- An agency having authority to consent to the adoption of a child;
- The child sought to be adopted, if over 14 years of age and of sound intellect; or
- An adult adoptee.

The bill moves the definition of "professional" within the code and clarifies it does not include a person who received solely reimbursement for expenses.

Who May Adopt

The bill changes the phrase "husband and wife" to "married adult couple" in the statute governing who may adopt.

Consent to Adoption and Relinquishment

The bill clarifies it is the duty of the court to inform the consenting person or relinquishing person of the legal consequences of the consent or relinquishment; previous law stated the court's duty was to advise the consenting person or relinquishing person of the consequences of consent or relinquishment. The bill also adds a provision that states a consent or relinquishment may be given by any father or possible father any time after the birth of a child, or before the birth of the child if he has the advice of independent legal counsel as to the consequences of the consent prior to its execution and such counsel is present at the execution of the consent.

The bill provides that a relinquishment will be final when executed unless the relinquishing party, prior to the entry of a final order terminating parental rights, alleges and proves by clear and convincing evidence that the relinquishment was not freely and voluntarily given; the burden of proving the relinquishment was not freely and voluntarily given is on the relinquishing party. The bill provides, if a parent has relinquished a child and the other parent does not relinquish the child, and the other parent's rights have not been terminated, the rights of the parent who relinquished are not terminated, and full parental rights shall be restored. The bill removes a provision that terminates the right to receive notice in a subsequent adoption proceeding involving the child and a provision that terminates the rights of birth parents to inherit from or through such child upon relinquishment.

The bill clarifies that a petition for adoption must include facts relied upon to deem a relinquishment was unnecessary, if the consent or relinquishment of either or both parents is not obtained, and requires a copy of any relinquishment to be filed with the petition for adoption.

Foreign and Out-of-State Adoptions

The bill amends the section governing foreign and out-of-state adoptions to specify that a document that is the functional equivalent of a Kansas consent or relinquishment is valid if

executed and acknowledged outside of Kansas or in a foreign country in accordance with the laws of Kansas or the laws of the place where executed. The bill removes the requirement that a consent or relinquishment signed in a foreign country be acknowledged or affirmed in accordance with the law and procedure of the foreign country.

The section governing interstate adoption is amended to specify that any professional providing services related to the placement of children or adoption who fails to comply with the Interstate Compact on the Placement of Children will be guilty of a class C nonperson misdemeanor; previous law provided the penalty was a class C misdemeanor.

Payment for Adoption

The bill removes the requirement that legal and professional services performed outside the state shall not exceed customary fees for similar services when performed in Kansas. The bill also removes related references limiting fees and expenses to those that are reasonable in Kansas or are based on fees in the state.

Access to Adoption Records

In the section governing who may access adoption records, the bill replaces "the parties in interest and their attorneys" with "party filing for adoption or termination and that party's attorney." The bill additionally grants access to such records to an adoptee who has reached the age of majority and the Disciplinary Administrator. The bill moves a provision providing access by the Commission on Judicial Performance to such records. The bill removes an exclusion to the definition of "parties in interest" applicable to this section. The bill adds a provision that allows any party in interest to request access to the files and records in an adoption proceeding prior to the final decree of adoption. After notice and a hearing and upon a written finding of good cause, a court may order that some or all of the files and records be open to inspection and copying by the moving party. The court may permit access to some or all of the files and records for good cause shown after the final decree of adoption. Provisions allowing DCF to make contact at the request of various parties are amended to include birth parents. The bill also clarifies that the legal guardian of the adopted adult may grant permission for DCF to share identifying information or request DCF contact the birth or genetic parents in the event of a health or medical need.

Advertising Adoption and Adoption-Related Services

The bill adds any person who advertises that such person will provide adoption-related services to the provision requiring disclosure in any advertisement of whether such person is licensed. The bill also exempts DCF, an individual seeking to adopt a child, an agency, or an attorney from a prohibition on offering to adopt, find a home for, or otherwise place a child as an inducement to any parent, guardian, or custodian of a child to place such child in such person's home, institution, or establishment.

Venue

The section governing venue in an agency adoption is amended to clarify that venue may be in the county where the principal place of business for the child placing agency is

located, and to provide that, in all adoptions, venue may be established in any county in Kansas if all parties in interest agree in writing.

Jurisdiction

The bill provides that jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, shall be governed by the Uniform Child Custody Jurisdiction and Enforcement Act. The bill removes all current provisions related to jurisdiction in the KARA. The bill specifies the notice provisions of the KARA shall control in adoption proceedings.

Background Information

The bill removes the requirement of filing with the petition any hospital records pertaining to the child, leaving only the requirement of a properly executed authorization for release of any hospital records pertaining to the child, which is clarified. The bill also clarifies that the continuing class C misdemeanor for intentional destruction of certain background information is a nonperson misdemeanor.

Assessments

The bill removes the requirement that reports of assessments of the advisability of an adoption in independent or agency adoptions be filed not less than ten days before the hearing on the petition. The ten-day limit for reports filed by nonresident petitioners is also removed.

Notice

The bill amends notice for adoption hearings in the following manner:

- **Independent and stepparent adoptions.** The bill requires notice to possible parents, rather than presumed parents, and adds a requirement that the notice be given at least ten calendar days before the hearing. This section is also amended to require notice be given to any person who has physical custody of the child, unless waived by that person, and the bill removes the requirement that notice be given to any other persons as the court may direct. The requirement of notice to an individual *in loco parentis* in an independent adoption is removed;

- **Agency adoptions**. In addition to the required notice to the consenting agency, the bill requires notice be given to the parents or possible parents, any relinquishing party, and any person who has physical custody of the child at least ten calendar days before the hearing, unless waived by the person entitled to notice; and

- **Service.** The bill specifies notice of the hearing shall be by personal service, certified mail return receipt requested, or in any other manner the court may direct.

Hearing

In the statute governing hearings, the bill clarifies if a court enters a final decree of adoption after a hearing, that decree will terminate parental rights if not previously terminated. The bill also amends references in this section to jurisdiction and a party in interest to align the section with other amendments made by the bill.

Termination of Parental Rights in Adoption and Relinquishment Proceedings

In the statute governing termination of parental rights in adoption and relinquishment proceedings, the bill removes provisions specific to termination of parental rights in stepparent adoptions.

The bill directs a court to order publication notice of an adoption hearing if a father's whereabouts are unknown.

Previously existing provisions regarding filing of a petition to terminate parental rights are removed. The bill then specifies that a petition to terminate parental rights may be filed independently or with a petition for adoption; if such petition is filed independently, the venue for the proceeding will be in the county in which the child or a parent resides or is found.

A parent, a petitioner for adoption, the person or agency having legal custody of the child, or the agency to which the child has been relinquished may file a petition to terminate parental rights. The proceeding to terminate parental rights shall have precedence over any other proceeding involving custody of the child, absent a court's finding of good cause, until a court enters a final order on the termination issues or until further orders of the court.

The bill adds a requirement that notice be given at least ten calendar days before the hearing, unless waived by the person entitled to notice. The bill requires proof of waiver of notice be filed with the court before the petition can be heard, as required for proof of notice under continuing law.

References to "man" are changed to "person," "paternity" to "parentage," "regard to" to "consideration of," and "asserts" to "claims."

With regard to the court's consideration, order, and findings, the bill:

- Clarifies that finding the consent and relinquishment unnecessary may be part of the court's conclusion;
- Changes references to "next" to "immediately" with regard to timing requirements; and
- Replaces a provision allowing the court to consider the best interests of the child with a requirement the court consider all of the relevant surrounding circumstances.

This section is also amended to add a definition of “support,” which means monetary or non-monetary assistance that is reflected in specific and significant acts and sustained over the applicable period.

Adult Adoptions

The sections governing adoption of adults are amended to state that Kansas courts have jurisdiction over a proceeding for the adoption of an adult if the petitioner or adult adoptee resides in Kansas. In addition to the county in which the petitioner or adult adoptee resides, venue may be established in any county in Kansas if all parties in interest agree in writing to venue in that county. The bill clarifies a notice and hearing statute applies only to adult adoptions.

Forms

The bill adds the waiver of notice of hearing to the list of forms to be provided by the Judicial Council under the KARA.

Technical Amendments

The bill corrects a statutory reference to the definition of “maternity center” and makes further technical amendments as requested by the Office of Revisor of Statutes.

CORRECTIONS AND JUVENILE JUSTICE

Privatization or Outsourcing of Security Operations; SB 328

SB 328 creates and amends law related to security operations of state correctional and juvenile correctional facilities.

The bill requires prior legislative authorization for any state agency to enter into any agreement or take any action to outsource or privatize security operations of any correctional or juvenile correctional facility operated by a state agency. The bill applies to security operations or job classifications and duties associated with a security operation of correctional or juvenile correctional facilities.

The bill defines "security operations" to include supervision of inmates in a correctional institution or juvenile correctional facility by a corrections officer or warden. The Secretary of Corrections is granted rule and regulation authority to identify job classifications and duties to be considered part of security operations.

The bill does not prevent the Department of Corrections (Department) from renewing such an agreement for services if the agreement is substantially similar to an agreement existing prior to January 1, 2018. The Department is also permitted to enter into such an agreement for services with a different provider, if the agreement is substantially similar to an agreement existing prior to January 1, 2018.

CRIMES AND CRIMINAL MATTERS

Driving Under the Influence; House Sub. for SB 374

House Sub. for SB 374 amends law concerning driving under the influence of alcohol, drugs, or both (DUI). Specifically, the bill amends statutes governing the crimes of operating or attempting to operate a commercial motor vehicle under the influence (commercial DUI); implied consent; and tests of blood, breath, urine, or other bodily substance. The bill also repeals the crime of test refusal.

Legislative Intent

The bill states the Legislature's intent with regard to comparability of an out-of-jurisdiction offense to a Kansas offense shall be liberally construed to allow comparable offenses, regardless of whether the elements are identical to or narrower than the corresponding Kansas offense, for the purposes of determining a person's criminal history and that the Legislature intends to include, but does not limit such offenses to, convictions under specified statutes in Missouri, Oklahoma, Colorado, and Nebraska, as well as a Wichita municipal ordinance.

Commercial DUI

The bill amends language in the commercial DUI implied consent statute to state a person who drives a commercial motor vehicle "consents" to take a test or tests of that person's blood, breath, urine, or other bodily substance. Current law states a person is "deemed to have given consent" to tests of blood, breath, or urine. The bill amends the commercial DUI statute to provide a person commits the crime if the person commits an offense "otherwise comparable" to DUI, as defined in Kansas law.

Commercial DUI and DUI Changes

The bill amends provisions in the commercial DUI and DUI statutes concerning supervision upon release from imprisonment to provide an offender for whom a warrant has been issued by the court alleging a violation of such supervision is considered a fugitive from justice if it is found the warrant cannot be served. If it is found the offender has violated the provisions of this supervision, the court determines whether the time from the issuing of the warrant to the date of the court's determination of an alleged violation, or any part of it, is to be counted as time served on supervision. Further, the bill allows the term of supervision to be extended at the court's discretion beyond one year. Any violation of the conditions of such extended term of supervision may subject such person to the revocation of supervision and imprisonment in jail of up to the remainder of the original sentence, not the term of the extended supervision.

Within both statutes, the bill amends the one-month imprisonment enhancement for convicted persons who had one or more children under the age of 14 in the vehicle at the time of the offense. The bill specifies the enhancement applies to "any person 18 years of age or older" when one or more children under the age of 18 are in the vehicle at the time of the offense.

In subsections within those statutes stating the fact a person is or has been entitled to lawful use of a drug is not a defense, the bill replaces a reference to a DUI "involving drugs" with references to the subsections in the DUI statute that apply to drugs or a combination of drugs and alcohol.

The bill removes a requirement for the court to electronically report every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of commercial DUI to the Division of Vehicles. Under continuing law, diversions are not available for commercial DUI.

The bill amends the definition of "conviction" in these statutes to:

- Replace the phrase "a violation of a crime" with "an offense";
- Replace the term "state" with "jurisdiction" and remove a provision specific to acts committed on a military reservation; and
- Replace the phrase "a crime" with the phrase "an offense that is comparable to the offense" described in the statute.

The bill provides, for the purposes of determining whether an offense is comparable, the following shall be considered:

- The name of the out-of-jurisdiction offense;
- The elements of the out-of-jurisdiction offense; and
- Whether the out-of-jurisdiction offense prohibits conduct similar to the conduct prohibited by the closest approximate Kansas offense.

In the DUI statute, the bill requires the court to electronically report any finding regarding the alcohol concentration in the offender's blood or breath.

DUI Implied Consent

The bill amends language in the DUI implied consent statute to state a person who operates or attempts to operate a vehicle "may be requested" to submit to one or more tests of the person's blood, breath, urine, or other bodily substance. The bill removes language stating a dead or unconscious person shall be deemed not to have withdrawn consent. The bill adds language requiring the test to be administered at the direction of a law enforcement officer, and the law enforcement officer determines which type of test is to be conducted or requested. This replaces language requiring a law enforcement officer to request the person to submit to testing after providing required notice (described below) and to select the test or tests to be completed.

The bill removes language requiring law enforcement to request a person to submit to a test deemed consented to if at the time of the request the officer has reasonable grounds to believe the person was DUI. Instead, the bill adds language stating one or more tests may be required of a person when, at the time of the request, a law enforcement officer has probable cause to believe the person has committed the crime of DUI. The bill also replaces "reasonable

grounds" with "probable cause" elsewhere in the bill to reflect this change in the required standard.

The bill also revises language in this subsection to allow a test when a person has been involved in a motor vehicle accident or collision resulting in personal injury or death. This new language replaces provisions that distinguish between personal injury and serious injury or death when the operator may be cited for any traffic offense. The bill removes a definition for "serious injury" and other references to these provisions to reflect this change.

The bill removes "accident" from language allowing a law enforcement officer directing administration of a test to act on the basis of the collective information available to law enforcement officers involved in the investigation or arrest.

DUI Testing

Notice When Requesting a Test and Exceptions

The bill removes provisions governing the oral and written notice required to be given to a person when requesting a test or tests of blood, breath, urine, or other bodily substance. Instead, the bill adds two new subsections governing notice for tests of breath or other bodily substance other than blood or urine and for tests of blood and urine.

The notice for tests of breath or other bodily substance other than blood or urine states the following: there is no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing; if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person's driving privileges will be suspended for a period of at least 30 days and up to a year; refusal to submit to testing may be used against the person at any trial or hearing on a charge arising out of DUI; and the results of the testing may be used against the person at any trial or hearing on a DUI charge.

The notice for tests of blood or urine states the following: if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person's driving privileges will be suspended for a period of at least 30 days and up to a year; the results of the testing may be used against the person at any trial or hearing on a DUI charge; and after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing.

The bill states nothing in this section is to be construed to limit the right of a law enforcement officer to conduct any search of a person's breath or other bodily substance, other than blood or urine, incident to a lawful arrest pursuant to the *U.S. Constitution*, with or without providing the person the notice outlined above for requesting a test of breath or other bodily substance, other than blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Additionally, the bill states nothing in this section is to be construed to limit the right of a law enforcement officer to conduct or obtain a blood or urine test of a person pursuant to a warrant under the Kansas Code of Criminal Procedure, the *U.S. Constitution*, or a judicially recognized exception to the search warrant requirement, with or without providing the person the notice outlined above for requesting a test of blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Similarly, the bill states

nothing in this section is to be construed to limit the admissibility at trial of test results obtained pursuant to a judicially recognized exception to the warrant requirement.

The bill amends a subsection stating no test results shall be suppressed because of technical irregularities in the consent or notice required. Instead, the bill states no test results shall be suppressed because of irregularities not affecting the substantial rights of the accused in the consent or notice authorized. The bill replaces notice "required" with notice "authorized" elsewhere in the bill consistent with this change.

The bill states failure to provide any or all notice is not an issue or defense in any action other than an administrative action regarding the subject's driving privileges.

Collection of Test Samples

The bill revises law allowing a law enforcement officer to direct a medical professional to draw one or more samples of blood from a person to determine the blood's alcohol or drug concentration under certain circumstances. Pursuant to the bill, an officer may direct such withdrawal if the person has given consent, with or without the notice outlined above, and the officer has the required probable cause; law enforcement has obtained a search warrant authorizing the collection of blood from the person; or the person refuses or is unable to consent to submit to and complete a test, and another judicially recognized exception to the warrant requirement applies.

The bill revises language in a subsection outlining who may perform such withdrawal of blood to apply when a law enforcement officer "is authorized to collect one or more tests of blood," rather than when an officer "requests a person to submit to a test." The bill also clarifies language prohibiting a medical professional from requiring a person to sign any additional consent or waiver form to prohibit the medical professional from requiring the person "that is the subject of the test or tests to provide any additional consent or sign any waiver form." The bill also removes in this subsection references to medical technicians no longer defined by statute.

Similarly, the bill revises language in a subsection outlining who may collect urine samples to apply when a law enforcement officer "is authorized to collect one or more tests of urine," rather than when an officer "requests a person to submit to a test."

The bill clarifies test results are to be made available to any person submitting to testing "when available." The bill also states any person who participates in good faith in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance as authorized by law does not incur any civil, administrative, or criminal liability.

Preliminary Testing

The bill revises the statute governing preliminary screening tests to remove provisions stating a person is deemed to have given consent to a preliminary screening test of the person's breath, saliva, or both and to remove notice provided at the time of the request. The bill allows an officer to request a preliminary screening test of the person's breath, oral fluid, or both if otherwise permitted by law. The bill also replaces "saliva" with "oral fluid" elsewhere in the bill.

The bill provides preliminary screening tests of a person's oral fluid are to be conducted in accordance with any rules and regulations adopted by the Kansas Bureau of Investigation

(KBI). Additionally, the bill amends statutes authorizing the Secretary of Health and Environment and the Director of the KBI to adopt rules and regulations concerning preliminary screening devices to clarify such devices may be used as aids in determining grounds for requesting testing pursuant to state law or as otherwise authorized by law.

Immunity of Persons and Entities Involved in Testing

The bill adds paramedics to, and adds "advanced" to the term "emergency medical technicians" in, the list of persons and entities who have immunity for participating in good faith in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance under specified circumstances. The bill adds "as otherwise authorized by law" to the circumstances under which this immunity applies.

Repeal of the Crime of Test Refusal

The bill repeals the crime of test refusal, a class A nonperson misdemeanor, for which penalties include between 90 days and 1 year of imprisonment and a fine of between $1,250 and $1,750 for a first conviction. The bill also removes references to this statute throughout numerous statutes and makes other technical amendments to ensure statutory consistency.

Counterfeit Currency; Assault and Battery of a Law Enforcement Officer; Mistreatment of a Dependent Adult or Elder Person; THC Possession; Escape from Custody; Expanded SB 123 Program Eligibility; HB 2458

HB 2458 amends law related to counterfeit currency, assault and battery of a law enforcement officer, mistreatment of a dependent adult, mistreatment of an elder person, possession of tetrahydrocannabinol (THC), escape from custody, and expanded eligibility for SB 123 program.

Counterfeiting Currency

The bill creates the crime of counterfeiting currency, which is defined as doing any of the following with the intent to defraud:

- Making, forging, or altering any note, obligation, or security of the United States, as a severity level 7 nonperson felony if the total face value is $25,000 or more and a severity level 8 nonperson felony if the total face value is less than $25,000;

- Distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing the obligation or security has been so made, forged, or altered, with the same penalties as above; or

- Possessing any paper, ink, printer, press, currency plate, or other item with the intent to produce any counterfeit note, currency, obligation, or security of the United States, as a severity level 9 nonperson felony.

Assault and Battery of a Law Enforcement Officer

The bill amends the definition of a law enforcement officer for purposes of the crimes of assault and battery of a law enforcement officer by including uniformed or properly identified federal law enforcement officers while such officers are engaged in the performance of their duty. “Federal law enforcement officer” is defined as a law enforcement officer employed by the U.S. federal government who, as part of such officer’s duties, is permitted to make arrests and to be armed.

Mistreatment of a Dependent Adult and an Elder Person

The bill amends law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person.

The bill merges the two crimes into a single crime of mistreatment of a dependent adult or an elder person. Under previous law, the two crimes included the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement, or unreasonable punishment of the adult. Thus, under the bill, this act also becomes a crime when committed against an elder person. The bill also adds an additional act applicable to all victims: taking the personal property or financial resources of a victim for the benefit of the defendant or another person by taking control, title, use, or management of the personal property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

The bill amends the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than $1,000 to less than $1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for an exception for multiple previous offenses is changed to $1,500.

The definition of “elder person” for purposes of the crime is changed from 70 years of age or older to 60 years of age or older.

In the first degree murder statute, the bill adds the crime to the list of inherently dangerous felonies for purposes of the felony murder rule. (Under the felony murder rule, first degree murder includes the killing of a human being committed in the commission of, attempt to commit, or flight from any inherently dangerous felony.)

Possession of THC

The bill amends penalties for possession of THC so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony.

Escape from Custody

The bill amends the definition of “escape” to include failure to return to custody following temporary leave lawfully granted by a custodial official authorized to grant such leave.

Expanded Eligibility for SB 123 Program

The bill expands eligibility for the nonprison sanction of placement in a certified drug abuse treatment program for certain offenders convicted of unlawful possession of a controlled substance (a program established by 2003 SB 123). Eligibility is expanded from offenders convicted of a drug severity level 5 possession offense who have not been convicted of certain other crimes, to include offenders convicted of a severity level 4 possession offense with a criminal history of E or lower who have not been convicted of certain other crimes.

Under continuing law, an offender is classified as criminal history level E if the offender has at least three nonperson felonies but no person felonies.

EDUCATION

K-12 School Finance; Kansas School Equity and Enhancements Act Amendments; House Sub. for SB 61

House Sub. for SB 61 makes changes to school finance law. The bill makes a public policy statement concerning the consideration of Local Option Budget (LOB) funds in determining adequacy, revises the Base Aid for Student Excellence (BASE) for school years 2018-2019 through 2022-2023, amends LOB authority, changes the definition of Local Foundation Aid, and revises the terms of the mental health pilot program provided by 2018 Sub. for SB 423. [*Note:* Sub. for SB 423 was approved by the Governor on April 17, 2018.]

Public Policy Statement

The bill provides a statement of public policy of the State of Kansas to require an LOB of at least 15 percent of the school district's Total Foundation Aid. The statement further provides that the moneys provided for school districts pursuant to the required portion of the LOB shall be included in determining the adequacy of the amount of total funding and that other moneys provided by LOBs may also be included in determining the adequacy of the amount of total funding.

Base Aid for Student Excellence

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

- School year 2018-2019, $4,165;
- School year 2019-2020, $4,302;
- School year 2020-2021, $4,439;
- School year 2021-2022, $4,576; and
- School year 2022-2023, $4,713.

