Kansas Legislative Research Department April 2, 2018

PRELIMINARY SUMMARY OF LEGISLATION
2018 KANSAS LEGISLATURE

This publication contains summaries of selected bills enacted by the Legislature as of the end of the legislative day on March 29, 2018. Bills that have not yet been signed by the Governor are included.

A supplement containing summaries of major bills that were enacted after that date will be distributed during the week of April 9, 2018. An additional supplement will be mailed after the wrap-up session in May.

Highlights, a summary of major legislation, will be prepared after the Legislature adjourns and will be mailed 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://www.kslegislature.org/klrd (under "Publications").

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AGRICULTURE AND NATURAL RESOURCES

Groundwater Management Districts; SB 194

SB 194 permits groundwater management district (GMD) boards to increase the maximum water withdrawal charge from $1.00 for each acre-foot to $2.00 for each acre-foot. This charge will continue to be used to finance the operations of the GMD.

In addition, the bill eliminates a requirement that permits the boards of GMDs to assess a greater annual water withdrawal charge if more than 50.0 percent of the authorized place of use of the water is outside the district. (This provision had been subject to the maximum charge for groundwater withdrawal.)

Chicken Facilities—Permitting Requirements; SB 405

SB 405 amends the law that establishes the number of animals permitted in a confined animal feeding facility (CAFO) for the purpose of determining permitting requirements for new construction or expansion of a CAFO. Under continuing law, a CAFO is required to register with the Kansas Department of Health and Environment if the CAFO has an animal unit capacity of 300 or more. A permit is required for a CAFO with a capacity of 1,000 or more and may be required for a CAFO if the facility poses a significant water pollution potential.

The bill establishes the animal unit measurement calculation for chicken facilities that use a dry manure waste system as the number of laying hens or broilers multiplied by 0.003. In addition, the bill requires a confined chicken facility to obtain a federal permit if the facility uses a dry manure system and confines 125,000 or more broilers or 82,000 or more laying hens.

Further, the bill modifies the definition of “confined feeding facility” to include “building” in addition to the terms “lot,” “pen,” “pool,” and “pond.”

Egg Repackaging; Sub. for SB 414

Sub. for SB 414 repeals the limitations on egg repackaging set forth in KSA 2017 Supp. 2-2510, known as the Kansas Egg Law. The bill permits repackaged eggs to be graded Grade B or better under certain requirements as outlined in the bill. Those requirements include if undamaged eggs from damaged containers are placed only into containers with the same distributor and packer information (including the name, address, and U.S. Department of Agriculture plant number and packaging code); the container holding repackaged eggs is not labeled with a declaration of enhanced quality or any other claim that did not appear on the original container; the eggs with undamaged shells are handled and repackaged using good manufacturing processes and are under refrigerated conditions in accordance with Food and Drug Administration regulations; all damaged containers and packing materials identified with the U.S. Department of Agriculture grade shield are destroyed; and all segregated inedible eggs are destroyed to prevent human consumption.

With respect to the requirement that an inspection fee stamp be placed on the carton indicating the inspection fee had been paid, the bill exempts repackaged eggs from the fee as outlined in the new provisions of the bill (these eggs would have already been assessed the inspection fee).

Pesticide Business License; HB 2619

HB 2619 allows documentation required under Kansas pesticide law or rules and regulations to be created and maintained in paper or electronic format and stipulates that any document created or maintained in electronic format is capable of being reproduced in a paper format. These documents must be provided, in the format requested, to the Secretary of Agriculture (Secretary), or the Secretary's designee, upon request.

The bill also requires statements of services or contracts be presented to the customer in a paper format, unless the customer agrees to receive all or part of the statement of services or contract in electronic format.

In addition, the pesticide business licensee is required to present the statement of services or contract to the customer within 30 days of the provided services and prior to the due date for payment. Statements and contracts for prepaid services are excluded. The bill allows a customer to request a statement of service or contract, which must be presented no later than the close of business the following business day. A duplicate of the statement of services or contract provided to the customer must also be made available to the Secretary, or the Secretary's designee, upon request within two business days. The bill also requires the statement of services or contract to be signed by the individual who performed and, when applicable, supervised the pest control service or application of pesticides. The statement of services or contract may be signed using the legible printed names of the individuals or, when applicable, supervised the performance of the pest control service or application of pesticide.