Local Option Budget Authority

The bill provides that school districts may adopt an LOB up to the statewide average from the preceding year and may adopt an LOB up to 33 percent of the Total Foundation Aid of the district if the board of education of the district has adopted a resolution providing for such authority that has been subject to a protest petition of the district.

The bill reinstates a provision in law prior to Sub. for SB 423 providing for the Total Foundation Aid for purposes of the LOB to be calculated as if the BASE was $4,490 in all years in which the BASE is less than $4,490.

The bill also reinstates a provision in law prior to Sub. for SB 423 providing for districts to use the Special Education Aid amount from school year 2008-2009 for purposes of calculating the district's LOB authority in any year in which the district's actual Special Education Aid amount is less than that year.

Local Foundation Aid Defined

The bill eliminates a provision created by Sub. for SB 423 that included the proceeds of a 15 percent LOB as Local Foundation Aid.

Mental Health Pilot Program

The bill voids the provision of Sub. for SB 423 that allowed for nine schools to be served by the Central Kansas Cooperative in Education and replaces it with a provision allowing nine schools to be served by USD 435, Abilene, as fiscal agent.

Postsecondary Fees and Budgeting; HB 2542

HB 2542 amends statutes for fees collected by the Kansas Board of Regents (KBOR) and performance-based budgeting requirements.

Fees Collected by KBOR

The bill removes the June 30, 2018, sunset on a statute authorizing KBOR to fix, charge, and collect fees for state institutions and institutions domiciled or having their principal place of business outside the state of Kansas. The bill also removes fees concerning program modifications, on-site branch campus reviews, representative registration renewals, and changes in institution profiles. The bill adds “up to” before the percentage of gross tuition allowed to be charged for renewal fees.

This portion of the bill takes effect from and after June 29, 2018, and upon publication in the *Kansas Register.*

Performance-Based Budgeting Requirements

The bill also exempts postsecondary educational institutions that have implemented a performance agreement with KBOR from the performance-based budgeting requirements.

ELECTIONS AND ETHICS

Elections—Eligibility for Candidacy; Vote Audits; Canvass Date; Voting Machines; Signature if Voter Has Disability; HB 2539

HB 2539 amends the qualifications for candidacy for several statewide elected offices, creates law requiring manual audits of elections, amends law related to the timing of the election canvasses and to electronic voting machines, and amends provisions in election law concerning signatures if the voter has a disability that prevents the individual from signing.

Candidacy Qualifications for Certain Statewide Offices

The bill requires every candidate for the office of Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, or State Commissioner of Insurance to be a qualified elector of Kansas by the deadline for filing for such office.

The bill also adds these requirements for certain candidates:

- Age 25 or older when becoming a candidate for the office of Governor and Lieutenant Governor; and
- Licensed to practice law in Kansas to be a candidate for the Office of Attorney General.

These provisions take effect January 1, 2019.

Advance Voting Signatures and Forms

Signature verification. The bill states verification of the voter's signature by the county election official on an application for an advance ballot shall not be required if the voter has a disability preventing the voter from signing.

Assistance with voting. Voters with any disability that prevents them from being able to provide a signature may request assistance in signing an application for or marking an advance ballot, or signing an application or the form on the ballot envelope. The bill also exempts an individual with a disability that prevents the person from writing or signing from providing written permission for another individual to return the person's ballot to the county election officer.

The bill requires the individual providing assistance to submit a written statement, signed by the individual, to the county election officer with the application or ballot. This statement will affirm that the assisting individual has not influenced the voter and the assisting individual has completed the application, ballot, or signed the application or ballot form as the voter instructed.

Failure of the assisting individual to complete or sign these documents as the voter instructed becomes a level 9 nonperson felony.

Advance ballot envelopes. The bill requires the Office of the Secretary of State to prescribe the general format for advance voting ballot envelopes. The bill requires the envelope

to include a signature block for the advance voter; a signature block for the person, if any, assisting the advance voter; and a signature block for a person, if any, who signs the advance voting ballot envelope on behalf of an advance voter, when the advance voter is physically unable to sign the envelope.

The bill requires the advance ballot envelope contain the following statement after the signature block provided for the person who signs the advance ballot envelope on behalf of an advance voter who is physically unable to do so:

> My signature constitutes an affidavit that the person for whom I signed the envelope is a person who is physically unable to sign such envelope. By signing this envelope, I swear this information is true and correct, and that signing an advance ballot envelope under false pretenses shall constitute the crime of perjury.

The bill includes signing the above statement under false pretenses in the crime of perjury.

Election Audit Requirements

The bill requires, after any election in which the county board of canvassers certifies the results, the county election officer to conduct a manual audit or tally of each vote cast in 1 percent of all precincts, with a minimum of one precinct located within the county. The precinct(s) audited will be selected randomly after the election. The requirement for audit or tally applies regardless of the method of voting used.

The bill specifies these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election.

The bill requires the audit take place before the county board of canvassers meets to certify the election results. The bill requires the audit be performed manually and review all paper ballots selected for audit in accordance with the provisions of the bill. A sworn election board of bipartisan trained members is required to perform the audit in a public setting. The county election officer will determine the members of the board. The bill states any candidate or entity authorized to appoint a poll agent may appoint a poll agent for the audit.

The bill requires notice of the time and location of the audit be provided on the official county website at least five days before the audit takes place.

The results of the audit will be compared to the unofficial election night returns, and the bill requires a report be submitted to the county election officer and the Office of the Secretary of State before the county board of canvassers meets. In the case of a discrepancy between the audit and the unofficial returns that cannot be resolved, the county election officer or Secretary of State is authorized to require audits of additional precincts.

The Secretary of State is required to adopt rules and regulations governing the conduct and procedure of election audits, including the random selection of precincts and offices involved in audits.

The bill specifies the audit requirements apply to all counties for elections occurring after January 1, 2019.

Timing of Election Canvasses

The bill allows the county election officer to move the canvass for any election held on a Tuesday to any business day not later than 13 days after any election. The bill requires notice of the time and place of the canvass to be published in a newspaper of general circulation in the county prior to the canvass. The bill authorizes the canvass of any election not held on a Tuesday to be held not later than the 13th day following the election. Current law allows the canvass for elections held on Tuesday to be moved to the second Thursday following the election with prior notice, and requires the canvass for any election not held on Tuesday be held no later than the fifth day following the election.

Requirements for Electronic Voting Systems

The bill prohibits any board of county commissioners from purchasing, leasing, or renting any direct recording electronic voting system after the effective date of the bill.

The bill requires any electronic or electromechanical voting system purchased, leased, or rented by a board of county commissioners after the effective date of the bill to:

- Provide a paper record of each vote cast at the time the vote is cast; and
- Have the ability to be tested both before an election and prior to the canvass date. The ability to match the paper record of the machine to the vote total contained in the machine will be included in the testing.

The bill does not amend additional requirements in continuing law for electronic or electromechanical voting systems.

Social Media Attribution Requirements; New Penalties for Late Filing of Certain Reports; Publishing Precinct Level Election Results for Certain Races; HB 2642

HB 2642 maintains an exemption for attributions on certain social media providers; removes the requirement to include the name of the chairperson or treasurer of a political or other organization in an attribution; establishes new penalties for late-filed candidates' campaign finance reports and certain political committees' reports; addresses lobbyists' reporting formats

and penalties; and requires the Office of the Secretary of State to publish precinct level primary and general election results for certain races.

Attributions

The bill maintains an exemption for attributions on social media providers (*e.g.*, Twitter) by increasing the character limit of communications made over any social media provider from 200 to 280 characters or fewer. The bill removes the requirement to include the name of the chairperson or treasurer of a political or other organization in an attribution.

Penalties for Late Filing of Campaign Finance Reports and Lobbyist Report Formats and Penalties

The bill establishes new penalties for late-filed candidates' campaign finance reports that were due immediately prior to a primary or general election. The bill also requires similar penalties for the late filing of certain political committees' reports. The bill addresses lobbyists' reporting format and penalties.

Penalties for Late Filing of Candidates' Last-minute Reports

Under the bill, candidates' reports due the eighth day preceding a primary or general election and filed more than 48 hours late are subject to a civil penalty. The bill specifies the candidate is liable for a penalty of $100 for the first day such report was more than 48 hours late and $50 for each subsequent day the report was late. The civil penalty is capped at $1,000. Notice requirements regarding late reports in current law are unchanged. The bill authorizes the Kansas Governmental Ethics Commission (KGEC) to waive these penalties for good cause.

Penalties for Late Filing of Certain Political Committees' Reports

The bill applies the same civil penalty schedule for late filing of reports—$100 for the first day and $50 for each subsequent day—to each political committee that anticipates receiving $2,501 or more in any calendar year and is more than 48 hours late in submitting the reports required under KSA 2017 Supp. 25-4145 (reporting of organizational information and contribution receipts) and KSA 2017 Supp. 25-4148 (reporting of contributions made to candidates). The civil penalty is also capped at $1,000 for political committees. The bill authorizes KGEC to waive these penalties for good cause.

Changes Regarding Lobbyist Reporting

The bill requires every lobbyist electronically file the required reports of employment and expenditures. (Current law does not specify the filing format.) The bill also makes late filing of these reports subject to the same civil penalty amounts as applied under the bill to late last-minute campaign finance reports (*i.e.*, $100 for the first day such report was more than 48 hours late, $50 for each subsequent day the report was late, with a cap of $1,000). The bill authorizes KGEC to waive these penalties for good cause.

Publishing of Precinct Level Election Results for Certain Races

The bill also requires the Office of the Secretary of State to publish precinct level primary and general election results for all statewide offices, state legislative offices, and federal offices on the Office's official website no later than 30 days after the final canvass of the election has been completed.

FEDERAL AND STATE AFFAIRS

Kansas Amusement Ride Act; House Sub. for SB 307

House Sub. for SB 307 amends the Kansas Amusement Ride Act.

Definitions

“Limited-use amusement ride” means an amusement ride that is owned and operated by a nonprofit, community-based organization and is operated for less than 20 days a year, at only one location each year.

“Registered agritourism activity” has the same meaning as it does in the Agritourism Promotion Act (KSA 2017 Supp. 32-1430 *et seq.*).

“Amusement ride” specifically excludes:

- Antique amusement rides;
- Limited-use amusement rides;
- Registered agritourism activities;
- Any ride commonly known as a hayrack ride, in which patrons sit in a wagon or cart that is then pulled by horses or a tractor or other motor vehicle;
- Any ride commonly known as a barrel train, which has a series of handmade cars fashioned from barrels that are connected and pulled by a tractor or other motor vehicle; and
- Amusement rides owned by an individual and operated solely within a single county for strictly private use.

The definition of “amusement ride” is amended to remove language including all rides and devices in American Society for Testing and Materials (ASTM) International F24 Committee Standards.

“Antique amusement ride” means an amusement ride, as defined in continuing law, manufactured prior to January 1, 1930.

“Water slide” means a slide that is at least 30 feet in height and uses water to propel the patron through the ride. The bill requires an attendant to be stationed at each water slide 15 or more feet in height.

[*Note:* Water slides under 30 feet in height will not be subject to the requirements of the Amusement Ride Act. However, all slides 15 feet or more in height will still be required to have an attendant stationed at the slide while in operation.]

The definition of “qualified inspector,” as it relates to acceptable training requirements, is changed from Level II National Association of Amusement Ride Safety Officials (NAARSO) certification to Level I NAARSO certification. References to the Pennsylvania Department of Agriculture general qualified inspector status are also removed from the definition. The definition specifies any inspector of inflatable devices that are rented on a regular basis and erected at temporary locations must provide evidence of:

- Five years of experience working with inflatable devices; and
- Qualified training from a third party, such as advanced inflatable safety operations certification from the Safe Inflatable Operators Training Organization, or other similar qualification from another nationally recognized institution.

Finally, the definition of “serious injury” includes injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician. The current definition includes injuries or illnesses requiring immediate medical treatment.

Antique Amusement Rides, Limited-use Amusement Rides, and Registered Agritourism Activities

Permits

The bill provides that an antique amusement ride, limited-use amusement ride, or registered agritourism activity could not be operated in Kansas without a valid permit issued by the Department of Labor (Department). The owner of such a ride will be required to apply to the Department for a permit in such form and manner as prescribed by the Secretary of Labor (Secretary). The bill requires the application to include:

- The name of the owner and operator of the ride;
- The location of the ride or the location where the ride is stored when not in use;
- A valid certificate of inspection; and
- Proof of insurance.

Once an application is approved, the permit fee received, and a permit issued for the antique amusement ride, limited-use amusement ride, or registered agritourism activity, the permit will be valid for one year from the date of issuance.

Permit Fees

The bill requires applicants for operating permits for antique amusement rides, limited-use amusement rides, or registered agritourism activities to pay permit fees according to the following schedule:

- At a permanent location:

- $75 for rides designed for patrons less than 42 inches tall; and
- $100 for rides designed for patrons more than 42 inches tall;

- At a temporary location, $30; and
- Owned or operated by a municipality or nonprofit entity at a permanent or temporary location, $10.

Permit fees will be returned to applicants if their applications are denied by the Department. Permit fees collected by the Secretary will be credited to the Amusement Ride Safety Fund.

Registration

The bill requires each antique amusement ride, limited-use amusement ride, or registered agritourism activity to be registered with the Department prior to operation. Registration will be in such form and manner as prescribed by the Secretary and will require payment of a registration fee of $50.

The registration fee will be an annual fee paid by the owner, regardless of the number of rides owned by such owner. Registration fees collected by the Secretary will be credited to the Amusement Ride Safety Fund.

Insurance Requirements

The owner or operator of any antique amusement ride, limited-use amusement ride, or registered agritourism activity is required to provide for coverage of at least $750,000 per occurrence with a $1,000,000 annual aggregate. Continuing law states owners and operators of amusement rides are required to provide for coverage of at least $1,000,000 per occurrence with a $2,000,000 annual aggregate, or self-insure or participate in a public entity self-insurance pool, if the owner is the State or any subdivision of the State; the bill clarifies this requirement.

General Provisions

Inflatables

The bill states no inflatable device rented on a regular basis and erected at a temporary location may be operated in the state unless the operator had been trained by a person who has attained a basic inflatable safety operations certification from the Safe Inflatable Operators Training Organization.

Permit Applications, Amusement Rides

The bill specifies permit applications for amusement rides manufactured before July 1, 2018, must include certification that the ride qualifies as service proven, as that term is used in applicable ASTM International F24 Committee Standards.

For rides manufactured on and after July 1, 2018, the bill requires permit applications to include certification that the ride meets applicable ASTM International F24 Committee Standards pertaining to ride maintenance and operation.

The bill also includes antique amusement rides, limited-use amusement rides, and registered agritourism activities in provisions of the Kansas Amusement Ride Act not otherwise modified by the bill.

Serious Injury

The bill specifies, upon notification of serious injury, the Department must acknowledge receipt of the notice and determine whether an investigation is necessary.

Amusement Rides; SB 310

SB 310 makes amendments to the Kansas Amusement Ride Act (Act).

[*Note*: Language identical to the provisions of SB 310, except for the effective date and a reference to antique amusement rides added for consistency, was already passed by both chambers in House Sub. for SB 307. Both SB 310 and House Sub. for SB 307 were approved by the Governor on May 8, 2018.]

Definitions

“Limited-use amusement ride” means an amusement ride that is owned and operated by a nonprofit, community-based organization, is operated for less than either 20 days or 160 hours per year, and is operated at only one location each year.

“Registered agritourism activity” has the same meaning as it does in the Agritourism Promotion Act (KSA 2017 Supp. 32-1430 *et seq.*).

“Amusement ride” specifically excludes:

- Antique amusement rides;
- Limited-use amusement rides;
- Registered agritourism activities;
- Any ride commonly known as a hayrack ride, in which patrons sit in a wagon or cart that is then pulled by horses or a tractor or other motor vehicle;
- Any ride commonly known as a barrel train, which has a series of handmade cars fashioned from barrels that are connected and pulled by a tractor or other motor vehicle; and

- Amusement rides owned by an individual and operated solely within a single county for strictly private use.

The definition of "amusement ride" is amended to remove language including all rides and devices in American Society for Testing and Materials (ASTM) International F24 Committee Standards.

"Antique amusement ride" means an amusement ride manufactured prior to January 1, 1930.

"Water slide" means a slide that is at least 35 feet in height and uses water to propel the patron through the ride.

The definition of "qualified inspector," as it relates to acceptable training requirements, is changed from Level II National Association of Amusement Ride Safety Officials (NAARSO) certification to Level I NAARSO certification. References to the Pennsylvania Department of Agriculture general qualified inspector status is also removed from the definition. The definition specifies that any inspector of inflatable devices that are rented on a regular basis and erected at temporary locations shall be required to provide evidence of:

- Five years of experience working with inflatable devices; and

- Qualified training from a third party, such as advanced inflatable safety operations certification from the Safe Inflatable Operators Training Organization, or other similar qualification from another nationally recognized institution.

Finally, "serious injury" includes injury or illness that requires immediate admission and overnight hospitalization and observation by a licensed physician.

Antique Amusement Rides, Limited-use Amusement Rides, Registered Agritourism Activities

Permits

The bill provides that an antique amusement ride, limited-use amusement ride, or registered agritourism activity shall not be operated in Kansas without a valid permit issued by the Department of Labor (Department). The owner of such a ride shall apply to the Department for a permit in such form and manner as prescribed by the Secretary of Labor (Secretary). The application shall include:

- The name of the owner and operator of the ride;

- The location of the ride or the location where the ride is stored when not in use;

- A valid certificate of inspection; and

- Proof of insurance.

Once an application is approved, the permit fee is received, and a permit is issued for the antique amusement ride, limited-use amusement ride, or registered agritourism activity, the permit shall be valid for one year from the date of issuance.

Permit Fees

Applicants for operating permits for antique amusement rides, limited-use amusement rides, and registered agritourism activities shall pay a permit fee of $50.

Permit fees shall be returned to applicants if their applications are denied by the Department. Permit fees collected by the Secretary will be credited to the Amusement Ride Safety Fund.

Registration

The bill requires each antique amusement ride, limited-use amusement ride, or registered agritourism activity to be registered with the Department prior to operation. Registration shall be in such form and manner as prescribed by the Secretary and requires payment of a registration fee of $50.

The registration fee shall be an annual fee paid by the owner, regardless of the number of rides owned by such owner. Registration fees collected by the Secretary will be credited to the Amusement Ride Safety Fund.

Insurance Requirements

The owner or operator of any antique amusement ride, limited-use amusement ride, or registered agritourism activity shall be required to provide for coverage of at least $750,000 per occurrence with a $1,000,000 annual aggregate. Continuing law states owners and operators of amusement rides are required to provide for coverage of at least $1,000,000 per occurrence with a $2,000,000 annual aggregate, or self-insure or participate in a public entity self-insurance pool, if the owner is the State or any subdivision of the State.

General Provisions

Inflatables

The bill states no inflatable device rented on a regular basis and erected at a temporary location can be operated in the state unless the operator has been trained by a person who has attained a basic inflatable safety operations certification from the Safe Inflatable Operators Training Organization or other similar qualification from another nationally recognized institution.

Slide Attendants

The bill requires an attendant to be stationed at each slide that uses water to propel the patron through the ride and that is 15 feet or more in height.

Permit Applications, Amusement Rides

The bill specifies that permit applications for amusement rides manufactured before July 1, 2018, must include certification that the ride qualifies as service proven, as that term is used in applicable ASTM International F24 Committee Standards.

For rides manufactured on and after July 1, 2018, permit applications must include certification that the ride meets applicable ASTM International F24 Committee Standards pertaining to ride maintenance and operation.

The bill includes antique amusement rides, limited-use amusement rides, and registered agritourism activities in provisions of the Act not otherwise modified by the bill.

Serious Injury

The bill specifies, upon notification of serious injury, the Department must acknowledge receipt of the notice and determine whether an investigation is necessary.

State Banking Code; Savings and Loan Associations and Savings Banks; Mutual Banks; Kansas Money Transmitter Act; SB 335

SB 335 amends the State Banking Code related to savings and loan associations, savings banks, and the Kansas Money Transmitter Act (KMTA).

Savings and Loan Associations and Savings Banks

The bill amends and creates law to incorporate savings and loan associations and savings banks into the State Banking Code. The bill repeals the current Savings and Loan Code (Chapter 17, Articles 51-58, *Kansas Statutes Annotated*).

Activities of Mutual Banks [New Section 1]

The bill specifies the activities in which a mutual bank may engage. The bill authorizes a mutual bank, subject to the terms of its articles of incorporation (articles) and bylaws, and rules and regulations of the State Bank Commissioner (Commissioner), to raise funds through deposit, share, or other accounts, including demand deposit accounts (referred to as “accounts”) and issue passbooks, certificates, or other evidence of accounts.

The bill also prohibits a mutual bank from permitting overdrafts, as specified; describes notice requirements for payment of savings accounts; describes requirements for account withdrawals and states that any mutual bank failing to make full payment of any withdrawal when due will be deemed to be in an unsafe or unsound condition; requires a depositor of a mutual bank to be a voting member and have ownership interest in the bank, as may be provided for in the articles and bylaws of the bank; permits the articles and bylaws of a mutual bank to require all borrowers from the bank to be members and provides for their rights and privileges; and specifies all savings accounts and demand accounts have the same priority upon liquidation.

Definitions [New Section 5]

The bill establishes definitions for the following terms (applicable to New Sections 2-5 of the bill):

- “Invest” means any investment in the capital stock, obligations, or other securities, and any advance of funds to a service corporation, including the purchase of stock, the making of a loan, or other such advance of funds. The term does not include a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment; and

- “Savings and loan service corporation” or “service corporation” means a corporation or limited liability company organized under the laws of Kansas. The bill requires the entirety of the capital stock of a savings and loan service corporation to be available for purchase only by Kansas-chartered savings and loan associations, Kansas-chartered savings banks, and federally chartered savings and loan associations with home offices in Kansas. The bill requires

Kansas-chartered and federally chartered savings and loan associations and Kansas-chartered and federally chartered savings banks investing in a savings and loan service corporation to designate the savings and loan service corporation as a service corporation.

Investment in a Service Corporation by Savings and Loan Association or Savings Bank [New Section 2]

The bill states no savings and loan association or savings bank is permitted to make any investment in a service corporation if the association's aggregate outstanding investment exceeds 3.0 percent of the association's assets. The bill further requires that not less than half of the investment permitted exceeding 1.0 percent of the savings and loan association's assets must be used primarily for community, inner city, and community development purposes.

Application by a Savings and Loan Association to the Commissioner [New Section 3]

The bill requires a savings and loan association to apply to the Commissioner for approval at least 30 days prior to acquiring, establishing, or commencing new activity with an existing service corporation. The bill prohibits the association from engaging in activity with the service corporation without the Commissioner's approval.

The bill requires such application to include a complete description of the savings and loan association's investment in the service corporation; the proposed activities of the service corporation; the organizational structure and management of the service corporation; the relationship between the savings and loan association and the service corporation; and any other information the Commissioner deems necessary to describe the proposal.

The bill requires the service corporation to be operated in a manner that demonstrates to the public it maintains a separate corporate identity from the applicant and not commingle business transactions, accounts, and records with a savings and loan association.

The bill permits the Commissioner, in considering an application, to limit a savings and loan association's investment in a service corporation or refuse to permit any activity of a service corporation for supervisory, legal, or safety and soundness reasons.

Activities of a Service Corporation [New Section 4]

The bill specifies the activities in which a service corporation may engage. The bill authorizes the service corporation to engage in any activity that a savings and loan association may conduct directly and is subject to the Commissioner's supervision. The savings and loan association is required to notify the Commissioner if the service corporation fails to meet the requirements specified under this section of the bill. Further, if the service corporation is unable to comply with requirements of this section of the bill within 90 days of initial failure to meet such requirements, the savings and loan association is required to dispose of its investment in the service corporation.

The bill specifies that after a savings and loan association has received approval from the Commissioner, the service corporation may engage in a range of activities in these categories: business activities, when such activities are limited to financial documents, financial

clients, or are generally financially related to certain activities; credit-related activities; consumer services; real estate-related services; securities, liquidity management, and coin purchase activities; certain investments; community and economic development, or public welfare investment activities permissible under federal law; establishing or acquiring a corporation recognized by the Internal Revenue Service as organized for charitable purposes under certain circumstances; acting as an agent for or engaging in activities conducted on behalf of a customer, other than on an as principal basis; and any other activity reasonably incident to other listed services if the service corporation engages in those activities.

Certificate of Existence [New Section 6]

The bill authorizes a person acting on behalf of an entity to provide the financial institution with a certificate of existence of the entity and the authority of the person to act on behalf of the entity related to the opening of any deposit account, loan account, or other banking relationship.

The bill requires the certificate of existence and authority to be in the form of an affidavit and include certain information related to the entity and the person executing the affidavit. Additionally, the bill requires the affidavit to include a statement that the board of directors, managers, members, general partners, or other governing body of the entity opening the account has taken all required legal action to open the account in the name of the entity and the person authorized to engage in transactions related to the account.

The bill specifies, if the financial institution accepts the certificate of existence and authority, the financial institution is permitted to open and administer the account relying on the provided information. The financial institution will not be liable for any inaccurate information, unless the financial institution had actual knowledge of the inaccuracy or had sufficient knowledge to cause a reasonably prudent person to doubt the accuracy of such information.

Additionally, the bill does not prohibit a financial institution from requesting additional information or requiring other agreements in order to establish an account for an entity, including a resolution, certificate of good standing, request for taxpayer identification number, entity agreements or documents or parts evidencing the existence of the entity or the authority of the person executing the certificate, and an indemnification.

The bill defines “entity” and “financial institution” for this purpose.

State Banking Code Definitions [Section 7]

The bill amends the term definition of “bank” in the State Banking Code to be “bank or state bank” and mean a bank, savings and loan association, or savings bank incorporated under the laws of Kansas.

The bill also adds the following definitions to the State Banking Code:

- “Stock bank” means a bank that has an ownership structure represented by stock;

- "Mutual bank" means a bank that does not have an ownership structure represented by stock; and

- "Savings and loan association" or "savings bank" means a bank that is required to have qualified thrift investments that equal or exceed 65.0 percent of its portfolio assets, and its qualified thrift investments are required to equal or exceed 65.0 percent of its assets on a monthly average basis in 9 out of every 12 months.

Conversion to a State Bank [Section 8]

The bill amends the State Banking Code relating to any national bank, federal savings association, or federal savings bank becoming a state bank by specifying not less than two-thirds of the institution's members may ratify such a change and updates the requirements of the transcription of minutes. Further, the bill clarifies a federal savings association or federal savings bank operating in a mutual form and which seeks to become a stock bank must convert to a stock bank prior to converting to a state bank.

Conversion to a National Bank [Section 9]

The bill specifies that any state bank may convert to a federal savings and loan association or federal savings bank, in addition to a national bank as in continuing law. The bill specifies not less than two-thirds of the bank's members may ratify such a change. The application process and notice of conversion applies to federal savings and loan associations and federal savings banks in the same manner as to a national bank.

Capital Requirements [Sections 10-20]

The bill amends the capital requirements specified in the State Banking Code to incorporate the mutual form of ownership of most savings and loans.

Additionally, the bill provides for minimum capital requirements for mutual banks organized on or after July 1, 2018, which requires founding members of the bank to pledge funds at the time of organization the greater of $3,000,000 or an amount equal to 8.0 percent of the proposed bank's estimated deposits five years after organization.

The bill amends the definition of "capital" to mean, for a mutual bank, the total of the funds pledged by its members and its undivided profits.

Investment in Municipal Bonds [Section 21]

The bill permits banks to invest in bonds, securities, or other evidences of indebtedness, up to 15.0 percent of the bank's capital stock and surplus. The bill also updates the reference from "assessed valuation" to "market value."

Deletion of Internal References [Sections 22-25]

Enactment of the bill repeals the current Savings and Loan Code and references to it in other areas of law.

Amendments to the KMTA

The bill makes amendments to the KMTA under the State Banking Code.

KMTA Rules and Regulations; Informal Agreements [Section 26]

The bill specifies the Commissioner is allowed to issue an order, after notice and an opportunity for hearing, to address any violation of rules and regulations adopted pursuant to the KMTA.

The bill allows the Commissioner to enter into an informal agreement at any time with a person to resolve a matter arising under the KMTA, rules and regulations adopted pursuant to the KMTA, or an order issued pursuant to the KMTA.

The bill specifies the adoption of an informal agreement is not subject to the Kansas Administrative Procedure Act or the Kansas Judicial Review Act, nor considered an order or other agency action. The informal agreement is considered confidential examination material, which is confidential by law and privileged. The bill specifies such informal agreements are not subject to the Open Records Act, subpoena, discovery, or admissible in evidence in any private civil action.

The authority of the Commissioner to enter into informal agreements prescribed by the bill sunsets on July 1, 2023, unless the Legislature reviews and reenacts the provision.

Commissioner's Designees [Section 27]

The bill permits designees of the Commissioner to administer, interpret, and enforce the KMTA.

Electronic Delivery for Certain Health Insurance-related Documents; Coverage for Amino Acid-based Elemental Formula; SB 348

SB 348 authorizes electronic delivery as the standard method of delivery for certain health insurance-related documents and requires the State Employees Health Care Commission (Health Care Commission) to provide coverage for amino acid-based elemental formula, as specified.

Electronic Delivery as the Standard Method of Delivery

The bill amends the Electronic Notice and Document Act under the Insurance Code.

The bill authorizes a health benefit plan (plan) to utilize electronic delivery as the standard method of delivery for explanation of benefits and policy, including federally required summary of benefit and coverage documents, to a party when paper documents are readily available and notification has been provided to the party explaining the party's option to receive paper documents *via* U.S. mail.

The bill requires a plan to deliver paper documents *via* U.S. mail to a party if the party notifies the plan of a desire to receive the documents in such a manner instead of by electronic delivery.

The bill states "health benefit plan" has the same meaning as in KSA 40-4602 (any hospital or medical expense policy; health, hospital, or medical service corporation contract; a plan provided by a municipal group-funded pool; a policy or agreement entered into by a health insurer or health maintenance organization contract offered by an employer; or any certificate issued under any such policies, contracts, or plans. The definition excludes certain types of policies or certificates). The bill further specifies a "health benefit plan" also includes any individual health insurance policy, individual or group dental insurance policy, or nonprofit dental services corporation.

The bill defines a "nonprofit dental services corporation" as a nonprofit corporation organized pursuant to the Nonprofit Dental Service Corporation Act (KSA 40-19a01 *et seq.*).

The bill amends law related to the procedure for electronic delivery of notice in KSA 2017 Supp. 40-5804 under the Electronic Notice and Document Act to clarify such provisions are not applicable to the electronic delivery of explanation of benefits and policies, including federally required summary of benefit and coverage documents, to a party by a plan.

Coverage for Amino Acid-based Elemental Formula; Report to the Legislature

The bill requires the Health Care Commission (which administers the state health care benefits program for state employees and other qualified entities) to provide coverage for amino acid-based elemental formula, regardless of delivery method, for the diagnosis or treatment of food protein-induced enterocolitis syndrome, eosinophilic disorders, or short bowel syndrome if this formula is prescribed by a prescriber as defined in and authorized by the state Pharmacy Act and who is also licensed by the applicable medical professional licensure entity in Kansas. This coverage begins at the start of the next plan year (January 1, 2019).

The bill requires the Health Care Commission, pursuant to the requirements of the Insurance Code regarding mandated health insurance benefits, to submit on or before March 1, 2020, a report to the President of the Senate and the Speaker of the House of Representatives. The report is to include the following information pertaining to the mandated coverage for amino acid-based elemental formula provided during the 2019 Plan Year:

- The impact this mandated coverage had on the state health care benefits program (also referred to as the State Employee Health Plan [SEHP]);
- Data on the utilization of coverage for amino acid-based elemental formula by covered individuals and the cost of providing such coverage; and

- A recommendation whether such mandated coverage should continue for the SEHP or whether additional utilization and cost data are required.

The Legislature is permitted to consider in the next session following the report (the 2020 Legislative Session) whether to mandate coverage for amino acid-based elemental formula in individual or group health insurance policies, medical service plans, health maintenance organizations, or other contracts that provide for accident and health services delivered, issued for delivery, amended, or renewed on or after July 1, 2021.

Effective Date

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

GAMING

Lottery Ticket and Instant Bingo Vending Machines; Extending the Sunset of the Kansas Lottery; Changes to State Debt Setoff Program; Sub. for HB 2194

Sub. for HB 2194 amends the Kansas Lottery Act (Act) to allow the use of lottery ticket vending machines and the use of instant bingo vending machines, amends law concerning underage purchasing of lottery tickets, extends the sunset for the Kansas Lottery (Lottery), amends law directing transfers from the Lottery Operating Fund, and amends law concerning the State Debt Setoff Program.

Lottery Machines; Definition Changes

The bill amends the definition of "lottery machine" by removing the term "lottery ticket vending machine" from the definition of "lottery machine." The bill further amends the definition of "lottery machine" to specify lottery ticket vending machines and instant bingo vending machines are not considered lottery machines. Games on lottery machines are prohibited under law unchanged by the bill (KSA 2017 Supp. 74-8710).

Lottery Ticket Vending Machines

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

The bill also creates a definition for "lottery ticket vending machine," which is defined as a machine or similar electronic device owned or leased by the Lottery, the sole purposes of which are to:

- Dispense a printed physical ticket, such as a lottery ticket, a keno ticket, a pull tab ticket, or a coupon, which must be redeemed through something other than a lottery ticket vending machine, after a purchaser inserts cash or other form of consideration into the machine;
- Allow purchasers to manually check the winning status of a Lottery ticket; and
- Display advertising, promotions, and other information pertaining to the Lottery.

The bill states a lottery ticket vending machine cannot:

- Provide a visual or audio representation of an electronic gaming machine;
- Visually or functionally have the same characteristics as an electronic gaming machine;
- Automatically determine or display the winning status of any dispensed ticket;
- Extend or arrange credit for the purchase of a ticket;

- Dispense any winnings;
- Dispense any prize or dispense any evidence of a prize other than the lottery ticket, keno ticket, pull tab ticket, or any free Lottery ticket received as a result of the purchase of another Lottery ticket;
- Provide free games or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

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

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

Instant Bingo; Vending Machines

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

The bill also creates a definition for "instant bingo vending machine," which is defined as a machine or electronic device that is purchased or leased by a licensee, as defined by KSA 2017 Supp. 75-5173, from a distributor who has been issued a distributor registration certificate pursuant to KSA 2017 Supp. 75-5184, or leased from the Lottery in fulfillment of the Lottery's obligations under an agreement between the Lottery and a licensee entered into pursuant to the provisions of the bill. As specified in the definition, the sole purpose of an instant bingo vending machine is to:

- Dispense a printed instant bingo ticket after a purchaser inserts cash or other form of consideration into the machine; and
- Allow purchasers to manually check the winning status of an instant bingo ticket.

The bill states an instant bingo vending machine cannot:

- Provide a visual or audio representation of a bingo card or an electronic gaming machine;
- Visually or functionally have the same characteristics as a bingo card or an electronic gaming machine;

- Automatically determine or display the winning status of any dispensed instant bingo ticket;
- Extend or arrange credit for the purchase of an instant bingo ticket;
- Dispense any winnings;
- Dispense any prize;
- Dispense any evidence of a prize other than the instant bingo ticket;
- Provide free instant bingo tickets or any other item that can be redeemed for cash; or
- Dispense any other form of a prize to a purchaser.

The bill also requires all physical instant bingo tickets dispensed by an instant bingo vending machine to be purchased by a licensee from a registered distributor. No more than two instant bingo vending machines can be located on the premises of each licensee location.

Agreements Between Lottery and Nonprofit Organizations; Vending Machine Sales

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

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

Underage Purchasing of Lottery Tickets

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

The bill also allows officers having authority to enforce the provisions of the Act, or authorized representatives of the Attorney General, county attorney, or district attorney, to develop a program or system that determines and encourages compliance with the provisions of the Act. Such officers can engage or direct a person to violate the provisions of the Act, which prohibits sales of lottery tickets to persons under the age of 18 by lottery ticket vending machines.

Lottery retailers or such retailer's designee can also engage or direct a person younger than 18 to violate provisions of the Act pursuant to a self-compliance program designed to increase compliance with the provisions of the Act, and approved by the Executive Director.

Lottery Sunset Provision

The bill extends the date on which the Lottery will be abolished from July 1, 2022, to July 1, 2037.

Transfers from the Lottery Operating Fund

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

Commencing in FY 2019, on or before the tenth day of each month, the bill requires the Executive Director to certify the net profits from the sale of lottery tickets and shares in lottery ticket vending machines. Of that certified amount, moneys are distributed from the Lottery Operating Fund, as follows:

- 75.0 percent are transferred to the Community Crisis Stabilization Centers Fund created by the bill and to be used for community crisis stabilization centers operated through community mental health centers; and
- 25.0 percent are transferred to the Clubhouse Model Program Fund created by the bill and to be used for certified clubhouse model programs.

Such transfers could not exceed $4.0 million in the aggregate for FY 2019 or $8.0 million in the aggregate for FY 2020, and each fiscal year thereafter.

State Debt Setoff Program

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

Current law allows the Director of Accounts and Reports (Director) of the Department of Administration to enter into an agreement with a municipality for participation in the Program for the purpose of assisting in the collection of a debt. Such municipalities are required to certify that the municipality has made at least three attempts to collect a debt prior to submitting such debt to setoff. The bill amends the definition of “municipality” to include community mental health centers and licensed mental health clinics.

The bill requires the Director to enter into agreements with lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees for participation in the Program for the purpose of collecting debts. Each such contract is required to include a provision agreeing to defend, indemnify, and hold harmless the manager or licensee for all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses brought or asserted against the manager or licensee arising from the manager or licensee’s performance of an agreement to facilitate the collection of debts.

The bill specifies lottery gaming facility managers, racetrack gaming facility managers, and facility owner licensees are required to check the state debtor files before paying moneys on behalf of the State for any gambling winnings requiring completion of a federal tax form. If

the person winning the prize is listed in the state debtor files, the prize will be withheld by the manager or licensee to the extent of such debt. Withheld moneys are transmitted to the State Treasurer and deposited in the Setoff Clearing Fund.

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

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

Debt setoff provisions do not apply to Native American tribal gaming facilities.

Effective Date

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

HEALTH

Statutory Updates in Accordance with Enacted 2016 SB 449 and 2012 ERO No. 41; SB 217

SB 217 updates several statutory references in accordance with 2012 Executive Reorganization Order No. 41 (ERO 41) and enacted 2016 SB 449, which updated statutes transferred under ERO 41.

The bill replaces the term "mentally retarded and other handicapped persons" in statutes with "individuals with intellectual or other disabilities" in accordance with current law. The bill amends language to clarify the annual report of the Kansas Health Care Stabilization Fund Board of Governors will be submitted to the Health Care Stabilization Fund Oversight Committee and requires the reporting of the fund balance at the end of the fiscal year.

Additionally, the bill updates statutory references related to the Kansas Department for Aging and Disability Services and the Kansas Department for Children and Families in accordance with ERO 41. The bill makes conforming and technical amendments to law.

Kansas Telemedicine Act; Senate Sub. for HB 2028

Senate Sub. for HB 2028 establishes the Kansas Telemedicine Act (Act). The bill also provides for coverage of speech-language pathologist and audiologist services *via* telehealth under the Kansas Medical Assistance Program (KMAP), if such services are covered under KMAP when delivered *via* in-person contact.

Naming of Act [New Section 1]

Sections 1 through 7 are to be known and cited as the Kansas Telemedicine Act. The naming of the Act takes effect on and after January 1, 2019.

Definitions [New Section 2]

The bill establishes definitions for the following terms under the Act:

- "Distant site" means a site at which a healthcare provider is located while providing healthcare services by means of telemedicine;
- "Healthcare provider" means a physician, licensed physician assistant, licensed advanced practice registered nurse, or a person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences Regulatory Board (BSRB);
- "Originating site" means a site at which a patient is located at the time healthcare services are provided by means of telemedicine;
- "Physician" means a person licensed to practice medicine and surgery by the Board of Healing Arts (BOHA); and

- "Telemedicine," including "telehealth" means the delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine is to be provided by means of real-time two-way interactive audio, visual, or audio-visual communications, including the application of secure video conferencing or store-and-forward technology, to provide or support healthcare delivery that facilitates the assessment, diagnosis, consultation, treatment, education, and care management of a patient's healthcare. The term does not include communication between healthcare providers consisting solely of a telephone voice-only conversation, e-mail, or facsimile transmission, or between a physician and a patient consisting solely of an e-mail or facsimile transmission.

Effective Date

This section takes effect on and after January 1, 2019.

Privacy and Confidentiality, Establishment of a Provider-Patient Relationship, Standards of Practice, and Follow-up [New Section 3]

Requirements for Patient Privacy

The bill specifies the same requirements for patient privacy and confidentiality under the Health Insurance Portability and Accountability Act of 1996 and 42 CFR § 2.13 (related to confidentiality restrictions and safeguards), as applicable, applying to healthcare services delivered *via* in-person visits also apply to healthcare visits delivered *via* telemedicine. Nothing in this section supersedes the provisions of any state law relating to the confidentiality, privacy, security, or privileged status of protected health information.

Establishment of the Provider-Patient Relationship

The bill authorizes telemedicine to be used to establish a valid provider-patient relationship.

Standards of Practice

The bill requires the same standards of practice and conduct that apply to healthcare services delivered *via* in-person visits apply to healthcare services delivered *via* telemedicine.

Follow-up Care

The bill requires a person authorized by law to provide and who provides telemedicine services to a patient to provide the patient with guidance on appropriate follow-up care.

Reporting of Services

If the patient consents and has a primary care or other treating physician, the person providing telemedicine services is required to send a report to the primary care or other treating physician of the treatment and services rendered to the patient within three business days of the telemedicine encounter. A person licensed, registered, certified, or otherwise authorized to practice by the BSRB is not required to comply with this reporting requirement.

Effective Date

This section takes effect on and after January 1, 2019.

Application to Policies, Contracts, and KMAP [New Section 4]

Issued for Delivery, Amended, or Renewed On or After January 1, 2019

The provisions of this section apply to any individual or group health insurance policy, medical service plan, contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society, or health maintenance organization that provides coverage for accident and health services delivered, issued for delivery, amended, or renewed on or after January 1, 2019. The Act also applies to KMAP.

Prohibitions

The bill prohibits the aforementioned policies, plans, contracts, and KMAP from excluding an otherwise covered healthcare service from coverage solely because the service is provided through telemedicine rather than in-person contact or based upon the lack of a commercial office for the practice of medicine, when such service is delivered by a healthcare provider. The bill also prohibits such groups from requiring a covered individual to use telemedicine or in lieu of receiving in-person healthcare service or consultation from an in-network provider.

Medically Necessary Coverage

These groups shall not be prohibited from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered individual's health benefits plan.

Medical Record

The insured's medical record serves to satisfy all documentation for the reimbursement of all telemedicine healthcare services, and no additional documentation outside the medical record is required.

Payment or Reimbursement

The bill authorizes an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation, or health maintenance organization to establish payment or reimbursement of covered healthcare services delivered through telemedicine in the same manner as payment or reimbursement for covered services delivered *via* in-person contact.

No Mandate of Coverage

The bill does not mandate coverage for a healthcare service delivered *via* telemedicine, if such service is not already a covered service when delivered by a healthcare provider, and subject to the terms and conditions of the covered individual's health benefits plan.

Impact Report and State Employee Group Pilot Project Statutes Not Applicable

The bill specifies KSA 40-2248 (related to mandated health benefits and impact report) and KSA 40-2249a (related to the state employee group pilot project) do not apply to this section.

Effective Date

This section takes effect on and after January 1, 2019.

Rules and Regulations [New Section 5]

BOHA

The bill requires the BOHA, following consultation with the State Board of Pharmacy and the Board of Nursing, to adopt rules and regulations by December 31, 2018, relating to the prescribing of drugs, including controlled substances, *via* telemedicine.

Additionally, the BOHA is required to adopt rules and regulations necessary to effectuate provisions of the Act by December 31, 2018.

BSRB

The BSRB is required to adopt rules and regulations as necessary to effectuate provisions of the Act by December 31, 2018.

Effective Date

This section takes effect upon publication in the statute book.

Prohibition on Delivery of Abortion Procedures via Telemedicine [New Section 6]

The bill states nothing in the Act is construed to authorize the delivery of any abortion procedure *via* telemedicine.

Severability and Non-severability Clauses [New Section 7]

The bill states if any provision of the Act, or the application thereof to any person or circumstance, is held invalid or unconstitutional by court order, the remainder of the Act and application of such provision is not affected. Additionally, it is conclusively presumed the Legislature would have enacted the remainder of the Act without the invalid or unconstitutional provision. Further, the provision of the bill related to abortion is expressly declared to be non-severable. If the abortion language is held invalid or unconstitutional by court order, the entire Act is affected.

Coverage of Speech-Language Pathology and Audiology Services [New Section 8]

Coverage Requirement under KMAP

On and after January 1, 2019, the Kansas Department of Health and Environment (KDHE) and any managed care organization providing state Medicaid services under KMAP is required to provide coverage for speech-language pathology services and audiology services by means of telehealth, as defined in the Act, when provided by a licensed speech-language pathologist or audiologist licensed by the Kansas Department for Aging and Disability Services if such services are covered by KMAP when delivered *via* in-person contact.