Finally, the bill makes technical changes by replacing the term "authorized representative" with "designee" and removing the term "written" throughout the amended section of law.

Multi-year Flex Account Application Deadline; HB 2691

HB 2691 changes the deadline to file an application for a multi-year flex account (MYFA) with the Chief Engineer from on or before October 1 to on or before December 31 of the first year of the MYFA term for which the application is being made.

Licensure Requirements for Child Care Facilities; SB 428

SB 428 amends licensure and inspection requirements for child care facilities and creates definitions for "drop-in program" and "school-age program."

Building Requirements

The bill states no license for a drop-in program or school-age program shall be denied, suspended, or revoked on the basis that the building does not meet requirements for licensure if the building:

- Is a public recreation center or school and is used by school-age children and youth the same age as children and youth cared for in the drop-in program or school-age program;

- Complies, during all hours of operation of the drop-in program or school-age program, with the Kansas Fire Prevention Code (KFPC) or a building code that is by law deemed to comply with the KFPC; and

- Complies, during all hours of operation of the drop-in program or school-age program, with all local building code provisions that apply to recreation centers, if the building is a public recreation center, or schools, if the building is a school, except if the local building code provisions for a recreation building and the KFPC conflict or are otherwise inconsistent, then the KFPC standards shall control.

Environmental Requirements

The bill states no license for a drop-in program or school-age program operating in a public recreation center or school that is used by school-age children or youth the same age as the children or youth cared for in the drop-in program or school-age program shall be denied, suspended, or revoked based on an environmental deficiency if:

- The environmental deficiency does not pose an imminent risk to children and youth;

- The environmental deficiency is outside the applicant's or licensee's immediate authority to correct; and

- The applicant or licensee has notified the public recreation center or school of the environmental deficiency.

Definitions

The bill deletes the definition of "child care program" and inserts the definition of "drop-in program" to mean a child care facility that is not located in an individual's residence that serves

exclusively school-age children and youth and where the operator permits children and youth to arrive and depart from the program at the child or youth's own volition at unscheduled times.

The bill defines "school-age program" to mean a child care facility that services exclusively school-age children and youth but does not include a drop-in program. The definition of "school" is amended to include grades 7 through 12. The current definition references kindergarten and grades 1 through 6.

The definition of "recreation center" is amended to "public recreation center" and the maximum age of an individual allowed to be served by recreation programs is changed from 16 to 18.

Involuntary Manslaughter—DUI; Aggravated Battery—DUI; HB 2439

HB 2439 amends the definition of the crime of involuntary manslaughter to include the killing of a human being committed in the commission of, or attempt to commit, or flight from driving under the influence of alcohol or drugs (DUI) while:

- In violation of any restriction imposed on such person's driving privileges for DUI;
- The person's driving privileges are suspended or revoked for DUI; or
- The person has been deemed a habitual violator, as defined in KSA 2017 Supp. 8-285, including at least one DUI violation.

Violation of this provision is a severity level 3, person felony. This new offense is added to the list of offenses for which juvenile records or files may not be expunged. It also is added to the list of offenses that the Department of Corrections is required to report when committed by a sex offender in the custody of the Secretary of Corrections.

In addition, the bill amends the definition of aggravated battery to include causing great bodily harm or disfigurement of another person while DUI under the same circumstances as those described above. Violation of the aggravated battery provision is a severity level 4, person felony.

The new offenses are added to the list of underlying offenses requiring an increased penalty for a third or subsequent conviction for driving while driving privileges are canceled, suspended, or revoked for such underlying offenses. The bill amends the DUI, commercial DUI, and test refusal statutes to include the new offenses in the list of offenses for which any convictions in a person's lifetime must be considered in determining the number of a subsequent DUI conviction. The DUI administrative penalties definitions statute is amended to include the new offenses, as well as the continuing offense of involuntary manslaughter while DUI, in the definition of "alcohol or drug-related conviction."

The statute governing the use of previous DUI-related convictions in calculating criminal history for involuntary manslaughter while DUI or aggravated battery while DUI is amended to apply the same rules to the new offenses.