Implementation and Administration by KDHE

KDHE is required to implement and administer this section consistent with applicable federal laws and regulations. KDHE is required to submit to the Centers for Medicare and Medicaid Services any state Medicaid plan amendment, waiver request, or other approval request necessary to implement this section.

Rules and Regulations

KDHE is required to adopt rules and regulations necessary to implement and administer this section by December 31, 2018.

Impact Report

On or before January 13, 2020, KDHE is required to prepare an impact report that assesses the social and financial effects of the coverage mandated under this section for speech-language pathology and audiology services, including the impacts listed in KSA 40-2249(a) and (b) relating to social and financial impacts of mandated health benefits. KDHE is required to submit such report to the Legislature, the House Committee on Health and Human Services, the House Committee on Insurance, the Senate Committee on Public Health and Welfare, and the Senate Committee on Financial Institutions and Insurance.

Effective Date

This section takes effect upon publication in the statute book.

Application of the Act to Insurance Policies [Section 9]

The bill specifies the requirements of the Act apply to all insurance policies, subscriber contracts, or certificates of insurance delivered, renewed, or issued for delivery within or outside of Kansas, or used within the state by or for an individual who resides or is employed in the state.

Corporations Under the Nonprofit Medical and Hospital Service Corporation Act [Section 10]

The bill specifies corporations organized under the Nonprofit Medical and Hospital Service Corporation Act are subject to the provisions of the Act.

Effective Dates

The bill takes effect upon publication in the statute book, unless otherwise noted.

Commitment for Evaluation and Treatment; Competency to Stand Trial; HB 2549

HB 2549 amends law related to the competency of a defendant to stand trial.

The bill allows a court in misdemeanor and felony cases to commit a defendant to the state security hospital or any appropriate state, county, or private institution or facility for a psychiatric or psychological examination and report to the court for determination of competency to stand trial. Additionally, if a defendant who is charged with a misdemeanor or felony is found incompetent to stand trial, the bill requires the court to commit the defendant for evaluation and treatment to any appropriate state, county, or private institution or facility.

The bill adds "facility" to the list of places where a defendant may be committed for evaluation and treatment and makes technical amendments, including a change in reference from the Secretary of Social and Rehabilitation Services to the Secretary for Aging and Disability Services.

[*Note*: Under current law, a defendant charged with a felony may be committed only to a state security hospital or any county or private institution for examination and report to the court and, if found incompetent to stand trial, may be committed only to a state security hospital or any appropriate county or private institution for evaluation and treatment. Under current law, a defendant charged with a misdemeanor may be committed only to any appropriate state, county, or private institution for examination and report and, if found incompetent to stand trial, may be admitted only to these same institutions for evaluation and treatment.]

JUDICIARY

Supersedeas Bonds; SB 199

SB 199 amends law concerning stay of enforcement of a judgment while on appeal. The law specifies that if an appellant seeks such a stay, the *supersedeas* bond shall be set at the full amount of the judgment, subject to certain limitations where the appellant can prove an undue hardship or denial of the right to an appeal. The bill creates a rebuttable presumption that an appellant will suffer an undue hardship when the judgment amount exceeds $2.5 million, the defendant is a small business, and judgment is for a claim arising from activities within the appellant's ordinary course of business. For these purposes, "small business" means a sole proprietorship, partnership, limited liability company, corporation, or other business entity, whether for-profit or not-for-profit, with between 2 and 50 employees that is not a corporate affiliate or subsidiary of, or owned in whole or in part by, any other business. The bill also limits the amount of any *supersedeas* bond to no more than $25.0 million, regardless of the full amount of judgment.

In addition to a continuing exception to limitations on the amount of a *supersedeas* bond applicable where the appellee proves the appellant is purposefully dissipating or diverting its assets, the bill adds an exception where the appellee proves the appellant is likely to purposefully dissipate or divert assets outside of the ordinary course of its business. The bill specifies the court may enter orders necessary to stop dissipation and diversion of assets when an appellee proves the dissipation or diversion or likely dissipation or diversion was for the primary purpose of avoiding ultimate payment of the judgment. This replaces language stating these limitations would not apply if the court makes a finding on the record that the appellant bringing the appeal is likely to disburse assets reasonably necessary to satisfy the judgment and allowing the court to increase the amount of such bond required not to exceed the full amount of the judgment.

The bill applies to any proceeding filed on or after the effective date of the bill.

Kansas Sexually Violent Predator Act Amendments; SB 266

SB 266 amends various provisions within the Kansas Sexually Violent Predator Act (Act).

Definitions

The bill amends the definition of "sexually violent predator" to specify such person "has serious difficulty in controlling such person's dangerous behavior."

The bill defines "conditional release" to mean approved placement in the community for a minimum of five years while under the supervision of the person's court of original commitment and monitored by the Secretary for Aging and Disability Services (Secretary).

The bill defines "conditional release monitor" to mean an individual appointed by the court to monitor the person's compliance with the treatment plan while placed on conditional release and who reports to the court. The bill specifies the monitor shall not be a court services officer.

The bill defines "progress review panel" to mean individuals appointed by the Secretary to evaluate a person's progress in the sexually violent predator treatment program.

Secure Confinement

The bill amends a provision requiring committed persons be kept in a secure facility to clarify the language of the provision and to specify it shall not apply to any reintegration, transitional release, or conditional release facility or building.

Annual Review and Petition for Final Discharge

The bill amends provisions related to the annual examination of and report regarding each committed person to require the court to forward the file-stamped copy of the annual report, notice, and waiver form to the Attorney General, and to require the Attorney General to forward a file-stamped copy of the annual written notice and report to the Secretary upon receipt.

A provision regarding petition for final discharge is amended to add a reference to a continuing, separate statutory provision requiring a minimum of five years pass in which the person petitioning has been free of violations of conditions of the person's treatment plan.

Conditional Release

The bill removes a prohibition on placement of more than 16 sexually violent predators on conditional release in any one county.

A provision requiring the plan of treatment established by the court for conditional release be based upon the recommendation of the treatment staff is amended also to include the recommendation of the progress review panel.

The non-exclusive list of provisions that may be included in the plan of treatment is amended to add "any other type of treatment," travel restrictions, searches, home visits, substance abuse testing, and registration requirements. The list is also amended to replace provisions prohibiting frequenting locations where children are likely to be present or engaging in activities in which contact with children is likely with a provision prohibiting "direct contact with individuals that match the person's victim template."

Provisions regarding procedures upon violation of a material condition of the conditional release treatment plan or for final discharge are reorganized. [*Note:* The amendments to these provisions remove four entire subsections and add five new subsections. However, much of the substantive language remains the same and is only reorganized. Substantive changes to these provisions are discussed beginning in the next paragraph of this summary.]

Provisions related to monitoring by a professional person are changed to monitoring by a conditional release monitor. Provisions regarding a request by such monitor to the court for an emergency *ex parte* order directing law enforcement to take a person who has violated a material condition of the treatment plan into custody are amended to replace provisions allowing for a verbal request followed by a written form with a requirement that such request be by sworn affidavit setting forth with specificity the grounds for the entry of such emergency *ex parte* order,

provided to the court by personal delivery, telefacsimile communication, or electronic means prior to the entry of such order, with notice given to the person's counsel or to the person, if unrepresented.

The provision for examination to determine whether the person should be considered for final discharge is amended to adjust the applicable standard from the person's mental abnormality or personality having "changed" to having "significantly changed."

In addition, references to "transitional release program" are changed to "transitional release."

The bill adds a provision requiring a current examination of the person's mental condition be made and submitted to the court and the Secretary once each year.

Individual Person Management Plans and Appeals

The bill amends the statute governing rights and rules of conduct for various persons in the custody of the Secretary, including sexually violent predators, to clarify that the continuing provision allowing use of an individual person management plan as needed for safety and security purposes in various situations may be used for behavioral management in such situations and that the list of situations is non-exclusive. The wording of the list of situations is amended to provide grammatical consistency and to add "disruption of the therapeutic environment on the unit" to the list of situations.

The provision in this statute governing appeals from a final agency determination is amended to require all documentation submitted through Larned State Hospital and all agency responses accompany a request for hearing. The bill requires a request for hearing be dismissed if the appellant fails to demonstrate exhaustion.

Technical Changes

The bill makes non-substantive changes to statutory references to ensure statutory consistency.

Protection from Stalking, Sexual Assault, or Human Trafficking Act; SB 281

SB 281 amends the Protection from Stalking or Sexual Assault Act to apply to victims of human trafficking. The bill renames the act the Protection from Stalking, Sexual Assault, or Human Trafficking Act and defines "human trafficking" as any act that would constitute the following crimes as defined in Kansas criminal law: human trafficking, aggravated human trafficking, commercial sexual exploitation of a child, and selling sexual relations. Similarly, "human trafficking victim" is defined as a victim of one of these crimes.

The bill revises who may seek relief on behalf of a minor child under the Protection from Abuse and Protection from Stalking, Sexual Assault, or Human Trafficking Act. Specifically, when a minor child is alleged to be a human trafficking victim, the bill allows the following to seek relief on the minor's behalf: a parent of the minor child, an adult residing with the minor child, the child's court-appointed legal custodian or court-appointed legal guardian, a county or district attorney, or the Attorney General. Additionally, the bill allows the child's court-appointed

legal custodian or court-appointed legal guardian to seek relief on behalf of a minor child under the Protection from Abuse Act and the Protection from Stalking, Sexual Assault, or Human Trafficking Act. Under continuing law in these acts, parents and adults residing with the minor are authorized to seek relief on behalf of a minor not alleged to be a human trafficking victim.

The bill allows a court to enter an order restraining the defendant from following, harassing, telephoning, contacting, recruiting, harboring, transporting, or committing or attempting to commit human trafficking upon the human trafficking victim or otherwise communicating with the human trafficking victim. The order must contain a statement that violation of the order may constitute an offense under the Kansas Criminal Code, and the accused may be prosecuted, convicted of, and punished for such offense.

The bill replaces references in the Protection from Abuse Act and Protection from Stalking, Sexual Assault, or Human Trafficking Act to "district judge" with "judge of the district court."

The bill also makes conforming amendments to statutes within the Protection from Stalking, Sexual Assault, or Human Trafficking Act and amends the crime of violation of a protective order, a class A misdemeanor, to include knowingly violating a protection from human trafficking order.

Saturday Process Service; SB 288

SB 288 repeals statutes making it a misdemeanor, subject to a fine of $100, imprisonment in the county jail for up to 30 days, or both, if a person knowingly:

- Causes or procures any process issued from a justice's court in a civil suit to be served on Saturday upon a person whose religious faith recognizes Saturdays as the Sabbath or who shall serve any such process made returnable on that day; or

- Procures any such suit pending in court against such person to be adjourned for trial on Saturday.

Stay During *Habeas Corpus* Proceedings, Juror Contact, and Grand Jury Procedures; HB 2479

HB 2479 creates and amends law related to criminal procedure.

Stay During KSA 60-1507 Proceedings

The bill creates law in the Kansas Code of Criminal Procedure providing for an automatic stay in an underlying criminal case when a district court has granted relief in a KSA 60-1507 proceeding and the prosecution files an appellate docketing statement appealing from the district court's decision. The time during the prosecution's appeal is not counted for purposes of the speedy trial statute until the mandate in the appeal has issued. Despite the stay, the court can release the prisoner on bond, even where the prisoner has not filed a notice of appeal, pursuant to the statute governing release after conviction.

The stay can be lifted upon motion filed in the appellate court if the court finds the prisoner has made a strong showing the prisoner is entitled to relief and will be irreparably injured if the stay is not lifted. If the stay is lifted, the time during the prosecution's appeal still will not be counted for purposes of the speedy trial statute until the mandate in the appeal has been issued, and the prisoner will be entitled to a new bond hearing in the underlying criminal case.

Juror Contact

The bill also adds provisions to the Code of Criminal Procedure concerning contact of jurors following criminal actions. Immediately following discharge of the jury, the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative may only discuss the jury deliberations or verdict with a member of the jury if the juror consents to the discussion and the discussion takes place at a reasonable time and place.

If such discussion occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative must inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

The bill requires any unreasonable contact with a juror by the defendant, the defendant's attorney or representative, the prosecutor, or the prosecutor's representative without the juror's consent to be immediately reported to the trial court. Any violation will be considered a violation of a lawful court order, which the bill provides is punished as contempt of court.

The bill requires the judge, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is discharged, the judge must inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

The bill states nothing in the section prohibits a law enforcement officer from discussing the deliberations or verdict with a member of the jury for the purpose of investigating an allegation of criminal conduct. Further, the bill states nothing in the section prohibits the court or a judge from discussing the deliberations or verdict with a member of the jury for any lawful purpose.

Grand Jury Procedure

The bill amends law concerning grand juries to require all proceedings before the grand jury, including all testimony, to be recorded. The grand jury may select the method of recording and employ a certified shorthand reporter to make a stenographic record of all proceedings. The law previously required the grand jury to employ a certified shorthand reporter. The bill allows the grand jury to elect to record the proceedings utilizing a digital recording system maintained by the court, if such system is available.

The bill also amends law concerning indictments to allow the presiding juror to sign the indictment "Presiding Grand Juror" rather than signing the presiding juror's name, which was required under former law. Additionally, the bill amends a statute concerning amendment of an indictment to replace "the people" with "the prosecuting attorney" to clarify who can order the amendment.

Technical Changes

The bill makes technical changes to statutory references.

Compensation for Wrongful Conviction and Imprisonment; Contact with Jurors in Civil Cases; HB 2579

HB 2579 creates and amends law regarding compensation for wrongful conviction and imprisonment and creates law regarding contact with jurors in civil cases.

Compensation for Wrongful Conviction and Imprisonment

The bill creates a civil cause of action allowing claimants to seek damages from the State for wrongful conviction.

Establishing Eligibility for Damages

A claimant is entitled to damages if he or she establishes by a preponderance of evidence:

- The claimant was convicted of a felony crime and subsequently imprisoned;
- The claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;
- The claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges, or finding of not guilty on retrial; and
- The claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction.

For these purposes, neither a confession nor admission later found to be false or a guilty plea constitute committing or suborning perjury, fabricating evidence, or causing or bringing about the conviction. Additionally, the bill allows the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, in the interest of justice, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by such person or those acting on such person's behalf.

The bill requires the suit, accompanied by a statement of the facts concerning the claim for damages and verified by the claimant, to be brought by the claimant within a period of two years after the dismissal of the criminal charges against the claimant, finding of not guilty on retrial, or grant of a pardon to the claimant. A claimant convicted, imprisoned, and released from custody before July 1, 2018, must commence an action under this section no later than July 1, 2020.

The bill specifies the caption form for pleadings and requires any claim filed under the bill be served on the Attorney General in accordance with the Code of Civil Procedure. The claim shall be tried by the court and no request for jury trial is permitted. The decision of the district court may be appealed directly to the Supreme Court pursuant to the Code of Civil Procedure.

Monetary Damages

A claimant entitled to damages shall receive $65,000 for each year of imprisonment, as well as not less than $25,000 for each additional year served on parole or postrelease supervision or each additional year the claimant was required to register as an offender under the Kansas Offender Registration Act, whichever is greater. A claimant shall not receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was lawfully incarcerated. The bill requires the court to order the award be paid as a combination of an initial payment not to exceed $100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to exceed $80,000 per year. The bill allows the claimant to designate a beneficiary or beneficiaries for the annuity by filing such designation with the court. Alternatively, the bill allows the court to order one lump-sum payment if it finds it is in the best interests of the claimant.

If, at the time the judgment for the award is entered, the claimant has won a monetary award against or has entered into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the amount of the award in the action or received in the settlement agreement, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement, will be deducted from the sum of money to which the claimant is entitled pursuant to the bill. The court must include in the judgment entry an award to the State of any amount deducted.

If, after the judgment is entered, the claimant wins a monetary award against or enters into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the claimant must reimburse the State for the sum of money paid pursuant to the claim under the bill, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement. The amount of the reimbursement shall not exceed the amount of the monetary award the claimant wins for damages in the other civil action or receives in the settlement agreement.

Fees, Costs, and Other Relief

In addition to monetary damages, the bill allows the court to award other non-monetary relief as sought in the complaint, including, but not limited to, counseling, housing assistance, and personal financial literacy assistance as appropriate. Further, the bill states claimants are entitled to receive reasonable attorney fees and costs incurred in the action brought pursuant to

the bill, not to exceed a total of $25,000, unless a greater reasonable total is authorized by the court upon a showing of good cause; receive tuition assistance; and participate in the state health care benefits program (Program).

Tuition assistance. Claimants awarded tuition assistance shall receive a waiver of tuition and required fees for attendance at a "postsecondary educational institution" (defined in the bill) for up to 130 credit hours and could attend either full time or part time. The Kansas Board of Regents (KBOR) is authorized to make expenditures to reimburse each individual awarded tuition assistance for additional fees, including, but not limited to, fees for room and board, technical equipment, and course-required books. Further, the bill prohibits delayed enrollment of an individual who is awarded tuition assistance because appropriations are not available for any additional fees provided to such individual. To remain eligible for a tuition and fees waiver, the individual must remain in good standing at the institution where the individual is enrolled and provide a written electronic copy of the court order awarding relief in the form of tuition assistance to the institution or KBOR. KBOR is required to adopt rules and regulations to administer this tuition assistance.

State health care benefits. On and after July 1, 2018, a claimant has 31 calendar days from the date of judgment entered to complete or decline enrollment in the Program for the remainder of the plan year and for the next ensuing plan year. A claimant is qualified to participate in the Program for the remainder of the claim year and the next ensuing plan year. A claimant is not qualified to elect a high-deductible health plan and health savings account under the Program. The cost of premiums shall be paid from the Tort Claims Fund and shall not be charged to the claimant. The claimant must pay any applicable copayments, deductibles, and other related costs, however, and may elect to include the claimant's dependents, in which case the claimant shall be responsible for the costs of premiums, copayments, deductibles, and other costs for covered dependents. The bill requires the Secretary of Health and Environment, or the Secretary's designee, to provide assistance to obtain and maintain coverage including enrollment, maintenance of records, and other assistance.

Certificate of Innocence; Expungement Orders

If the court finds the claimant is entitled to a judgment, the bill requires the court to enter a certificate of innocence finding the claimant was innocent of all crimes for which the claimant was mistakenly convicted and order the associated convictions and arrest records expunged and purged from all applicable state and federal systems. The court is required to enter the expungement order regardless of whether the claimant has prior criminal convictions. The bill outlines the required contents of the order of expungement, which includes a direction to the Kansas Bureau of Investigation (KBI) to purge the conviction and arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court must send a certified copy of the order to the KBI, which is required to carry out the order and notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency that may have a record of the conviction and arrest. The KBI is required to provide confirmation of such action to the court. If a certificate of innocence and an order of expungement are entered, the bill states the claimant shall be treated as not having been arrested or convicted of the crime.

Upon entry of a certificate of innocence, the bill requires the court to order the expungement and destruction of the associated biological samples authorized by and given to the KBI in accordance with state law requiring collection of such samples in certain circumstances. The order shall direct the KBI to expunge and destroy such samples and profile

record. The clerk of the court must send a certified copy of the order to the KBI, which shall be required to carry out the order and provide confirmation of such action to the court. The bill states the KBI shall not be required to expunge and destroy any samples or profile record associated with the claimant related to any offense other than the offense for which the court has entered a certificate of innocence.

The bill states the decision to grant or deny a certificate of innocence shall not have a *res judicata* effect on any other proceedings.

Kansas Department of Corrections Reentry Services

The bill states nothing in the bill precludes the Kansas Department of Corrections from providing reentry services to a claimant that are provided to other persons, including, but not limited to, financial assistance, housing assistance, mentoring, and counseling. Such services may be provided while an action under this section is pending and after any judgment is entered, as appropriate for such claimant.

Additional Responsibilities of the Attorney General

Upon receiving a certified copy of the certificate of innocence and the judgment entry from the clerk of the court, the bill requires the Attorney General to pay any judgment through the procedure established in the Tort Claims Act.

The bill amends the statute governing the Tort Claims Fund administered by the Attorney General to provide that moneys in that fund may be used to pay judgments arising under the bill. The bill states payment of a judgment arising from a claim under the bill shall be subject to review by the State Finance Council, and the Attorney General is required to notify the State Finance Council of the need for such review and ensure that payment of the judgment occurs without unnecessary delay.

Contact With Jurors in Civil Cases

The bill adds provisions to the Code of Civil Procedure concerning contact with jurors following civil actions. Immediately following discharge of the jury, the bill allows the defendant, the defendant’s attorney or representative, the plaintiff, or the plaintiff’s attorney or representative (the parties) to discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion.

If a discussion occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the contacting party must inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror’s right to review and have a copy of any declaration filed with the court.

The bill requires any unreasonable contact with a juror by the parties without the juror’s consent to be immediately reported to the trial court. Any violation shall be considered a violation of a lawful court order, which may be punished as contempt of court.

The bill requires the judge, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is discharged, the bill requires the judge to inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

The bill states nothing in the section prohibits a law enforcement officer from discussing the deliberations or verdict with a juror for the purpose of investigating an allegation of criminal conduct or the court from discussing the deliberations or verdict with a juror for any lawful purpose.

LAW ENFORCEMENT

Records Related to Law Enforcement Officers—Disclosure of Files Related to Previous Employment; Central Registry Records; SB 180

SB 180 creates and amends law regarding records related to law enforcement officers.

Disclosure of Files Related to Previous Law Enforcement or Government Employment

The bill creates a process for disclosure of a law enforcement officer applicant's files if the applicant has been employed by another state or local law enforcement agency or governmental agency. For these purposes, "files" is defined as all performance reviews or other files related to job performance, commendations, administrative files, grievances, previous personnel applications, personnel-related claims, disciplinary actions, internal investigation files, suspensions, investigation-related leave, documents concerning termination or other departure from employment, all complaints, and all early warning information. "Early warning information" is defined as information from a data-based management tool designed to identify officers who may be exhibiting precursors of problems on the job that can result in providing those officers with counseling or training to divert them from conduct that may become a disciplinary matter. The bill also defines other key terms.

When interviewing an applicant who has been employed by another agency for a law enforcement officer position, hiring agencies shall require such applicant to execute a written waiver that explicitly authorizes each agency that has employed the applicant to disclose the applicant's files to the hiring agency and releases the hiring agency and each agency that employed the applicant from any liability related to the use and disclosure of the files. An applicant who refuses to execute the waiver shall not be considered by the hiring agency. A copy of the waiver shall be provided to each agency along with the request for information.

The bill requires the agency to disclose the files to the hiring agency within 21 days of receiving the request either by providing copies to the hiring agency or allowing the hiring agency to review the files at the agency's office. The bill establishes an exception if the agency is prohibited from providing the files pursuant to a binding nondisclosure agreement executed before July 1, 2018, to which such agency is a party. However, agencies must disclose an applicant's files if such files are subject to a binding nondisclosure agreement executed on or after July 1, 2018, but the bill limits disclosure to only those files necessary to determine an applicant's qualifications and fitness for performance of a law enforcement officer's duties. Further, the bill allows agencies to redact personally identifiable information of persons other than the applicant in files disclosed. The bill states an agency shall not be liable for complying with the provisions of this section in good faith or participating in an official oral interview with an investigator regarding the applicant.

The bill prohibits disclosure of the files by the hiring agency, except as necessary for such agency's internal hiring processes, and states the files constitute a record of the agency that made, maintained, or kept the files for the purposes of the Kansas Open Records Act (KORA) and are not subject to a KORA request directed toward the hiring agency. Except in a civil action involving negligent hiring, the files are not subject to discovery, subpoena, or other process directed toward the hiring agency obtaining the files. The bill adds a provision to KORA to specify a request for records defined by the bill as "files" that were submitted to an agency must be directed to the agency that made, maintained, or kept such files.

Central Registry Records

The bill amends the section of the Kansas Law Enforcement Training Act (KLETA) related to the central registry of Kansas police officers and law enforcement officers.

The bill specifies the registry is to include all records received or created by the Kansas Commission on Peace Officers' Standards and Training (CPOST) pursuant to this section and all records related to violations of KLETA, including records of complaints received or maintained by CPOST.

The bill removes language stating the registry shall be made available only to agencies that appoint or elect police or law enforcement officers and adds provisions governing disclosure of records in the registry.

All records in the registry shall be confidential and not subject to disclosure pursuant to KORA, except that records contained in the registry, other than investigative files, would have to be disclosed:

- To an agency that certifies, appoints, or elects police or law enforcement officers;
- To the person who is the subject of the information, but CPOST may require disclosure in a manner to prevent identification of any other person who is the subject or source of the information;
- In any proceeding conducted by CPOST in accordance with the Kansas Administrative Procedure Act (KAPA), in an appeal from such proceeding, or to a party or party's attorney in such proceeding;
- To a municipal, state, or federal licensing, regulatory, or enforcement agency with jurisdiction over acts or conduct similar to acts or conduct that would constitute grounds for action under KLETA; or
- To the director of police training of the Law Enforcement Training Center when such disclosure is relevant to the director's pretraining evaluation of applicants for admission.

Additionally, the following records may be disclosed to any person pursuant to KORA:

- A record containing only a police or law enforcement officer's name, the name of a police or law enforcement officer's current employer, the police or law enforcement officer's dates of employment with the police or law enforcement officer's current employer, the name of previous law enforcement employers and the dates of employment with each each employer, a summary of the trainings completed by the police or law enforcement officer as reported to CPOST, and the status of the police or law enforcement officer's certification under KLETA; and
- Statewide summary data without personally identifiable information.

The bill provides that KORA exceptions shall apply to any records disclosed under the above provisions.

Finally, the bill specifies that records may be disclosed as provided in KAPA.

The confidentiality provision and disclosure exceptions created by the bill will expire on July 1, 2023, unless the Legislature reviews and reenacts the provision prior to that date.

Sheriff Qualifications; Kansas Law Enforcement Training Act—Definition of "Misdemeanor Crime of Domestic Violence"; Unlawful Sexual Relations—Law Enforcement Officer; HB 2523

HB 2523 amends various statutes related to law enforcement officers.

Sheriff Qualifications

The bill amends the statute setting forth the qualifications required of sheriffs. Specifically, the bill narrows language disqualifying a person from holding the office of sheriff if the person has been convicted of a violation of any federal or state laws or city ordinances relating to gambling, liquor, or narcotics, to disqualify only for a misdemeanor related to gambling, liquor, or narcotics within five years immediately preceding election or appointment. [*Note:* Any felony committed during the person's lifetime will continue to disqualify the person.]

The bill removes a specific 320-hour training requirement and clarifies the education, training, and testing required of sheriffs.

The bill also reorganizes continuing standards without substantive change.

Kansas Law Enforcement Training Act

The bill amends the definition of "misdemeanor crime of domestic violence" in the Kansas Law Enforcement Training Act (KLETA) to replace a list of persons with various relationships to the victim (*e.g.*, current or former spouse) who may commit the crime with the phrase "against a person with whom the offender is involved or has been involved in a 'dating relationship' or is a 'family or household member' as defined in [the domestic battery criminal statute] at the time of the offense."

The bill also amends the KLETA statute setting forth qualifications for applicants for certification to provide consistency with the education requirement amendments made to the sheriff qualifications statute.

Unlawful Sexual Relations—Law Enforcement Officer

The bill amends the crime of unlawful sexual relations, which prohibits persons in certain positions of authority from engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with certain persons under their authority, to include law enforcement officers, when the person with whom the offender is engaging in such conduct is 16 years of age or older and is interacting with the officer during the course of a traffic stop, a custodial interrogation, or an interview in connection with an investigation, or while the officer has such person detained. Such conduct constitutes a severity level 5 person felony.

LEGISLATURE

Reconciling Amendments to Statutes; SB 461

SB 461 reconciles amendments to statutes that were amended more than once during the current and prior legislative sessions. For such statutes, the bill repeals one version and amends the continuing version with non-contradictory amendments from the repealed version to create a single version of the statute containing all amendments.

OPEN RECORDS

Public Records; Disclosure of Information Regarding Child Fatalities or Near Fatalities; Law Enforcement Recordings; Redaction of Social Security Numbers; Kansas Open Records Act—Exceptions; House Sub. for SB 336

House Sub. for SB 336 amends various law related to public records.

Disclosure of Information Under the Revised Kansas Code for Care of Children

The bill amends the statute in the Revised Kansas Code for Care of Children (also known as the CINC Code) governing access to information concerning a child alleged or adjudicated to be in need of care and child fatalities.

A provision allowing a court to order disclosure of confidential agency records if such records are necessary for the proceedings of the court and are otherwise admissible as evidence is amended to remove the requirement that such records be admissible as evidence.

Provisions requiring disclosure, pursuant to the Kansas Open Records Act (KORA), of records or reports related to a child fatality or near fatality resulting from child abuse or neglect, but allowing for the filing of a motion with a court by the Secretary for Children and Families (Secretary) or any affected individual to prevent disclosure of such records, are amended to require notice of the filing of such motion to all parties requesting the records or report and provide such parties with the right to request and receive a hearing prior to the entry of an order on the motion. The bill adds the "public's interest in the disclosure of such records or reports" to the factors the court must consider when ruling on the motion.

The bill adds a provision requiring the Secretary, as allowed by applicable law, to release the following information when child abuse or neglect results in a child fatality and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;
- Date of the fatality;
- A summary of any previous reports of abuse or neglect received by the Secretary involving the child, along with the findings of such reports; and
- Any service recommended by the Department for Children and Families (DCF) and provided to the child.

The bill adds a similar provision requiring the Secretary, as allowed by applicable law, to release the following information when a child fatality occurs while the child was in the custody of the Secretary and a request is made under KORA, within seven business days of receipt of such request:

- Age and sex of the child;

- Date of the fatality; and
- A summary of the facts surrounding the death of the child.

Disclosure of Law Enforcement Audio or Video Recordings

The bill amends the statute governing disclosure of audio or video recordings made and retained by law enforcement using a body camera or a vehicle camera (law enforcement recordings).

Under continuing law, the statute allows, in addition to any disclosure authorized under KORA, certain persons to request to listen to or view law enforcement recordings and requires the law enforcement agency to allow such listening or viewing. The bill adds a provision requiring the agency to allow the listening or viewing within 20 days after the request is made.

Under continuing law, an "heir at law" is one of the persons who may make the request. The bill adds the attorney for an heir at law to the list of persons who may make the request. The bill also adds a definition for "heir at law" to include an executor or an administrator of a decedent; the living spouse of a decedent; if there is no living spouse of a decedent, a living adult child of a decedent; or, if there is no living spouse or adult child of a decedent, a living parent of a decedent. [*Note:* Under prior law, an executor or administrator of a decedent could make a request, so the bill changes only the organization, not the substance, of the law allowing these persons to make a request.]

In the list of requesters, the bill changes "a parent or legal guardian of a person under 18 years of age who is a subject of the recording" to "any parent or legal guardian of a person under 18 years of age who is a subject of the recording."

The bill clarifies that requests to listen to or view a law enforcement recording are to be made in accordance with procedures adopted by public agencies pursuant to KORA requirements.

Redaction of Social Security Numbers and Notice of Disclosure

The bill amends law related to the disclosure of personal information on public records to require the redaction of all portions of an individual's Social Security number on any document or record before it is made available for public inspection or copying. The provisions of the bill do not apply to documents recorded in the official records of any county recorder of deeds or in the official records of the courts.

The bill also requires an agency to:

- Give notice, as defined in the consumer information protection statutes, to any individual when the agency becomes aware of the unauthorized disclosure of the individual's personal information. Notice must be given as expediently as possible and without unreasonable delay, while also considering the legitimate

needs of law enforcement and any measures necessary to determine the scope of unauthorized disclosure;

- Offer to the affected individual credit monitoring services at no cost for one year;
- Provide all information necessary for the affected individual to enroll in such credit monitoring services; and
- Provide information to the affected individual on how a security freeze could be placed on the individual's consumer report.

Continuation and Elimination of KORA Exceptions

The bill continues in existence the following exceptions to KORA:

- KSA 9-513c, concerning information or reports obtained and prepared by the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business (the bill also removes an expiration provision in KSA 9-513c);
- KSA 39-709, concerning results of drug screenings administered under the cash assistance program;
- KSA 45-221(a)(26), concerning records of a utility or other public service pertaining to individually identifiable residential customers;
- KSA 45-221(a)(53), concerning records disclosing name or contact information for any person who is licensed to carry concealed handguns, enrolled in or completed any weapons training in order to be licensed, or has made application for such license under the Personal and Family Protection Act (PFPA);
- KSA 45-221(a)(54), concerning records of a utility related to cybersecurity threats, attacks, or general attempts to attack utility operations;
- KSA 65-6832 and KSA 65-6834, concerning protected health information;
- KSA 75-7c06, concerning records relating to licenses issued pursuant to the PFPA; and
- KSA 75-7c20, concerning security plans adopted to exempt a state or municipal building from law stating the carrying of a concealed handgun shall not be prohibited in any public area of any state or municipal building.

The bill amends three statutes within the Viatical Settlements Act of 2002 that were reviewed and continued in 2013 to remove specific expiration provisions.

The bill removes an exception preventing the disclosure of the name of any voter who has cast a ballot from the time the ballot is cast until the final canvass of the election by the county board of canvassers.

Technical Changes

The bill updates references to the Secretary, phrasing, and statutory references to ensure statutory consistency.

Creation of a New Exception to the Kansas Open Records Act; HB 2476

HB 2476 amends the section of the Kansas Open Records Act (KORA) related to the unlawful use of names derived from public records.

The bill creates an additional exception to the general prohibition in KORA against selling, giving, or receiving any list of names and addresses from public records for sales purposes. The new exception applies to lists of names and addresses derived from public records of the Secretary of State related to secured transactions under the Uniform Commercial Code.

PROFESSIONS AND OCCUPATIONS

Licensure, Certification, Registration, and Employment Requirements and Defining "Safety Sensitive Positions"; Senate Sub. for Senate Sub. for HB 2386

Senate Sub. for Senate Sub. for HB 2386 amends law related to licensure, certification, or registration (licensure) qualifications; amends qualifications for employment at adult care homes, hospitals, and home health agencies; and adds all employees of the Kansas Commission on Veterans' Affairs Office (KCVAO) to the definition of "safety sensitive positions" found in law.

Licensure Qualifications

The bill requires any person, board, commission, or similar body (board) that determines the qualifications of individuals for licensure to revise their requirements to list the specific civil and criminal records (record) that could disqualify an applicant from receiving a license, certification, or registration (license). The revision must occur within 180 days after the effective date of the bill.

The board may list only any disqualifying records directly related to protecting the general welfare and the duties and responsibilities for such entities. In no case are non-specific terms, such as moral turpitude or good character, or any arrests that do not result in a conviction, to be used to disqualify an individual's application for licensure.

The bill mandates the record cannot not be used to disqualify the individual for licensure for more than five years from the date of conviction unless the conviction is a class A misdemeanor, felony, sexually violent crime, or any conviction for which issuing a license would conflict with federal law, and the individual has not been convicted of any other crime in the five years immediately preceding the application for a license.

The bill allows any individual with a record to petition the board responsible for licensure at any time for an informal, written advisory opinion (opinion) concerning whether the individual's record would disqualify the individual from obtaining a license. The petition includes details of the record. The board is required to issue the opinion within 120 days of receiving the petition and the opinion is to be non-binding. The board is authorized to charge up to $50 for the review and issuance of the opinion in response to the petition.

Agencies Exempted from Licensure Provisions

The bill exempts the following entities from the bill's provisions related to licensure qualifications:

- Kansas Commission on Peace Officers' Standards and Training;
- Kansas Highway Patrol;
- Board of Accountancy;
- Behavioral Sciences Regulatory Board;

- State Board of Healing Arts;
- State Board of Pharmacy;
- Emergency Medical Services Board;
- Board of Nursing;
- Kansas Real Estate Commission;
- Kansas Insurance Department;
- Office of the Attorney General;
- Any municipality, as defined in KSA 75-6102; and
- Any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree.

The bill requires all boards to adopt and publicly maintain all necessary rules and regulations for the implementation of the bill.

Qualifications for Employment at Adult Care Homes, Hospitals, and Home Health Agencies

Conviction of Crimes Subject to a Complete Prohibition

The bill creates and amends law related to qualifications for employment at adult care homes, hospitals, and home health agencies, and defines terms related to the provisions of the bill.

Current law provides that persons convicted of certain crimes as an adult, or adjudicated as a juvenile, may not be employed at an adult care home. The bill expands such classes of persons to include persons who have adverse findings on any state or national registry, which are defined by the Secretary for Aging and Disability Services (Secretary) in rules and regulations. The bill specifies that the provisions of this section of the bill do not apply to persons currently participating in or upon successful completion of a diversion agreement, or who had been employed by an adult care home on or before July 1, 2018, and were continuously employed by the same adult care home.

Current law provides that persons convicted of theft may not be employed at listed facilities unless such person was employed at the facility on July 1, 2010, and while such person is continuously employed by the same adult care home. The bill clarifies that the prohibition does not apply to persons who were employed by an adult care home either on or before July 1, 2010. The bill further provides that the prohibition does not apply during or upon successful completion of a diversion agreement.

Conviction of Crimes Subject to a Six-year Prohibition

Current law allows an adult care home to employ persons convicted of certain listed crimes if six or more years have elapsed since the applicant satisfied the sentence imposed or was discharged from supervision. The bill clarifies that the sentence must be completed, or the individual be released from supervision. The bill also allows employment of an applicant who has been granted a waiver of the six-year disqualification. The bill removes certain crimes from the list of those having a six-year disqualification.

The bill subjects additional crimes to the six-year employment prohibition:

- Interference with custody of a committed person;
- Mistreatment of a confined person;
- Unlawful administration of a substance;
- Violation of a protective order;
- Promoting obscenity or promoting obscenity to minors; or
- Cruelty to animals.

The bill also subjects the following felony convictions to the six-year employment prohibition:

- Unlawful manufacture of a controlled substance;
- Unlawful cultivation or distribution of a controlled substance;
- Unlawful cultivation or distribution of a controlled substance using a communication facility;
- Unlawful obtainment or sale of a prescription-only drug;
- Unlawful distribution of drug precursors or drug paraphernalia;
- Unlawful distribution or possession of a simulated controlled substance;
- Forgery;
- Criminal use of a financial card;
- Violation of the Kansas Medicaid Fraud Control Act;

- Making a false claim, statement, or representation to the Medicaid program;
- Unlawful acts relating to the Medicaid program;
- Obstruction of a Medicaid fraud investigation;
- Identity theft or identity fraud; or
- Social welfare fraud.

The bill provides that the prohibition of employment of persons convicted of the above crimes does not apply to persons employed by an adult care home on or before July 1, 2018, and while such person is continuously employed by the same adult care home, or to any person during or upon successful completion of a diversion agreement.

The bill also provides that any person subject to a six-year prohibition of employment at a facility may apply to the Secretary for a waiver if five or more years have passed since completion of the sentence associated with the disqualifying conviction.

In addition, the bill directs the Secretary to adopt rules and regulations establishing the waiver process and criteria to be considered in evaluating any such waiver request.

Release of Records

The bill directs the Kansas Bureau of Investigation (KBI) to release all records of adult and juvenile convictions and adjudications, and records pertaining to the same from other states or countries, concerning persons working in adult care homes. The KBI is authorized to charge the Kansas Department for Aging and Disability Services (KDADS) a reasonable fee for providing these records.

Fingerprinting of Applicants

The bill requires KDADS to require applicants to be fingerprinted and to submit to a state and national criminal history record check. Fingerprints are used to identify persons and to determine whether the applicant has a record of criminal history in Kansas or other jurisdictions.

The bill authorizes KDADS to submit fingerprints to the KBI and the Federal Bureau of Investigation (FBI) for such criminal history checks. KDADS is allowed to use the information obtained from fingerprinting and the criminal history record check to verify the identify of the person and for making an official determination of the qualifications and fitness of the person to work in the adult care home.

Applicants are given 20 days to submit fingerprints through an authorized collection site in order to be eligible for provisional employment, or the applicant’s application would be considered withdrawn.

The bill also requires current or prospective employers of applicants to pay a fee not to exceed $19 to KDADS for each applicant's criminal history record check. Such fee is paid at the time of fingerprinting to the authorized collection site.

Criminal History Record Check Dispute and Waiver

If applicants dispute the contents of a criminal history record check, the applicant may file an appeal with the KBI.

The bill allows persons who have been disqualified for employment by reason of their criminal history records, and who have submitted fingerprints, to apply for a waiver with KDADS within 30 days of receipt of notice of employment prohibition.

KDADS is directed to adopt rules and regulations specifying the criteria and procedure for issuing a waiver of the employment prohibition. The Secretary is directed to consider the following criteria in granting a waiver:

- Passage of time;
- Extenuating circumstances;
- Demonstration of rehabilitation; and
- Relevancy of criminal history information to the position for which the applicant is applying.

Any employment prohibition issued remains in effect unless or until a waiver is granted.

Eligibility Determination

The bill requires adult care home operators to request eligibility determinations regarding adult and juvenile convictions and adjudications from KDADS. The bill also requires independent contractors that provide employees to work in adult care homes to provide written certification of the employment eligibility of such employees.

The Secretary is directed to provide a pass or fail determination after review of any criminal history record information in writing within three working days of receipt of such information from the KBI or the FBI.

Provisional Employment

The bill allows adult care home operators to hire applicants on a one-time provisional basis of 60 calendar days, pending the results of the criminal history record check. Provisional employees may be supervised only by employees who completed all training required by federal regulations, rules and regulations of KDADS, and the adult care home's policies and procedures.

Continuing law provides that no adult care homes, operators or employees of an adult care home, or an employment agency would be liable for civil damages arising from the decision to employ, refuse to employ, or to discharge from employment any person based on compliance with the above provisions, if such home or employment agency acts in good faith. The bill includes independent contractors in these liability provisions.

Exclusion from Criminal History Record Check

The bill specifies that persons continuously employed by the same adult care home since July 1, 1992, are not subject to a criminal history record check while continuously employed by such adult care home.

Current law excludes volunteers who work in adult care homes from the criminal history check requirements. The bill specifies that volunteers at adult care homes are not subject to the provisions of the bill unless they perform functions equivalent to those of direct access employees.

The bill also specifies that applicants who have been subject to a criminal history record check within the past year are not required to submit to a subsequent criminal history record check.

Fees, Deposit

The bill directs the Secretary to establish fees for criminal history record checks through rules and regulations. All fees collected and remitted to KDADS for charges related to criminal history record checks are remitted to the State Treasurer (Treasurer). The Treasurer is directed to deposit the entire amount in the State Treasury to the credit of the State Licensure Fee Fund.

Implementation of Criminal History Checks

The bill allows KDADS to implement the criminal history check provisions in phases for different categories of employers. KDADS is directed to adopt rules and regulations establishing dates and procedures for the implementation of criminal history record checks, and such dates may be staggered to facilitate implementation.

Submission of Fingerprints by Other State Agencies

The bill provides, upon authorization by the Secretary, other state agencies could submit fingerprints for state and national criminal history record checks and review the resulting criminal history and records as part of the screening process for current or prospective employees.

Authorized agencies and providers could access an Internet-based application portal operated and maintained by KDADS for the purposes of processing criminal history record information requests. Agencies are prohibited from sharing criminal history record information or the resulting pass or fail determinations with any other agency. The Secretary may charge an authorized agency $1 per request.

Employment in Hospitals

The bill subjects applicants for employment in a center, facility, hospital, or a provider of services to the same provisions applied to adult care homes as described above. The bill also provides that the following crimes would result in a prohibition of employment (this is already present in law for adult care home workers):

- Capital murder;
- First degree murder;
- Second degree murder;
- Voluntary manslaughter;
- Assisting suicide;
- Mistreatment of a dependent adult or mistreatment of an elder person;
- Human trafficking;
- Aggravated human trafficking;
- Rape;
- Indecent liberties with a child;
- Aggravated indecent liberties with a child;
- Aggravated criminal sodomy;
- Indecent solicitation of a child;
- Aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Sexual battery;
- Aggravated sexual battery;
- Commercial sexual exploitation of a child; and
- Attempt or conspiracy to commit any of the listed crimes, or similar statutes of other states or the federal government.

Prohibition of Operation

Continuing law prohibits a licensee from operating a center, facility, hospital, or providing services if such licensee has been found to be an adult with impairment in need of a guardian, conservator, or both. The bill specifies the prohibition does not apply to licensees who, as a minor, were found to be in need of a guardian or conservator for reasons other than impairment.

Employment by Home Health Agencies

The bill subjects applicants for employment at home health agencies, employment agencies, or as an independent contractor that provides staff to a home health agency to the same provisions applied to applicants in adult care homes and hospitals as described above.

Drug Screening for Safety Sensitive Positions

The bill adds all employees of the Commission on Veterans' Affairs office to the definition of "safety sensitive positions" in law.

The Director of the Division of Personnel Services, Department of Administration, has the authority to establish and implement drug screening programs for safety sensitive positions, including the ability to screen applicants for illegal drug use upon a conditional offer of employment and to screen employees upon reasonable suspicion of illegal drug use. Currently, only employees of the State's veterans' homes are subject to a drug screening upon reasonable suspicion of illegal drug use.