Criminal History—Comparable Offenses; HB 2567

HB 2567 amends a statute governing determination of criminal history to replace references to "another state" with "the convicting jurisdiction," clarify the comparable offense to be used for comparison for misdemeanor crimes in another jurisdiction is the offense under the Kansas Criminal Code in effect on the date the current crime of conviction was committed, and standardize terminology.

The bill also adds a provision that if a crime is not classified as either a felony or misdemeanor in the convicting jurisdiction, the comparable offense under the Kansas Criminal Code in effect on the date the current crime of conviction was committed shall be used to

classify the out-of-state crime as either a felony or misdemeanor. If Kansas does not have such comparable offense, the out-of-state crime shall not be used in classifying the offender's criminal history.

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

Giving a False Alarm; HB 2581

HB 2581 amends law related to the crime of giving a false alarm.

The bill renames the offense as "making an unlawful request for emergency service assistance" and its definition is amended to include transmitting or communicating false or misleading information in any manner to request emergency service assistance, including law enforcement, fire, medical, or other emergency service knowing at the time there is no reasonable ground for believing assistance is needed.

The crime continues to be a Class A nonperson misdemeanor, except including false information that violent criminal activity or immediate threat to a person's life or safety has or is taking place continues to be a severity level 7, nonperson felony, except in the following circumstances added by the bill:

- If bodily harm results from the response by emergency services, the offense is a severity level 6, person felony;
- Great bodily harm resulting from the response by emergency services is a severity level 4, person felony; and
- Death resulting from the response by emergency services is a severity level 1, person felony.

The bill clarifies use of an electronic device or software to alter, conceal, or disguise the source of the request or the identify of the person making such request continues to be a level 10, nonperson felony.

The bill provides that it shall not be a defense that the person who suffered bodily harm, great bodily harm, or death contributed, or others contributed, to such person's harm or death. Persons who make an unlawful request for emergency service assistance may also be prosecuted for any form of homicide.

Kansas National Guard Assistance Act; HB 2541

HB 2541 amends the Kansas National Guard Educational Assistance Act. Specifically, the bill amends the definition of "eligible guard member" to require the member not be under a suspension of favorable action flag or currently on the unit unfavorable information file. Within that definition, the bill replaces "newly enlisted or reenlisted member" with "current member." The bill also removes language stating the term "eligible guard member" does not include any member of the Kansas National Guard who is entitled to federal educational benefits earned by membership in the Kansas National Guard, except financial assistance under the federal Education Assistance Program for members of the selected reserve.

The bill provides that every eligible guard member enrolled at a Kansas educational institution and participating in the educational assistance program shall receive assistance each semester in an amount equal to the tuition and required fees for not more than 15 credit hours. The aggregate number of credit hours for which assistance may be provided under the program cannot exceed 150 percent of the total credit hours required for the eligible guard member to complete such member's educational program.

The eligible guard member must have at least one year remaining on such member's enlistment contract at the beginning of any semester for which the member receives assistance under the program and must agree to serve actively in good standing with the Kansas National Guard for not less than 24 months upon completion of the last semester for which the member receives assistance under the program. Prior law required three additional months of service for each semester, or part thereof, of assistance received. Further, prior to becoming eligible for participation in the program, each eligible guard member must submit the Free Application for Federal Student Aid (commonly referred to as the FAFSA) and apply for any other federal tuition assistance that such member also may be eligible to receive. To remain eligible, a member must maintain a grade point average of not less than 2.0. Upon completion of each semester, each eligible guard member receiving assistance under the program must submit a transcript of the credit hours earned, including the grades for credit hours, to such member's unit of assignment.

If a member fails to satisfy the agreement to continue service in the Kansas National Guard, such person must pay an amount to the State calculated by determining the total amount of assistance paid to the member under the program, dividing that amount by 24, and multiplying the resulting amount by the number of months such member did not serve as required. Prior law required payment of the total amount received. Any eligible guard member that received payments under the program but has failed to satisfy the agreement to continue service in the Kansas National Guard by reason of extenuating circumstances or extreme hardship may request a waiver from recoupment in writing through such member's chain of command to the Kansas National Guard Education Services Office. The chief of staff of the Kansas Army National Guard or the director of staff for the Kansas Air National Guard will review all requests for a waiver from recoupment, and the decision to issue such waiver will be made by either officer as such officer deems appropriate.