Current "safety sensitive positions" include:

- All state law enforcement officers authorized to carry firearms;
- All state corrections officers;
- All state parole officers;
- Heads of state agencies who are appointed by the Governor and employees on the Governor's staff;
- All employees with access to secure facilities of a correctional institution;
- All employees of a juvenile correctional facility;
- All employees within an institution of mental health; and
- All employees with access to a secured biological laboratory in the Office of Laboratory Services, Kansas Department of Health and Environment.

PUBLIC SAFETY

State Interoperability Advisory Committee; Sub. for HB 2556

Sub. for HB 2556 establishes the State Interoperability Advisory Committee (Committee) in statute. Currently, a State Interoperability Executive Committee exists by executive order.

The Committee provides input to the Adjutant General's Department (TAG) for the development and deployment of centralized interoperable communications planning and implementation capacity for Kansas. Specifically, the bill directs the Committee to make recommendations to TAG related to:

- Increasing communications and interagency coordination regarding informing the public of public safety risks and operations;
- Statewide contracts for public safety communications equipment, software, and consulting services;
- Revisions to the State Communications Interoperability Plan;
- Assessment of institutions and organizations that benefit from services provided;
- Development, release, and review of requests for proposals and awarding contracts for public safety communications technology public-private partnerships; and
- Other opportunities to improve public safety communications as the Committee deems appropriate.

The bill also requires the Committee to assist with the development of policies and procedures that increase communications and interagency coordination for the purpose of enhancing public safety interoperable communications.

The Committee does not have authority to:

- Require certification of public safety agencies or employees;
- Require training or establish mandatory training standards beyond what is necessary for the operation, care, and security of interoperable communications systems and plans developed by the Committee; or
- Limit local purchasing options for equipment compatible with the interoperability plan.

Organization and Membership

The Committee is overseen by the State Emergency Management Director (Director), who appoints a Statewide Interoperability Coordinator (Coordinator) to administer the Committee's business, serve as the Committee's chairperson, and act on the Committee's behalf. The chairperson appoints the vice-chairperson of the Committee.

Members of the Committee include:

- The Director (defined in the bill as the Adjutant General for the State of Kansas, or the Adjutant General's designee);
- The Coordinator;
- The Secretary of Transportation, or the Secretary's designee;
- The Superintendent of the Highway Patrol, or the Superintendent's designee;
- The Executive Branch Chief Information Security Officer, or the Officer's designee;
- A tribal representative appointed by the Governor;
- The 911 Coordinating Council Administrator, or the Administrator's designee;
- The Chief Executive Officer of the Board of Regents, or the the Chief Executive Officer's designee; and
- One member appointed by each of the following associations:
  - Kansas Association of Public Safety Communications Officials;
  - Kansas Sheriffs' Association;
  - Emergency Medical Services Board;
  - Kansas Association of Chiefs of Police;
  - Kansas State Association of Fire Chiefs;
  - Mid-America Regional Council;
  - League of Kansas Municipalities;
  - Kansas Association of Counties; and
  - Kansas Emergency Management Association.

Executive branch members serve until succeeded; each non-executive branch member serves a three-year term beginning on August 1, 2018, and are eligible to serve more than one term. Members may be removed for cause by a majority vote of the Committee, or by their appointing or designating authority. Vacancies are filled in the same manner as provided for the original member.

The Committee is required to meet at least once per quarter of the calendar year, with the first meeting to take place prior to September 1, 2018. All actions of the Committee require a majority vote by members present when there is a quorum (majority of voting members).

Executive Subcommittee

The bill establishes an executive subcommittee that assists in the administration of the Committee's business when the full Committee is not meeting, and is allowed to conduct any Committee business delegated to it by the full Committee. The subcommittee includes the Director, Coordinator, Secretary of Transportation or the Secretary's designee, and Superintendent of the Highway Patrol or the Superintendent's designee.

Working Groups

The bill also allows the chairperson to appoint and convene working groups to address specific interoperability and communications requirements, research topics, and make recommendations. The chairperson is authorized to add subject matter experts to the working groups on an *ad hoc* basis. Each working group will meet at least once every quarter of the calendar year on the call of the Director, Coordinator, or working group chairperson.

Working groups will make recommendations to the Committee related to:

- Improving interagency communications, training, and exercise coordination;
- Improving effective receipt of information from, and communicating information to, the public;
- Improving logistics coordination during on-site events;
- Evaluating communication and communication protection technologies and recommending procurement standards;
- Identifying and promoting anti-intrusion technologies for communications from individuals to public safety agencies;
- Identifying methods to protect sensitive public safety operations from placement on social media sites that deliberately or inadvertently place public safety workers at risk;
- Identifying and collecting relevant public safety communications systems and equipment performance metrics; and
- Other responsibilities as assigned by the chairperson.

The Office of the Director will provide staff support for the Committee and working groups.

SECURITY

Kansas Cybersecurity Act; House Sub. for SB 56

House Sub. for SB 56 creates the Kansas Cybersecurity Act (Act) and amends the membership and the frequency of required meetings for the Information Technology Executive Council (ITEC).

Definitions

The bill defines various terms used throughout the Act, including "cybersecurity," which means "the body of information technologies, processes, and practices designed to protect networks, computers, programs, and data from attack, damage, or unauthorized access." The definition of "Executive Branch agency" does not include elected office agencies, the Kansas Public Employees Retirement System, Regents institutions, the Kansas Board of Regents (KBOR), or the Adjutant General's Department.

Chief Information Security Officer (CISO)

The bill establishes the position of Executive Branch Chief Information Security Officer (CISO). The CISO is an unclassified employee appointed by the Governor.

Duties of the CISO

Duties of the CISO include the following:

- Report to the Executive Branch Chief Information Technology Officer (CITO);
- Serve as the State's CISO;
- Serve as the Executive Branch chief cybersecurity strategist and authority on policies, compliance, procedures, guidance, and technologies impacting Executive Branch cybersecurity programs;
- Ensure Kansas Information Security Office resources assigned or provided to Executive Branch agencies are in compliance with applicable laws, rules, and regulations;
- Coordinate cybersecurity efforts among Executive Branch agencies;
- Provide guidance to Executive Branch agencies when compromise of personal information or computer resources has occurred or is likely to occur as the result of an identified high-risk vulnerability or threat; and
- Perform such other functions and duties as provided by law and as directed by the Executive Branch CITO.

Kansas Information Security Office (KISO)

The bill establishes the Kansas Information Security Office (KISO) within the Office of Information Technology Services to effect the provisions of the Act. For budgeting purposes, the KISO is a separate agency from the Department of Administration.

Under the direction of the CISO, the KISO is to perform the following functions:

- Administer the Act;
- Assist the Executive Branch in developing, implementing, and monitoring strategic and comprehensive information security (IS) risk-management programs;
- Facilitate Executive Branch IS governance, including the consistent application of IS programs, plans, and procedures;
- Create and manage a unified and flexible framework to integrate and normalize requirements resulting from state and federal laws, rules, and regulations using standards adopted by the ITEC;
- Facilitate a metrics, logging, and reporting framework to measure the efficiency and effectiveness of the state IS programs;
- Provide the Executive Branch with strategic risk guidance for information technology (IT) projects, including the evaluation and recommendation of technical controls;
- Assist in the development of Executive Branch agency cybersecurity programs that are in compliance with relevant laws, rules, regulations, and standards adopted by ITEC;
- Coordinate the use of external resources involved in IS programs, including, but not limited to, interviewing and negotiating contracts and fees;
- Liaise with external agencies, such as law enforcement and other advisory bodies, as necessary, to ensure a strong security posture;
- Assist in the development of plans and procedures to manage and recover business-critical services in the event of a cyberattack or other disaster;
- Assist Executive Branch agencies to create a framework for roles and responsibilities relating to information ownership, classification, accountability, and protection;
- Ensure a cybersecurity training program is provided to Executive Branch agencies at no cost;

- Provide cybersecurity threat briefings to ITEC;

- Provide an annual status report of Executive Branch cybersecurity programs to the Joint Committee on Information Technology and the House Committee on Government, Technology and Security; and

- Perform such other functions and duties as provided by law and as directed by the CISO.

Duties of Executive Branch Agency Heads

The Act directs Executive Branch agency heads to do the following:

- Be solely responsible for security of all data and IT resources under such agency's purview, irrespective of the location of the data or resources (locations of data may include agency sites, agency real property, infrastructure in state data centers, third-party locations, and in transit between locations);

- Ensure an agency-wide IS program is in place;

- Designate an IS officer to administer the agency's IS program who reports directly to executive leadership;

- Participate in CISO-sponsored statewide cybersecurity program initiatives and services;

- Implement policies and standards to ensure all the agency's data and IT resources are maintained in compliance with applicable state and federal laws, rules, and regulations;

- Implement appropriate cost-effective safeguards to reduce, eliminate, or recover from identified threats to data and IT resources;

- Include all appropriate cybersecurity requirements in the agency's request for proposal specifications for procuring data and IT systems and services;

- Submit a cybersecurity assessment report to the CISO by October 16 of each even-numbered year, including an executive summary of the findings, that assesses the extent to which the agency's systems and devices specified in the Act are vulnerable to unauthorized access or harm and the extent to which electronically stored information is vulnerable to alteration, damage, erasure, or inappropriate use;

- Ensure the agency conducts annual internal assessments of its security programs. Such assessment results are confidential and are not subject to discovery or release to any person or agency outside of the KISO or CISO until

July 1, 2023, unless the provision is reviewed and reenacted by the Legislature prior to that date;

- Prepare a summary of the cybersecurity assessment report, which excludes information that might put data or information resources of the agency or its contractors at risk and submit such report to the House Committee on Government, Technology and Security, or its successor committee, and the Senate Committee on Ways and Means;
- Participate in annual agency leadership training, which serves to ensure understanding of:
  - Information and information systems that support the operations and assets of the agency;
  - Potential impact of common types of cyberattacks and data breaches on the entity's operations and assets, and how such attacks could impact the operations and assets of other governmental entities on the state network;
  - How cyberattacks and data breaches occur;
  - Steps to be undertaken by the executive director or agency head and agency employees to protect their information and information systems; and
  - Annual reporting requirements of the executive director or agency head; and
- Ensure, if an agency owns, licenses, or maintains computerized data that includes personal information, confidential information, or information that is regulated by law regarding its disclosure, it shall, in the event of a breach or suspected breach of system security or an unauthorized exposure of that information, comply with the notification requirements as set by statute and federal law and rules and regulations to the same extent as a person who conducts business in Kansas. The entity head is required to notify the CISO and the Secretary of State (only if the breach involves election data) no later than 48 hours after the discovery of the breach or unauthorized exposure.

Protection of Confidential and Personal Information

The bill allows an executive director or agency head, with input from the CISO, to require employees or contractors whose duties include collection, maintenance, or access to personal information to be fingerprinted and to submit to a state and national criminal history record check at least every five years. The bill allows the information obtained from the background check to be used for purposes of verifying the person in question's identity and fitness to work in a position with access to personal information. Local and state law enforcement shall assist with fingerprinting and background checks pursuant to the Act, and are allowed to charge a fee as reimbursement for expenses incurred.

Any information collected pursuant to the Act (including system information logs, vulnerability reports, risk assessment reports, system security plans, detailed system design

plans, network or system diagrams, and audit reports) is considered confidential by the Executive Branch agency and KISO unless all information has been redacted that specifically identifies a target, vulnerability, or weakness that places the organization at risk. The provisions of this section expire on July 1, 2023, unless reviewed and reenacted by the Legislature.

Cybersecurity Fees

Executive Branch agencies are able to pay for cybersecurity services from existing budgets, from grants or other revenues, or through special assessments to offset costs. Any increase in fees or charges due to the Act, including cybersecurity fees charged by KISO, are to be fixed by rules and regulations adopted by the agency and used only for cybersecurity. The bill allows services or transactions with an applied cybersecurity cost recovery fee to indicate the portion of the fee dedicated to cybersecurity on all receipts and transaction records.

Changes to ITEC

The bill amends the membership of ITEC, as follows:

- Removes the Secretary of Administration;
- Adds language to allow each of the two cabinet agency heads to appoint a designee;
- Increases the number of non-cabinet agency heads from one to two, and allows each to appoint a designee;
- Removes the Director of the Budget;
- Removes the Judicial Administrator of the Kansas Supreme Court;
- Modifies the representation of KBOR from the Executive Director to the Chief Executive Officer, or the Officer's designee;
- Removes the Commissioner of Education;
- Reduces the number of representatives of cities from two to one;
- Reduces the number of representatives of counties from two to one;
- Adds a representative from the private sector who has a background and knowledge in technology and cybersecurity and is not an IT or cybersecurity vendor that does business with the State of Kansas;
- Adds one representative appointed by the Kansas Criminal Justice Information System Committee;

- Adds two members of the Senate Committee on Ways and Means, one appointed by the President of the Senate or the member's designee and the other appointed by the Minority Leader of the Senate or the member's designee; and

- Adds two members of the House Committee on Government, Technology and Security, or its successor committee, one appointed by the Speaker of the House of Representatives or the member's designee and the other appointed by the Minority Leader of the House of Representatives or the member's designee.

The bill clarifies that members cannot appoint an individual to represent them on ITEC unless such individual is specified as a designee pursuant to the bill. The bill also requires ITEC to meet quarterly on call of the Executive Branch CITO, or as provided by continuing law.

STATE FINANCES

State Budget—Omnibus Appropriations; House Sub. for SB 109

House Sub. for SB 109 includes adjusted funding for FY 2018 and FY 2019 for most state agencies and FY 2018 and FY 2019 capital improvement expenditures for a number of state agencies. An overview of the Governor's amended budget recommendations for FY 2018 and FY 2019 and the Conference Committee's adjustments to the Governor's amended recommendations are reflected below.

FY 2018

The approved FY 2018 budget in House Sub. for SB 109 includes expenditures of $16.3 billion, including $6.7 billion from the State General Fund (SGF). The amount is an all funds decrease of $118,118 and an SGF decrease of $8.3 million below the Governor's recommendation in FY 2018. The 2018 Session claims bill was also included in the bill. Adjustments to the Governor's recommendations include:

- Adding $31.1 million, including $40.5 million from the SGF, to fund the spring human services consensus caseload estimate;
- Deleting $6.3 million, including $5.5 million from the SGF, to adopt the spring 2018 education consensus estimates;
- Adding $3.0 million, all from the SGF, for the Medicaid regular medical program for the teaching hospitals associated with the Wichita Center for Graduate Medical Education program;
- Adding $1.0 million, all from the SGF, for the tiny-k Program within the Kansas Department of Health and Environment (KDHE);
- Adding $1.4 million, all from the SGF, for information technology modernization;
- Adding $2.0 million, all from the Motor Vehicle Operating Fund, and transferring $2.0 million from the State Highway Fund to the Motor Vehicle Operating Fund in FY 2018 for expenditures related to the implementation of and production costs for digital license plate conversion and distribution beginning August 2018;
- Adding $1.0 million, all from the Problem Gambling and Addictions Grant Fund, for additional substance abuse treatment services; and
- Adding language to require the Kansas Department for Aging and Disability Services to implement a change to the Medicaid Home and Community Based Services Traumatic Brain Injury (TBI) waiver to allow coverage for individuals with a documented brain injury acquired from a cause not already covered under the waiver, eliminate the requirement that individuals on the waiver must be at least 16 years old, and allow expenditures within existing resources to provide coverage for new individuals on the waiver.

FY 2019

In FY 2019, the bill includes expenditures of $16.8 billion, including $7.0 billion from the SGF. The amount is a decrease of $84.0 million, including $59.3 million from the SGF, below the Governor's recommendation for FY 2019. The bill also reduces SGF revenue by $99.9 million for FY 2019. The bill includes the following adjustments:

- Adding $68.6 million, including $76.9 million from the SGF, to fund the human services consensus caseload estimate for FY 2019;
- Adding $15.0 million, all from the SGF, to restore approximately 64.0 percent of the 4.0 percent remaining FY 2017 allotment to the Board of Regents and to state universities. The 2017 Legislature had previously reviewed the allotment and restored approximately $6.7 million of the original $30.7 million for FY 2019;
- Deleting $114.1 million, including $99.2 million from the SGF, to delete portions of the Governor's recommendation for education for FY 2019. This includes the Governor's proposed *Gannon V* remedy ($113.0 million, including $99.2 million from the SGF); $1.0 million, all from Temporary Assistance for Needy Families, for Parents as Teachers; $105,000, all from the SGF, for career and technical education (CTE) credentialing exams; and the lapse of the $50,000 appropriation for the CTE incentive;
- Adding $82.0 million, all from the SGF, for Kansas Public Employees Retirement System (KPERS)-School, but instead adding language to transfer $82.0 million from the SGF to the KPERS Trust Fund;
- Adding $7.0 million, including $8.4 million from the SGF, to adopt the spring 2018 education consensus estimates;
- Deleting $57.3 million, all from special revenue funds, and adding $57.3 million, all from the SGF, to reduce the State Highway Fund transfers to the Department of Education;
- Adding $5.2 million, all from the Children's Initiatives Fund, for early childhood programs for FY 2019. This includes the Pre-K Pilot ($4.2 million) and Parents as Teachers ($1.0 million);
- Adding language to transfer up to $56.0 million from the SGF to the KPERS Trust Fund in FY 2019 and FY 2020. The amount to be transferred in FY 2019 is the amount that revenue receipts during FY 2018 exceed FY 2018 Consensus Revenue Estimates. The amount to be transferred in FY 2020 is the amount that revenue receipts during FY 2019 exceed FY 2019 Consensus Revenue Estimates;
- Adding $1.4 million, including $146,726 from the SGF, for disaster relief;
- Adding $2.0 million, all from the Motor Vehicle Operating Fund, and adding language to transfer $2.0 million from the State Highway Fund to the Motor

Vehicle Operating Fund for FY 2019 for expenditures related to the implementation of and production costs for digital license plate conversion and distribution;

- Deleting language contained in 2017 Senate Sub. for HB 2002, Section 44(c), to reduce the transfer from the Insurance Department Service Regulation Fund to the SGF by $8.0 million;

- Adding $2.7 million, all from the SGF, for information technology modernization;

- Adding $823,748, including $179,532 from the SGF, for health facilities surveys contractors for FY 2019;

- Adding $1.0 million, all from the SGF, for the tiny-k Program within KDHE;

- Adding $115,000, including $85,000 from the SGF, for 2018 Senate Sub. for HB 2600 (enacted), which contains provisions creating the Palliative Care and Quality of Life Advisory Council and the State Palliative Care Consumer and Professional Information and Education Program within KDHE;

- Adding $22.1 million, including $10.0 million from the SGF, for an increase in nursing facility reimbursement rates;

- Adding $1.0 million, all from the Problem Gambling and Addictions Grant Fund, for additional substance abuse treatment services;

- Adding language to continue the Mental Health Task Force authorized by 2017 Senate Sub. for HB 2002 to meet during the 2018 Legislative Interim to study various mental health topics, including the creation of a strategic plan addressing the recommendations of the 2017 Mental Health Task Force and recommending the number and location of additional psychiatric beds. Two new members will be added to the task force: one individual appointed by the Kansas Association for the Medically Underserved and one individual appointed by the Kansas Hospital Association;

- Adding language requiring the agency to implement a change to the Medicaid Home and Community Based Services TBI waiver to remove requirements concerning age of individuals on the waiver and traumatic onset requirement and allow expenditures within existing resources to provide coverage for new individuals on the waiver;

- Adding $5.5 million, including $3.3 million from the SGF, to increase payments for foster care kinship placements from an average of $3 per day to an average of $10 per day;

- Adding language to transfer $2.8 million from the SGF and $500,000 from the Economic Development Initiatives Fund to the State Water Plan Fund for water-related projects; and

- Adding $27.7 million, including $14.9 million from the SGF, to provide salary adjustments equivalent to two steps on the Statewide Pay Matrix for employees who did not receive a salary adjustment as part of the 2017 Salary Initiatives, one step for employees who received approximately one step on the statewide pay matrix in FY 2018, two steps for uniformed corrections officers, two steps for non-judge employees within the Kansas Judicial Branch, and a 2.0 percent salary adjustment for judges and justices. This adjustment excludes Kansas state legislators, the Board of Regents and Regents institutions, Kansas Highway Patrol officers, employees of the Kansas Bureau of Investigation included in the Recruitment and Retention Plan, and teachers and licensed personnel and employees and the Kansas State School for the Deaf and the Kansas State School for the Blind.

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

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES

House Sub. for SB 109 Conference Profile
(Dollars in Millions)

	Actual FY 2017	Rec. FY 2018	Rec. FY 2019
Beginning Balance	$ 37.1	$ 108.5	$ 447.5
Receipts (November 2017 Consensus)	6,149.5	6,912.1	7,100.1
Governor’s Revenue Adjustments	0.0	1.2	(0.8)
Pooled Money Investment Board Transfer	198.4	118.8	0.0
Legislative Receipt Adjustments	0.0	(1.2)	(100.4)
Adjusted Receipts	6,347.9	7,030.9	6,998.9
Total Available	$ 6,385.0	$ 7,139.4	$ 7,446.4
Less Expenditures	6,276.5	6,691.9	6,993.9
Sub. for SB 423 – Education Bill	0.0	0.0	77.7
Ending Balance	**$ 108.5**	**$ 447.5**	**$ 374.9**
Ending Balance as a % of Expenditures	1.7 %	6.7 %	5.4 %

STATE GOVERNMENT

Transfer Responsibility and Procurement of Audits from Legislative Division of Post Audit to Audited Agencies; Creation of 911 Coordinating Council Audit; SB 260

SB 260 transfers responsibility for procuring independent audits from the Legislative Division of Post Audit (LPA) to the audited agencies, establishes a one-time audit of the 911 Coordinating Council, and prohibits state agencies from contracting with the same vendor to plan and build certain information technology projects. [*Note*: Provisions enacted in 2018 HB 2438 reconcile the effective date of provisions pertaining to the creation of the 911 Coordinating Council Audit included in SB 260.]

Audits

The bill transfers responsibility for four audits currently administered by LPA: the Statewide Single Audit, a financial audit of the Kansas Lottery, a security audit of the Kansas Lottery, and a financial audit of the Kansas Public Employees Retirement System (KPERS). LPA currently is responsible for administering the audit contracts, but the agencies are responsible for the costs. Agencies are billed by LPA, which collects the funds and pays the contracted auditing firms for their services.

Statewide Single Audit

The bill transfers responsibility for procuring and administering the Statewide Single Audit from LPA to the Department of Administration (DoA). The Statewide Single Audit includes four statutorily required audits:

- An annual audit of the State's consolidated annual financial report;
- An annual audit of the State's compliance with federal requirements (known as the federal single audit);
- A biennial examination of financial management practices at the State Treasurer's Office; and
- A biennial examination of financial management practices at the Pooled Money Investment Board.

In addition, the audit includes two audits that are not statutorily required: annual financial audits of the Department of Transportation and audits of two state revolving loan funds administered by the Department of Health and Environment.

The bill creates the Department of Administration Contract Audit Committee to select a firm to conduct the audit. This committee consists of persons appointed by the following individuals: the Secretary of Administration, the Director of Accounts and Reports, the Post Auditor, the State Treasurer, and the Director of the Budget.

The bill allows the DoA to charge state agencies for audit expenses that are above regular DoA operating costs. Moneys received from agencies are deposited into the Department of Administration Audit Services Fund, which is created by the bill.

Kansas Lottery Financial and Security Audits

The bill creates the Kansas Lottery Audit Contract Committee to select a firm to conduct the required audits. This committee consists of persons appointed by the following individuals: the Executive Director of the Kansas Lottery, the Chairperson of the Kansas Lottery Commission, and the Post Auditor.

KPERS Financial Audit

The bill requires the KPERS Board of Trustees to select a firm to perform the audit. In addition, the bill requires LPA to conduct a performance audit of KPERS at least once every three years.

Creation of the 911 Coordinating Council Audit

The bill creates a one-time audit of the budget and expenditures of the 911 Coordinating Council (Council) to be conducted by LPA on or before December 31, 2018. LPA is required to examine the following:

- Annual expenses and financial needs, including personnel;
- Total annual operating expenses included in the 2.5 percent cap on expenditures;
- Current and project contractual expenses;
- Expenditures and distribution of moneys from the 911 State Grant Fund; and
- Whether the moneys expended by the Council are being used pursuant to the Kansas 911 Act.

The auditor conducting the audit is required to compute the anticipated costs of the audit, subject to review and approval by the Contract Audit Committee. Once approved, LPA will be reimbursed from the 911 State Grant Fund.

The bill requires the audit report to be submitted to the Council; the House Committee on Energy, Utilities and Telecommunications; and the Senate Committee on Utilities.

Information Technology Contracting Requirements

The bill prohibits state agencies from contracting with a vendor on an information technology project if that vendor prepared or assisted with:

- The preparation of the program statement;
- The project planning documents; or
- Any other project plans prepared prior to approval of the project by the Chief Information Technology Officer (CITO) of the relevant branch of government.

Information technology projects with estimated cumulative costs of less than $5.0 million are exempted from the provisions of the bill. Additionally, the provisions of the bill could be waived with written permission from the CITO.

Effective Date

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

State Agency Duties—Docket Fees, Marriage Licenses, Regulation of Scrap Metal, Crime Victims Compensation Board, and Appointment of an Appraiser; SB 261

SB 261 amends provisions concerning state agency duties regarding docket fees, marriage licenses, the regulation of scrap metal, the Crime Victims Compensation Board, and transfer of the duty to appoint an appraiser.

Docket Fees

The bill amends the statute governing disposition of docket fees to extend from June 30, 2019, until June 30, 2021, the period during which the State Treasurer shall deposit and credit the first $3.1 million to the Electronic Filing and Management Fund (Fund). Beginning with the fiscal year ending June 30, 2022, the bill increases from $1.0 million to $1.5 million the amount the State Treasurer is directed to deposit and credit to the Fund in subsequent years.

Marriage Licenses

The bill replaces the requirement that the judge or clerk of a district court record the marriage on the court's marriage record and forward the license, marriage certificate, names of the parties, and name and address of the officiant to the Secretary of Health and Environment (Secretary) with a requirement that the judge or clerk submit the information from the license to the vital statistics integrated information system maintained by the Secretary, or by other means as designated by the Secretary and the Judicial Administrator. The bill removes a requirement that the judge or clerk notify the Secretary if no marriage license has been issued during a month.

Scrap Metal Theft Reduction Act

The bill delays or makes unenforceable certain provisions of the Scrap Metal Theft Reduction Act (Act) until January 1, 2020. The following provisions are delayed by the bill:

- A requirement the Attorney General establish a central database for the Act and certain actions required of scrap metal dealers related to registering for the database;
- The ability for the Attorney General, upon a finding that a scrap metal dealer has violated any provision of the Act, to impose a civil penalty not less than $100 nor more than $5,000;
- The requirements that a scrap metal dealer obtain a copy of an identification card of a seller of scrap metal and a photograph of the item or items being sold; and
- A prohibition on certain actions related to the purchasing and disposing of scrap metal.

These provisions had been delayed until January 1, 2019.

The bill requires the Attorney General to report to the President of the Senate, Speaker of the House of Representatives, and standing judiciary committees on or before February 1, 2019, on the progress achieved in establishing the required database.

Crime Victims Compensation Board

The bill amends law governing awards from the Crime Victims Compensation Board. Specifically, the bill amends the definition of "collateral source" to specify it means the "net financial benefit" received by a victim or claimant from various sources and excludes taxes, legal fees, costs, expenses of litigation, liens, offsets, credits, or other deductions from the benefit received. The definition is also amended to include "damages awarded in a tort action" received by or readily available to the victim or claimant.

Transfer of the Duty to Appoint an Appraiser

The bill amends law requiring an appraisal prior to the State purchasing or disposing of any real property. The bill transfers the duty to appoint a disinterested appraiser from the Judicial Administrator to the Director of Property Valuation, the head of the Department of Revenue's Division of Property Valuation. Similarly, if the county assessment value of the real property is more than $200,000, the bill allows the Director of Property Valuation, rather than the Judicial Administrator, to appoint three disinterested appraisers.

Repealer; Monumental Surcharge; Department of Administration Audits and Contracts; Senate Sub. for HB 2129

Senate Sub. for HB 2129 permits the Secretary of Administration (Secretary) to approve a new lease or renew or extend an existing lease without an energy audit being performed if the Secretary determines an energy audit is not economically feasible. The Secretary must inform the Joint Committee on State Building Construction in writing of any such determination when it is made.

The bill also exempts the Legislative Division of Post Audit from paying the Monumental Building Surcharge assessed by the Department of Administration for maintenance of the Capitol Complex.

The bill further removes the requirement that state agency contracts or leases extending for a period longer than one year be filed with the Director of Accounts and Reports. The bill removes the requirement that contracts subject to approval by the Attorney General be countersigned by the Director of Accounts and Reports. Finally, the bill removes the requirement that orders or requisitions for contractual services be made on a prescribed form unless a purchase order is required for each contracted payment.

Rules and Regulations Filing Act; State Rules and Regulations Board; Joint Committee on Administrative Rules and Regulations; HB 2280

HB 2280 revises the Rules and Regulations Filing Act pertaining to economic impact statements, new authority granted to the Director of the Budget (Director) to review and approve proposed rules and regulations, the composition of the State Rules and Regulations Board (State Board), the composition and powers of the Joint Committee on Administrative Rules and Regulations (Joint Committee), and an evaluation that will be conducted by the Legislative Division of Post Audit regarding the implementation of the new provisions contained in the bill.

Economic Impact Statements

The bill revises the contents of the economic impact statement that accompanies a state agency's proposed rule and regulation or, if applicable, the proposed amendment to a current rule and regulation. Currently, an economic impact statement includes a description of:

- The proposed rule and regulation;
- The extent to which the proposed rule and regulation is required by federal law;
- The cost, including the government agencies and other persons who will bear the expense; and
- The less intrusive or less costly methods to achieve the same end and the reasons for rejecting those methods.

The bill deletes references to the descriptions of cost and alternative means and requires instead an economic impact statement to include quantified cost-benefit analyses that will be performed by the state agency and the Director. If a state agency's proposed rule and regulation chose to address a policy issue differently than what an agency of a neighboring state or the federal government adopted, the state agency will be required to include an explanation as to why the Kansas policy differs.

The economic impact statement will include an analysis that addresses the following factors:

- The extent to which the rule and regulation will enhance or restrict business activities and growth;
- The economic effect on the Kansas economy, including specific businesses, business sectors, public utility ratepayers, individuals, and local units of government;
- The businesses that will be affected directly;
- The benefits compared to the cost;
- Measures taken by the agency to minimize the cost and impact on businesses and economic development within the state, local units of government, and individuals;
- An estimate of the total annual implementation and compliance costs, which will be expressed as a single dollar amount, that will be expected to be absorbed by businesses, local units of government, or members of the public, and which will include an agency determination of whether these costs will exceed $3.0 million over a two-year period; and
- An estimate of the total implementation and compliance costs, which will be expressed as a single dollar amount, that will be expected to be absorbed by businesses, local units of government, and individuals.

In addition, the bill requires state agencies to consult and solicit information from businesses, business associations, local governmental units, state agencies or institutions, and members of the public who may be affected by the proposed rules and regulations or who may provide relevant information.

Approval Process by the Director of the Budget

Prior to an agency submitting a proposed rule and regulation to the Secretary of Administration (Secretary) and the Attorney General, as required by law, the agency will send the proposed rule and regulation to the Director, who will conduct an independent analysis, using the factors specified above, to determine whether the costs incurred by non-state government entities will be $3.0 million or less over a two-year period. The Director will approve the proposed rule and regulation for submission to the Secretary and Attorney General if it is determined the impact will be less than or equal to $3.0 million. If the impact exceeds $3.0 million, the Director may either disapprove the proposed rule and regulation or approve it, provided the agency conducted a public hearing prior to submitting the proposed rule and regulation and found the costs have been accurately determined and will be necessary for achieving legislative intent.

Starting with the 2019 Legislative Session, the Director will submit an annual report to the Legislature and the Joint Committee that will include the text of each rule and regulation reviewed, the final economic impact statement, and a summary of the analysis supporting the Director’s decision. If the Legislature is in session, the Director will submit a separate report to

the Legislature and the Joint Committee regarding the Director's decision involving a proposed rule and regulation determined to cost more than $3.0 million over a two-year period.

Composition of the State Rules and Regulations Board

The bill amends statutes governing the appointment of members to the State Board. The bill adds a member of the minority party to the membership of the State Board, along with the chairperson of the Senate Committee on Ways and Means (in even-numbered years) or the chairperson of the House Committee on Appropriations (in odd-numbered years). Under the provisions of the bill, the new minority party member of the State Board will be either the ranking minority member of the Joint Committee or a member of the Joint Committee appointed by the minority leader of the same legislative chamber as the Joint Committee chairperson.

Composition and Powers of the Joint Committee on Administrative Rules and Regulations

A ranking minority member will be designated for the Joint Committee by the minority leader of the Senate or House, as will be applicable, so that the chairperson and the ranking minority member will be from the same chamber. Following each of its meetings where comments, recommendations, and concerns are expressed while reviewing proposed rules and regulations, the Joint Committee will issue a report to the Legislature. The report will be made available to each agency that had proposed rules and regulations. If it will be impractical to finalize a report in time for an agency's public hearing on the proposed rules and regulations, a preliminary report will be made available to the agency. In that case, the preliminary report will be made part of the final report, and it will be made available to each agency.

Evaluation

In 2021, the Legislative Post Audit Committee will direct the Legislative Division of Post Audit to conduct an audit that studies:

- The accuracy of economic impact statements submitted by state agencies for the preceding seven years;
- The impact the Director's review has had on the accuracy of economic impact statements; and
- Whether the $3.0 million threshold is the appropriate level to trigger an additional public hearing.

Effective Date

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

One-time Audit of the 911 Coordinating Council; HB 2438

HB 2438 creates a one-time audit of the budget and expenditures of the 911 Coordinating Council (Council) to be conducted by the Legislative Division of Post Audit (LPA) on or before December 31, 2018.

LPA is required to examine the following:

- Annual expenses and financial needs, including personnel;
- Total annual operating expenses included in the 2.5 percent cap on expenditures;
- Current and projected contractual expenses;
- Expenditures and distribution of moneys from the 911 State Grant Fund; and
- Whether the moneys expended by the Council are being used pursuant to the Kansas 911 Act.

The Post Auditor conducting the audit is required to compute the anticipated costs of the audit, subject to review and approval by the Contract Audit Committee. Once approved, LPA is reimbursed from the 911 State Grant Fund.

The bill requires the audit report to be submitted to the Council; the House Committee on Energy, Utilities and Telecommunications; and the Senate Committee on Utilities.

Repealer. The bill repeals KSA 12-5377 (the statute whose provisions are amended as described above), as amended by SB 260.

Effective date. The bill is effective upon publication in the *Kansas Register.* [*Note:* The audit provisions of this bill are identical to those of SB 260 except for the effective date.]

TAXATION

Appraisal Management Company Registration Act; SB 419

SB 419 makes several changes to the Kansas Appraisal Management Company Registration Act.

The bill prohibits individuals with appraisal credentials who have been refused, denied, suspended, revoked, surrendered, or non-renewed in lieu of a pending disciplinary proceeding in any jurisdiction from owning an interest in an appraisal management company. Prior law had allowed such persons to own up to 10 percent of such companies.

The bill authorizes the Kansas Real Estate Appraisal Board (Board) to transmit information and any disciplinary action taken on appraisal management companies to the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

The bill clarifies the Board has the authority to collect and remit national registry fees for certain appraisal management companies operating in Kansas that are otherwise exempt from state-specific registration requirements (as authorized in KSA 2017 Supp. 58-4705).

Finally, the bill removes an initial 30-day window that appraisal management companies had under prior law to remove appraisers from their panels without written notification.

Taxation; Savings Accounts; HB 2067

HB 2067 amends Kansas law related to savings accounts established for designated beneficiaries to pay for qualified disability expenses pursuant to sections 529 and 529A of the Internal Revenue Code of 1986.

The bill allows the proceeds from such an account established pursuant to section 529A to be transferred upon the death of a designated beneficiary to such beneficiary's estate or an account for another eligible individual specified by the designated beneficiary. The bill also disallows the State, or any agency or instrumentality thereof, from seeking the proceeds from such an account, except when such action is otherwise required by the federal Social Security Act. Current law allows the Kansas Medicaid plan to seek such proceeds following the death of a beneficiary for benefits provided to the beneficiary.

The bill also extends a subtraction modification for purposes of Kansas individual income taxes to contributions made to a qualified savings account established pursuant to section 529A. Current law allows for such modifications for contributions to savings accounts established pursuant to section 529. The cumulative amount of the subtraction modification remains at $3,000 (or $6,000 for a married couple filing a joint return) per year for each designated beneficiary.

Finally, the bill eliminates a requirement that expenditures made from a savings account established pursuant to section 529 must be used at an institution of postsecondary education in order for a taxpayer making contributions to such an account to be able to claim the subtraction modification.

Motor Vehicle Rebate Sales Tax Exclusion; HB 2111

HB 2111 excludes the amount of any cash rebate granted by a manufacturer to a purchaser or lessee of a new motor vehicle from the sales price of the motor vehicle for purposes of calculating the sales tax liability on the purchase of the motor vehicle. Current law includes the value of a rebate for purposes of calculating sales tax liability. The bill requires the rebate to be paid directly to the retailer as a result of the original sale.

This exclusion takes effect July 1, 2018, and sunsets June 30, 2021.

Automated Sales Suppression Devices; HB 2488

HB 2488 creates the crime of knowingly selling, purchasing, installing, transferring, manufacturing, creating, designing, updating, repairing, using, or possessing automated sales suppression devices or phantom-ware.

The bill defines an “automated sales suppression device” to include a computer software program carried on a memory stick or removable compact disc that is accessed through an Internet link or any other means that falsifies electronic records of electronic cash registers and other point-of-sale systems. “Phantom-ware” is generally defined as a hidden programming option embedded in the operating system or hardwired into an electronic cash register that is used to create a virtual second till or eliminate or manipulate selected transaction records.

An unlawful act under the bill is considered a severity level 7 nonperson felony. The bill also clarifies that persons convicted under the law are liable for all taxes, interest, and penalties due as a result of such unlawful acts.

TRANSPORTATION AND MOTOR VEHICLES

Regulating Traffic—Passing Waste Collection Vehicles, Length and Weight Limits, Improper Passing of a School Bus, Golf Cart Operation; Sub. for SB 272

Sub. for SB 272 amends the Uniform Act Regulating Traffic on Highways (Uniform Act) regarding passing of waste collection vehicles, length and weight limits for certain vehicles, the fine for improper passing of a school bus, and operation of golf carts on city streets.

Move Over for Waste Collection Vehicles

The bill adds a new section to the Uniform Act that requires drivers of motor vehicles to take certain actions when approaching a stationary waste collection vehicle obviously and actually engaged in waste collection and displaying hazard warning signal lamps as required by KSA 8-1722. [*Note:* KSA 8-1722 requires every vehicle designed and used for collection of waste to be equipped with simultaneously flashing amber lights and to use those lights when collecting or transporting waste and traveling at 15 miles per hour or less.]

The bill requires a driver of a motor vehicle approaching a stationary waste collection vehicle to proceed with due caution and take one of two actions:

- Move into a lane not adjacent to that of the stationary waste collection vehicle, if the highway consists of at least two lanes in the same direction of travel as the driver's motor vehicle and road, weather, and traffic conditions permit; or

- Reduce the speed of the vehicle and maintain a safe speed for the road, weather, and traffic conditions.

[*Note:* These actions are the same as those required in KSA 2017 Supp. 8-1531 when the driver of a motor vehicle approaches an authorized road construction vehicle.]

The bill defines "waste collection vehicle" as a vehicle specifically designed, equipped, and used exclusively for garbage, refuse, recycling, or solid waste collection or disposal operations.

The bill requires a law enforcement officer to issue a warning citation prior to July 1, 2019, for the unlawful passing of a waste collection vehicle and establishes a fine of $45 for such violation.

The bill specifies the section added shall not operate to relieve the driver of a waste collection vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Fine for Improper Passing of a School Bus

The bill increases the fine for improper passing of a school bus for any subsequent violation within five years to $750 for a second violation and to $1,000 for a third or subsequent violation. The fine in continuing law for improper passing of a school bus is $315.

Length and Weight Limits

The bill adds specified exemptions to limits on vehicle weights and lengths for certain vehicles.

Vehicle Weight

The bill authorizes the operation of an emergency vehicle at a gross weight not exceeding 86,000 pounds and subject to maximum weights on axles of 24,000 pounds on a single steering axle, 33,500 pounds on a single drive axle, 62,000 pounds on a tandem axle, and 52,000 pounds on a tandem rear drive steering axle. The bill defines "emergency vehicle" for this purpose as a vehicle designed to be used under emergency conditions to transport personnel and equipment and to support the suppression of fires and mitigation of other hazardous situations.

Vehicle Length

The bill adds an exemption from limits on the lengths of vehicles and vehicle combinations operated on Kansas public roads to allow a towaway trailer transporter combination not exceeding 82 feet in length. The bill defines a "towaway trailer transporter combination" as a trailer transporter towing unit and 2 trailers or semitrailers with a total weight not exceeding 26,000 pounds; the bill requires the trailers carry no property and constitute inventory property of a trailer manufacturer, distributor, or dealer. The bill defines a "trailer transporting towing unit" as a power unit not used to carry property when operating in this combination.

Golf Carts Operated at Night

The bill authorizes operation of a golf cart on any public street or highway between sunset and sunrise if the golf cart is equipped with lights as required by law for motorcycles and with a properly mounted slow-moving vehicle emblem as required by KSA 8-1717. [*Note:* Requirements for lights on motorcycles, in KSA 8-1801 *et seq.*, include head lamps of a certain intensity and tail lamps. A slow-moving vehicle emblem is defined in KSA 8-1717; it must be mounted on the rear of the vehicle, in or near the center, between two and ten feet above the ground.]

Continuing law prohibits operation of golf carts on any interstate, federal, or state highway; on any public highway or street within a city unless authorized by that city; and on any street or highway with a posted speed limit exceeding 30 miles per hour.

Trooper and Law Enforcement Officer Memorial Highways; SB 375

SB 375 designates portions of highways in Kansas as memorial highways in honor of Kansas Highway Patrol (KHP) officers and a Johnson County deputy sheriff killed in the line of duty, amends several current designations, and adds law to state a commemorative sign shall include certain information about rank or title.

The additions and changes to designations are as follows:

- Master Trooper Larry L. Huff Memorial Highway, K-15 from the southern city limits of Clay Center south to K-82; this portion is removed from the Eisenhower Memorial Highway;

- Trooper Conroy G. O'Brien Memorial Highway, US-50 from K-61 southwest of Hutchinson to the northwestern city limits of Sylvia; this portion is removed from the Turkey Wheat Trail Highway;

- Trooper Jimmie Jacobs Memorial Highway, US-54 from the western city limits of Meade west to the eastern city limits of Plains; this portion is removed from designation as The Yellow Brick Road;

- Trooper Ferdinand "Bud" Pribbenow Memorial Highway, K-96 from its western junction with I-235 northwest to the eastern city limits of Mount Hope; this portion is removed from the State Fair Freeway;

- Master Trooper Dean A. Goodheart Memorial Highway, US-83 from I-70 north to US-24; this portion is removed from the Veterans of Foreign Wars Memorial Highway;

- Trooper John McMurray Memorial Highway, K-18 from I-70 northeast to the western city limits of Manhattan; this portion is removed from the 75th Division of the United States Army Highway;

- Trooper Maurice R. Plummer Memorial Highway, US-24 from US-59 north to Williamstown, then southeast to US-40 north of Lawrence;

- Lieutenant Bernard C. Hill Memorial Highway, US-59 from US-56 north to the southern city limits of Lawrence;

- Trooper James D. Thornton Memorial Highway, US-81 from US-166 north to the Sedgwick County line; and

- Master Deputy Brandon Collins Memorial Highway, US-69 in Johnson County from 167th Street to 215th Street.

The bill also changes the designation on US-75 from the northern border of Woodson County south to the northern city limits of Yates Center from the Eldon K Miller Memorial Highway to the Sergeant Eldon K Miller Memorial Highway.

The bill requires the Secretary of Transportation (Secretary) to place signs along the highway rights-of-way to indicate the designations. The bill exempts the designations for KHP officers from requirements the Secretary receive sufficient moneys from gifts and donations to reimburse the Secretary for the cost of placing such signs plus 50.0 percent before such signs are placed.

Rank or title on signs. The bill adds to law a requirement that any sign that commemoratively designates a highway, bridge, interchange, or trail in honor of an individual

shall include, if applicable, the individual's rank if a current or former member of law enforcement, the U.S. military, or the National Guard or the individual's title if a current or former holder of an elected office or member of an elected body.

Joint Legislative Transportation Vision Task Force; House Sub. for SB 391

House Sub. for SB 391 establishes the Joint Legislative Transportation Vision Task Force (Task Force). Its provisions expire June 30, 2019.

Membership

The Task Force includes certain persons by virtue of office and appointees of certain officials.

The Task Force will include these legislative officials:

- The chairperson and ranking minority member of the House Committee on Transportation;
- The chairperson of the House Committee on Transportation and Public Safety Budget;
- The chairperson of the House Committee on Appropriations, or the chairperson's designee from the House Committee on Appropriations;
- The chairperson and ranking minority member of the Senate Committee on Transportation;
- The chairperson of the Senate Committee on Ways and Means Subcommittee on Transportation; and
- The chairperson of the Senate Committee on Ways and Means, or the chairperson's designee from the Senate Committee on Ways and Means.