Recognizing Pornography as a Public Health Hazard; SR 1762

SR 1762 states the Senate recognizes pornography is a public health hazard that leads to individual and public health impacts and societal harms and recognizes the need for additional education prevention, research, and policy change at the community and societal levels. It urges the Senate and other governing bodies to take appropriate steps. It references poor personal and societal outcomes related to pornography and related research.

The resolution requires the Secretary of the Senate to send enrolled copies of the resolution to the following: the Attorney General; the Kansas Bureau of Investigation Director; the Kansas Highway Patrol Superintendent; the Secretary of Health and Environment; the Kansas Library Association; the Kansas County and District Attorneys Association; the Kansas Sheriffs' Association; the Kansas Association of Chiefs of Police; the Kansas Association of District Court Clerks and Administrators; the Kansas Appellate Courts; the Kansas Supreme Court; the League of Kansas Municipalities; the Kansas County Commissioners Association; the American Family Association of Kansas and Missouri State Director; and Senator Pilcher-Cook.

(A similar resolution, HR 6016, was adopted by the House of Representatives during the 2017 Session.)

Alcoholic Beverage Control Modernization Fee; HB 2362

HB 2362 creates a $20 alcoholic beverage control (ABC) modernization fee to be charged on both initial and renewal liquor license applications. The bill reduces the initial application fee for a liquor license from $50 to $30 plus the $20 modernization fee. The $20 modernization fee is added to the renewal application fee, which will remain at $10.

The revenue from the $20 fee will be deposited in the ABC Modernization Fund created by the bill, to be used for the software and equipment upgrades associated with the Department of Revenue's licensing, permitting, enforcement, and case management.

State Symbols; HB 2650

HB 2650 designates the official state rock as Greenhorn limestone, the official state mineral as galena, the official state gemstone as jelinite amber, and the official state fish as the channel catfish.

Risk-based Capital Instructions; SB 267

SB 267 updates the effective date specified in the Insurance Code for the risk-based capital (RBC) instructions promulgated by the National Association of Insurance Commissioners for property and casualty companies and for life insurance companies from December 31, 2016, to December 31, 2017.

Amendments to the State Banking Code; SB 283

SB 283 amends several sections of the State Banking Code, as follows.

Change of Terminology – Collective Investment Funds

On and after July 1, 2018, the bill changes the terminology, from "common trust" funds to "collective investment" funds, for the establishment and investment of such funds by a bank or trust company authorized to act as a fiduciary.

Notification Requirements for Acquiring Control and Change of Control

The bill updates the notice requirements for acquiring control and change of control provided to the State Bank Commissioner (Commissioner). The bill specifies that a person acting directly, indirectly, or directly or indirectly in concert with one or more persons is prohibited from engaging in any activity that may result or does result in acquiring control of any bank, bank holding company, or trust company without notifying the Commissioner at least 30 days prior to acquiring control. The bill permits the Commissioner to determine whether an activity may result or does result in a change of control. Additionally, the bill requires the board of directors of any privately held bank, bank holding company, or trust company to notify the Commissioner, at least 30 days prior to the date the change of control becomes effective, of any change of control of the bank, bank holding company, or trust company.

Waiver of Notice Requirement

On and after July 1, 2018, the bill amends the requirement that a person proposing to acquire control, or a bank or trust company undertaking a merger transaction, submit an application 60 days prior to the proposed change of control or merger transaction. The bill permits the Commissioner to waive this 60-day prior notice requirement if the acquired bank or trust company is under a formal corrective action.

Qualifications of the Deputy Commissioner of the Banking Division

The bill amends the required qualifications for an individual to serve as Deputy Commissioner of the Banking Division (Deputy Commissioner). The bill permits an individual to serve as Deputy Commissioner if the individual has five years of experience as an officer of a state bank holding company or a wholly-owned subsidiary conducting business that is related to banking, or has a combination of experience.

Effective Dates

Provisions related to change of terminology for collective investment funds and waiver of notice take effect July 1, 2018. The bill takes effect upon publication in the *Kansas Register*.

Kansas Pharmacy Patients Fair Practices Act; SB 351

SB 351 creates the Kansas Pharmacy Patients Fair Practices Act (Act). The bill specifies co-payments applied by a health carrier for a prescription drug may not exceed the total submitted charges by the network pharmacy. Additionally, a pharmacy or pharmacist has the right to provide a covered person with information regarding the amount of the covered person's cost share for a prescription drug. The bill specifies neither a pharmacy or pharmacist can be proscribed by a pharmacy benefits manager (PBM) from discussing any such information or selling a more affordable alternative to the covered person, if such alternative is available.

The bill applies to any contract between a PBM and a pharmacy, pharmacy services administration organization, or group purchasing organization entered or renewed on and after January 1, 2019. The bill states supplemental policies are exempt from the Act.

The terms "covered person," "health carrier," and "pharmacy benefits manager" are defined in the bill.

Claims Handling Operations—Catastrophic Events; HB 2469

HB 2469 prohibits local units of government from imposing restrictions or enforcing local licensing or registration ordinances on insurance claims handling operations during any catastrophic event threatening life or property. The bill requires insurers to notify the city or county prior to establishing a claims handling operation.

Under the bill, a political subdivision will not be prohibited from exercising its police power when necessary to preserve public health and welfare, including, but not limited to, enforcing its building, zoning, and fire safety codes.

The bill defines "claims handling operations" as including, but not limited to, the establishment of a base of operations on a temporary basis, not to exceed six months, by an insurer within the disaster area and the investigation and handling of claims by personnel authorized by such insurer. The term "insurer" means an insurance company, as defined in KSA 40-201 (general provisions, Insurance Code).

Fair Credit Reporting Act; Security Freeze; Prohibition on Fees; HB 2580

HB 2580 amends the Fair Credit Reporting Act (Act) to clarify that continuing statutes governing security freezes on consumer reports fall within the Act. It also amends one of the statutes governing security freezes to remove a provision allowing a $5 fee to place, temporarily lift, or remove a freeze, and instead prohibits a consumer reporting agency from charging a fee for these services.

Similarly, the bill amends the statute governing security freezes for "protected consumers" (defined elsewhere in the Act as an individual under 16 years of age when the

request for a security freeze is made or an individual for whom a guardian or conservator has been appointed) to remove a provision allowing a $10 fee to place or remove a security freeze.

Because no fee would be allowed in any case, the bill removes provisions in both statutes prohibiting the charging of a fee to an identity theft victim or, in the case of a protected consumer, when the protected consumer is under 18 years of age and the reporting agency has a consumer report pertaining to the consumer.

Mandatory Reporters; SB 311

SB 311 adds emergency medical services attendants to the list of mandatory reporters of abuse, neglect, exploitation, or need of protective services as it pertains to a resident or certain adults (as defined in continuing law).

Continuing law defines "resident" and an "adult" when referencing "certain adults," as specified below.

Definitions of "Resident" and "Adult" in Continuing Law

Current law (KSA 2017 Supp. 39-1401) defines a "resident" as any resident, as defined by KSA 2017 Supp. 39-923 (any individual kept, cared for, treated, boarded, or otherwise accommodated in an adult care home), or any individual kept, cared for, treated, boarded, or otherwise accommodated in a medical care facility, state psychiatric hospital, or state institution for people with an intellectual disability.

Additionally, current law as it pertains to the abuse, neglect, exploitation, or need for protective services of certain adults (KSA 2017 Supp. 39-1430) defines an "adult" to mean an individual 18 years of age or older alleged to be unable to protect the individual's own interest and who is harmed or threatened with harm, whether financial, mental, or physical in nature, through action or inaction by either another individual or through their own action or inaction when residing in the person's own home, the home of a family member, or the home of a friend; residing in an adult family home; or receiving services through a provider of community services and its affiliates operated or funded by the Kansas Department for Children and Families, the Kansas Department for Aging and Disability Services, or a residential facility licensed pursuant to statutes pertaining to providers of disability services.