The following officials will appoint Task Force members, as listed below:

- Speaker of the House of Representatives (House):
  - One member of the House;
  - Four Kansas residents;
- President of the Senate:
  - One member of the Senate;
  - Four Kansas residents;
- Minority Leader of the House:

  - One member of the House;
  - Two Kansas residents;

- Minority Leader of the Senate:
  - One member of the Senate;
  - Two Kansas residents;

These entities each will appoint members, as listed below:

- Kansas Economic Lifelines will appoint three Kansas residents;

- The League of Kansas Municipalities will appoint two city representatives, one from a city with a population exceeding 25,000 and one from a city with a population less than or equal to 25,000; and

- The Kansas Association of Counties will appoint two county commissioners, one from a county with a population exceeding 40,000 and one from a county with a population less than or equal to 40,000.

In addition, the following *ex officio* members will be nonvoting members of the Task Force:

- Secretary of Transportation, or the Secretary's designee;

- Secretary of Revenue, or the Secretary's designee;

- Secretary of Agriculture, or the Secretary's designee; and

- Chief Executive Officer of the Kansas Turnpike Authority, or the Officer's designee.

The bill requires appointed members who are not legislators to be affiliated with one of the stakeholder organizations listed below, except for two members appointed by the Speaker of the House and two members appointed by the President of the Senate. Not more than two members may be appointed from each of those organizations:

- The Kansas Contractors Association;

- The Heavy Constructors Association;

- The Kansas Aggregate Producers' Association;

- The Kansas Ready Mix Association;

- The Greater Kansas City Building and Construction Trades Council;

- The American Council of Engineering Companies of Kansas;
- The Kansas Public Transit Association;
- A class I railroad company;
- A short line railroad company;
- The Kansas Motor Carriers Association;
- The Portland Cement Association;
- The Petroleum Marketers and Convenience Store Association of Kansas;
- The Kansas Asphalt Pavement Association;
- The International Association of Sheet Metal, Air, Rail and Transportation Workers;
- A Kansas aerospace company;
- The Kansas Grain and Feed Association;
- The Kansas Economic Development Alliance; or
- The AFL-CIO.

The bill requires members of the Task Force be appointed no later than 45 days from the effective date of the bill (upon publication in the *Kansas Register*). The bill requires all members to be residents of Kansas. The bill also requires at least two members from all six Kansas Department of Transportation (KDOT) districts.

Co-chairpersons, Meetings, and Quorum

The Speaker of the House will select a representative and the President of the Senate will select a senator to serve as co-chairpersons of the Task Force.

The bill authorizes the Task Force to meet in an open meeting at any time upon the call of either co-chairperson of the Task Force.

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

Filing of Vacancies; Designees

The bill requires any vacancy on the Task Force be filled by appointment in the manner prescribed for the original appointment.

Any member appointed to the Task Force or a subcommittee who is a member of the House or Senate may designate another member of the respective chamber to attend any or all meetings of the Task Force or a subcommittee as the member's designee.

Subcommittees

The bill authorizes the co-chairpersons to establish any subcommittees as the co-chairpersons deem necessary and for those subcommittees to meet on dates and locations approved by the Task Force co-chairpersons.

Duties of the Task Force

The bill states the Task Force has the following mission:

- Evaluate the progress of the 2010 Transportation Works for Kansas program to date;
- Evaluate the current system condition of the state transportation system, including roads and bridges;
- Solicit local input on uncompleted and future projects; the bill requires the co-chairpersons to schedule and organize open meetings for this purpose to be held at least eight times, including one in each KDOT district and in the Wichita and Kansas City metropolitan areas;
- Evaluate current uses of State Highway Fund dollars, including fund transfers for other purposes outside of infrastructure improvements;
- Evaluate current transportation funding in Kansas to determine whether it is sufficient to not only maintain the transportation system in its current state, but also to ensure it serves the future transportation needs of Kansas residents;
- Identify additional necessary transportation projects, especially projects with a direct effect on the economic health of Kansas and its residents;
- Make recommendations regarding the needs of the transportation system over the next ten years and beyond; and
- Make recommendations on the future structure of the State Highway Fund as it relates to maintaining the state infrastructure system.

Reports to the Legislature

The bill requires the Task Force to make and submit reports to the Legislature by January 31, 2019, concerning all such work and recommendations of the Task Force.

Support Services and Compensation

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

KDOT will be required, upon request by the Task Force, to provide data and information relating to the transportation system in Kansas that is not otherwise prohibited or restricted from disclosure by state or federal law.

Subject to approval by the Legislative Coordinating Council, legislative Task Force members will be paid as specified in KSA 75-3223(e).

Effective Date

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

Township and County Responsibilities for Traffic Control Devices; Highway Improvement Funds; HB 2511

HB 2511 amends the Uniform Act Regulating Traffic on Highways (Act) as it relates to the powers of local authorities and responsibilities for traffic-control devices and signage. It also amends law regarding a special highway improvement fund.

Responsibility for Traffic-control Devices and Signage

County-township System

In all counties operating under the county-township system, the county will be responsible for maintaining county roads and for placing and maintaining traffic-control devices. The county will also be responsible for:

- Signs related to county culverts and county bridges on township roads; and
- Construction signage related to county projects on township roads.

A township board will be responsible for maintaining the local township roads and for placing and maintaining traffic-control devices on such township roads, except those listed above as being under the control of the board of county commissioners. The bill requires regulatory signs on township roads under the township board’s control to be consistent with resolutions of the board of county commissioners of the county where the road is located.

Under current law, the provisions above apply only to townships located in five specified counties (Douglas, Johnson, Riley, Sedgwick, and Shawnee).

County Unit Road System

In all counties operating under the county unit road system, the bill places the following responsibilities for traffic-control devices and signage:

- Counties are to maintain the county roads and township roads and to place and maintain all traffic-control devices on such roads; and
- Township boards will not be responsible for roads or signage.

General County Rural Highway System

In all counties operating under the general county rural highway system, the bill places responsibilities for traffic-control devices and signage as follows:

- Counties are to maintain the county roads and township roads and place and maintain all traffic devices on such roads in accordance with continuing law; and
- Township boards will not be responsible for roads or signage.

Roads and Bridges

The bill amends a section of law related to roads and bridges to reference the responsibilities of township boards as outlined in the amendments to the Act in the bill.

Current law requires township boards in all counties not operating under the county road-unit system to be responsible for all township roads and culverts and the board of county commissioners to procure machinery, implements, tools, and materials required for the construction or repair of such roads and culverts.

The bill clarifies that township boards in counties operating under the county-township system (as opposed to those not operating under the county road unit system, as in current law) will be responsible for providing such machinery, tools, and materials. The bill also requires the township board to place and maintain all traffic-control devices for township roads.

Special Highway Improvement Fund for Townships

The bill adds “township” to the definition of “municipality” and adds “township board” to the definition of “governing body” to allow a township, as well as a city or county as in current law, to transfer funds into a special highway improvement fund. Under continuing law, moneys in such a fund are dedicated for construction or reconstruction of highways, bridges, roads, and streets and for necessary incidental facilities.

UNIFORM LAWS

Uniform Arbitration Act; Mediation or Arbitration of Trust Instruments; HB 2571

HB 2571 repeals the current Uniform Arbitration Act (UAA) and replaces it with the Uniform Arbitration Act of 2000 (or Revised Uniform Arbitration Act [RUAA]). The bill also enacts law relating to arbitration or mediation of trust instruments in the Uniform Trust Code.

Uniform Arbitration Act

[*Note:* Some provisions of the RUAA are substantially similar to those of the UAA, although they may have been restructured. Such provisions are noted throughout this summary, and headings containing only provisions that are substantially similar to those currently in the UAA are denoted with a "**".]

Definitions

The RUAA defines "arbitration organization," "arbitrator," "court," "knowledge," "person," and "record." (The UAA defines only "court.")

Notice

The RUAA outlines notice requirements, including taking action reasonably necessary to inform another person in ordinary course, regardless of the other person acquiring knowledge, actual notice, and receipt of notice.

Applicability

The RUAA only applies to arbitration agreements made on or after July 1, 2018. It does not apply to actions or proceedings commenced or rights accrued before that date. The UAA continues to govern arbitration agreements made before that date unless all parties to the agreement or proceeding agree in the record that the RUAA should apply.

Waiver

A party may waive or the parties may vary the effect of the requirements of the RUAA, except with regard to applicability, motions to enforce an arbitration agreement, immunity, pre-award ruling, various court rulings and procedures, uniformity, and electronic signature compliance.

Additionally, before a controversy arises subject to an arbitration agreement, a party may not waive or agree to vary the effect of the requirements of provisions regarding judicial relief, enforceability, provisional remedies, subpoenas, depositions, court jurisdiction, or appeal; agree to unreasonably restrict the right to notice of the initiation of a proceeding or disclosure of facts by a neutral arbitrator; or waive the right to representation by a lawyer, except for employers and labor organizations in a labor arbitration.

*Judicial Relief and Notice***

The RUAA requires application for judicial relief be made by motion and heard in the manner provided by law or rule of court. Notice of an initial motion is to be served in the manner for service of summons in a civil action (unless a civil action involving the arbitration agreement is pending), and subsequent motions are to be served in the manner provided for serving motions in pending cases. (The UAA contains a substantially similar provision.)

Agreement and Enforceability

The RUAA provides that an agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties is valid, enforceable, and irrevocable, except upon a ground that exists in law or equity for the revocation of a contract. (The UAA contains a substantially similar provision.)

A court decides whether an agreement exists or a controversy is subject to an agreement, an arbitrator decides whether a condition precedent has been fulfilled and whether a contract containing a valid agreement is enforceable, and an arbitration proceeding may continue pending final resolution by a court of a challenge to the existence of or whether a controversy is subject to an agreement.

*Motion to Enforce Arbitration Agreement***

The RUAA provides that a person may file a motion showing an arbitration agreement and alleging that another person refuses to arbitrate under the agreement. If the refusing party does not appear or does not oppose the motion, the court is required to order arbitration. If the refusing party opposes the motion, the court is required to summarily decide the issue and order arbitration unless it finds no enforceable arbitration agreement.

A person may file a motion alleging an arbitration has been initiated or threatened without an arbitration agreement. A court is required to summarily decide this issue and order the parties to arbitrate if it finds there is an enforceable agreement. A court may not order arbitration if it finds there is no enforceable agreement.

The court is not allowed to refuse to order arbitration because the claim lacks merit or grounds for the claim have not been established.

The above motions have to be made in the court in which a proceeding involving a claim referable to arbitration under an alleged arbitration agreement is pending, if such exists. Otherwise, the motion may be made in any court allowable under the venue provisions of the RUAA.

If a party moves the court to order arbitration, the court is required to stay any judicial proceeding involving a claim alleged to be subject to the arbitration until the court decides the motion.

If the court orders arbitration, the court is required to stay a judicial proceeding involving a claim subject to the arbitration. If the claim is severable, the court may limit the stay to that claim. (The UAA contains substantially similar provisions.)

Provisional Remedies

Before an arbitrator is appointed and is authorized and able to act, the court, upon motion by a party and good cause shown, is able to enter an order for provisional remedies as it is under a civil action. After appointment of an arbitrator, the arbitrator is allowed to issue orders for provisional remedies as it is under a civil action, and a party is allowed to move the court for a provisional remedy only if urgent and the arbitrator cannot act timely, or the arbitrator cannot provide an adequate remedy. Right to arbitration may not be waived by a party making a motion for provisional remedies.

Initiation of Arbitration

The RUAA specifies the notice required to initiate an arbitration proceeding. Appearance at the arbitration hearing waives any objection to lack of or insufficiency of notice unless an objection is raised before the beginning of the hearing.

Consolidation of Arbitration Proceedings

Unless the agreement prohibits consolidation, a court is allowed to consolidate separate arbitration proceedings (or specific claims within separate proceedings), upon motion of a party, if:

- The agreements or proceedings are between the same persons or one of them is a party to a separate agreement or proceeding with a third person;
- The claims subject to the agreements arise in substantial part from the same transaction or transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions; and
- Prejudice from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

Appointment of Arbitrator

The RUAA requires the agreed method of appointment of an arbitrator to be followed, unless it fails. If there is no agreement, the agreed method fails, or the appointed arbitrator fails, the court, upon motion of a party, appoints the arbitrator, and such arbitrator has the powers of an arbitrator designated in the agreement or appointed pursuant to the agreed method. (The UAA contains a substantially similar provision.)

An individual with an interest in the arbitration outcome or a relationship with a party may not serve as a neutral arbitrator.

Disclosures by Arbitrator

The RUAA requires an individual requested to serve as an arbitrator to disclose any known facts that a reasonable person would consider likely to affect impartiality, including financial or personal interest in the arbitration outcome or existing or past relationships with certain persons involved in the arbitration. An arbitrator has a continuing obligation to disclose such facts, and the RUAA includes procedures for objection and vacating of awards based on the existence of or failure to disclose such facts.

*Majority Required***

Where there are multiple arbitrators, the RUAA requires all arbitrators to conduct the arbitration hearing and a majority to exercise the powers of an arbitrator. (The UAA contains substantially similar provisions.)

Immunity

The RUAA provides the same immunity for an arbitration organization as that of a judge of a Kansas court acting in a judicial capacity. Such immunity is not lost due to an arbitrator's failure to make disclosures required under the RUAA.

An arbitrator or arbitration organization is not competent to testify and may not be required to produce records in a judicial, administrative, or similar proceeding to the same extent as a Kansas judge, except as necessary to determine the claim of an arbitrator or arbitration organization against a party to the arbitration proceeding, or on a hearing to vacate an award based on arbitrator misconduct, corruption, or fraud, if a *prima facie* ground exists.

An arbitrator, arbitration organization, or representative of such organization is entitled to attorney fees and other reasonable expenses of litigation in a civil action against them, arising from their services, if a person seeks to compel testimony or production of records from them and the court determines they are immune or not competent to testify under the above provisions.

Authority of Arbitrator; Procedure; Hearing

The arbitrator may conduct arbitration as the arbitrator considers appropriate for a fair and expeditious disposition, and the arbitrator's authority includes the power to hold conferences with the parties before the hearing and determine the admissibility, relevance, materiality, and weight of any evidence.

The arbitrator may decide a request for summary disposition upon agreement of all parties, or upon request of one party, if all parties have notice and a reasonable opportunity to respond.

The RUAA sets forth requirements for hearing, including notice, objection and waiver of objection, postponement, decision, timeliness, and rights of parties at the hearing. (The UAA contains substantially similar provisions.)

If an arbitrator ceases or is unable to act during a proceeding, the RUAA requires a replacement be appointed to continue the proceeding and resolve the controversy.

*Attorney Representation***

A party to an arbitration proceeding may be represented by a lawyer. (The UAA contains a substantially similar provision.)

Subpoenas; Depositions; Testimony; Discovery

The arbitrator may issue subpoenas for witnesses, records, and other evidence and may administer oaths. A subpoena is served as in a civil action and is enforced in the same manner by the court, upon motion. (The UAA contains a substantially similar provision.)

The arbitrator may permit deposition of a witness for use as evidence at the hearing, under conditions determined by the arbitrator. (The UAA contains a substantially similar provision.)

The arbitrator may permit discovery as appropriate, taking into account the needs of the parties and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective. If discovery is permitted, the arbitrator may order a party to comply with discovery-related orders, issue subpoenas, and take action against a noncomplying party to the extent a court may do so in a civil action.

The arbitrator may issue a protective order to prevent disclosure of certain protected information to the extent a court may do so in a civil action.

Laws compelling testimony and providing for witness fees in civil actions apply to the proceeding. (The UAA contains a substantially similar provision.)

The court may enforce subpoenas or discovery orders upon conditions determined by the court to make the proceeding fair, expeditious, and cost effective. Subpoenas and discovery orders issued by an arbitrator in another state are required to be served and enforced in the manner they are served and enforced in a civil action in Kansas.

Pre-award Ruling

If an arbitrator makes a pre-award ruling in favor of a party, that party may request the ruling be incorporated into the award. A prevailing party may move the court for an expedited order to confirm the award, and the court is required to summarily decide the motion. The court is required to confirm the award unless the court vacates, modifies, or corrects the award.

Record and Timing of Award

The arbitrator is required to make a signed or otherwise authenticated record of an award and provide notice of the award (including a copy) to each party. The arbitrator is required to make an award within the time specified by the agreement or, if not specified, within the time ordered by the court. The time for award may be extended, within or after the time

specified or ordered, by the court or by the parties in a record. (The UAA contains substantially similar provisions.)

An objection that an award was not timely made is waived unless the party gave notice of the objection before receiving notice of the award.

Modification or Correction of Award by Arbitrator

An arbitrator may modify or correct an award, upon motion by a party within 20 days of receiving notice of the award, on the grounds of miscalculation or mistake or of imperfection in a matter of form not affecting the merits, because the arbitrator has not made a final and definite award upon a submitted claim, or to clarify an award. Notice of objection to such motion must be given within ten days of receiving notice of the motion. If a motion to the court is pending for confirmation, vacation, or modification or correction of an award, the court may submit the claim to the arbitrator to consider whether to modify or correct the award for the same reasons as those listed above. A modified or corrected award is subject to the same requirements and court proceedings as other awards. (With the exception of the provisions allowing modification or correction when an arbitrator has not made a final and definite award, the UAA contains substantially similar provisions.)

Punitive Damages; Exemplary Relief; Fees; Remedies

An arbitrator is allowed to award punitive damages or other exemplary relief if such award is authorized in a civil action and the evidence justifies the award. If such damages or relief are awarded, the arbitrator is required to state such damages or relief separately and specify in the award the facts justifying and law allowing such award.

An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if authorized in a civil action or agreed to by the parties. (The UAA specifically excludes attorney fees from the "other expenses" that may be included in an award.)

Other than the above remedies, an arbitrator is allowed to order such remedies as the arbitrator considers just and appropriate.

The fact such remedy could not or would not be granted by the court cannot be grounds for refusing to confirm an award or for vacating an award. (The UAA contains a substantially similar provision.)

The arbitrator's expenses and fees, together with other expenses, are required to be paid as provided in the award. (The UAA contains a substantially similar provision.)

*Confirming Order***

After receiving notice of an award, a party may move the court to confirm the award. The court is required to issue a confirming order unless the award is modified, corrected, or vacated. (The UAA contains a substantially similar provision.)

Motion to Vacate

A court is required to vacate an award, upon motion by a party, if:

- The award was procured by corruption, fraud, or other undue means;
- There was evident partiality by a neutral arbitrator, corruption by an arbitrator, or misconduct by an arbitrator;
- An arbitrator refused to postpone the hearing upon sufficient cause, consider material evidence, or otherwise conducted the hearing to substantially prejudice the rights of a party;
- The arbitrator exceeded the arbitrator's powers;
- There was no agreement to arbitrate and an objection was raised before the arbitration hearing; or
- The arbitration was conducted without proper notice of initiation and the rights of a party were substantially prejudiced.

A motion to vacate is required to be filed within 90 days after receiving notice of the award unless the movant alleges corruption, fraud, or undue means, in which case the motion is required to be filed within 90 days after the ground is known or would have been known by exercise of reasonable care.

Upon vacating an award on grounds other than no agreement, the court may order a rehearing. If the grounds are corruption, fraud, or undue means or partiality, corruption or misconduct by the arbitrator, a rehearing is required to be conducted before a new arbitrator. If the award is vacated on any other grounds listed, the rehearing is required to be before the same arbitrator or successor. The rehearing decision is required to be issued within the same time limits as provided for an award.

If the court denies a motion to vacate, it is required to confirm the award unless a motion to modify or correct the award is pending.

(The UAA contains substantially similar provisions, except for the grounds based on conducting arbitration without proper notice of initiation of arbitration.)

*Modification or Correction by Court ***

A court is required to modify or correct an award, upon motion made within 90 days after the movant receives notice of the award, if:

- There was evident mathematical miscalculation or evident mistake in the description of a person, thing, or property;

- An award was made on a claim not submitted and the award may be corrected without affecting the merits of the decision on the submitted claims; or

- The award is imperfect in form not affecting the merits of the decision on the claim.

If such motion is granted, the court is required to modify or correct and then confirm the award. Otherwise, unless a motion to vacate is pending, the court is required to confirm the award.

A motion to modify or correct may be joined with a motion to vacate.

(The UAA contains substantially similar provisions.)

Entry of Judgment; Costs; Fees

The court is required to enter a judgment in conformity with its order confirming, vacating without directing a rehearing, or modifying or correcting an award, and such judgment may be recorded, docketed, and enforced as a judgment in a civil action.

The court may allow reasonable costs of the motion and proceedings, and, upon application by a prevailing party to a contested motion for order confirming an award, motion to vacate, or motion to modify or correct an award, may add reasonable attorney fees and other reasonable expenses of litigation.

(The UAA contains substantially similar provisions, except it did not specifically permit attorney fees.)

*Jurisdiction***

A Kansas court having jurisdiction over the controversy and parties may enforce an arbitration agreement, and an agreement providing for arbitration in Kansas confers exclusive jurisdiction on the court to enter judgment on an award under the RUAA. (The UAA contains a substantially similar provision.)

*Venue***

A motion for judicial relief must be made in the court of the county in which the arbitration agreement specifies the arbitration hearing is to be held or the county in which the hearing was held. Otherwise, the motion may be made in the court of the county in which an adverse party resides or has a place of business; if none, the motion may be made in the court of any Kansas county. Subsequent motions must be made in the court hearing the initial motion unless the court directs otherwise. (The UAA contains a substantially similar provision.)

*Appeal***

An appeal is in the same form as from an order or judgment in a civil action, and may be taken from a final judgment or from an order:

- Denying a motion to compel arbitration;
- Granting a motion to stay arbitration;
- Confirming or denying confirmation of an award;
- Modifying or correcting an award; or
- Vacating an award without directing a rehearing.

(The UAA contains a substantially similar provision.)

*Uniformity***

The RUAA directs that consideration be given to the uniformity of law between enacting states in applying and construing the act. (The UAA contains a similar provision.)

Electronic Signatures

The RUAA states its provisions conform to the requirements of the Electronic Signatures in Global and National Commerce Act.

Applicability to Other Statutory Sections

The Overhead Power Line Accident Prevention Act and a statute regarding assistive devices for major life activities is amended to update references from the UAA to the RUAA.

Arbitration or Mediation of Trust Instruments

The bill provides a trust instrument requiring the mediation or arbitration of disputes involving beneficiaries, fiduciaries, or persons granted non-fiduciary powers under the trust be enforceable. An exception to this enforceability applies when the dispute is related to the validity of the trust, unless all interested persons consent to arbitration or mediation of the dispute.

NUMERICAL INDEX OF BILLS
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