The above definition of "adult" excludes residents as defined in KSA 39-1401 *et seq.*

Treatment Facility Deemed Status License Renewal; HB 2106

HB 2106 authorizes the Secretary for Aging and Disability Services (Secretary) to grant a treatment facility licensed by the Secretary under the Alcohol or Other Drug Addiction Treatment Act and also accredited by the Commission on Accreditation of Rehabilitation Services, The Joint Commission, the Council on Accreditation, or another national accrediting body approved by the Kansas Department for Aging and Disability Services (KDADS), a license renewal based on such accreditation, referred to as "deemed status." An accredited treatment facility that loses accreditation is required to notify KDADS immediately.

Additionally, the bill requires KDADS to inspect an accredited treatment facility to determine compliance with state licensing standards and rules and regulations not covered by the accrediting entity's standards, or inspect and investigate in response to a complaint made against the accredited treatment facility.

The bill makes technical amendments to statutory references.

Organ Transplants—Nondiscrimination in Access for Individuals with Disabilities; HB 2343

HB 2343 creates law regarding nondiscrimination in access to organ transplants for individuals with disabilities.

The bill states the following findings and purpose:

- Mental or physical disability does not diminish an individual's right to health care;
- The federal Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities, yet many such individuals still experience discrimination in accessing critical health care services;
- In other states, individuals with disabilities have been denied lifesaving organ transplants based on assumptions their lives are less worthy, they are incapable of complying with post-transplantation medical requirements, or they lack adequate support systems to ensure compliance with post-transplantation medical requirements;
- Although organ transplant centers must consider medical and psychosocial criteria when determining whether a patient is suitable to receive an organ transplant, transplant centers that participate in Medicare, the state program for medical assistance, and other federally funded programs are required to use patient selection criteria that result in a fair and nondiscriminatory distribution of organs; and
- State residents in need of organ transplants are entitled to assurances they will not encounter discrimination on the basis of a disability.

The bill defines "covered entity" to include:

- A licensed health care provider, as defined in the Health Care Provider Insurance Availability Act;
- A medical care facility, as defined in the act governing standards for medical care facilities;
- A laboratory;
- A state psychiatric hospital, as defined in the Care and Treatment Act for Mentally Ill Persons;
- An adult care home, as defined in the act governing licensure of adult care home administrators;
- A group home, as defined in the statute governing planning and zoning of group homes;

- An institutional medical unit in a correctional facility; or

- Any entity responsible for potential recipients of the anatomical gift.

The bill defines "qualified individual" to mean an individual who has a disability (defined to have the meaning stated in the ADA) and meets the essential eligibility requirements for the receipt of an anatomical gift, with or without the support networks available to the individual, the provision of auxiliary aids and services, or reasonable modifications to the policies or practices of a covered entity, including certain modifications specified in the bill.

The bill defines "auxiliary aids and services" to include various methods of making aurally delivered materials available to individuals with hearing impairments and visually delivered materials available to individuals with visual impairments, as well as various supported decision-making services.

The bill also defines "anatomical gift" and "organ transplant."

The bill prohibits a covered entity, solely on the basis of an individual's disability, from:

- Considering a qualified individual ineligible to receive an anatomical gift or organ transplant;

- Denying medical and other services related to organ transplantation;

- Refusing to refer the individual to a transplant center or a related specialist for the purpose of evaluation or receipt of an organ transplant;

- Refusing to place a qualified individual on an organ transplant waiting list; or

- Placing a qualified individual at a lower-priority position on an organ transplant waiting list than the position where the individual would be placed without the disability.

A covered entity may take an individual's disability into account when making treatment or coverage recommendations or decisions to the extent a physician, following an individualized evaluation, has found the disability to be medically significant to the provision of the anatomical gift. A covered entity may not consider the individual's inability to independently comply with post-transplantation medical requirements to be "medically significant" if the individual has the necessary support system to assist in complying with the requirements.

A covered entity must make reasonable modifications in policies, practices, or procedures when necessary to allow an individual with a disability to access services, including transplantation-related counseling, information, coverage, or treatment, unless the entity can demonstrate the modifications would fundamentally alter the nature of the services. Similarly, a covered entity must take necessary steps to ensure an individual with a disability is not denied services due to the absence of auxiliary aids and services, unless the entity can demonstrate taking the steps would fundamentally alter the nature of the services or would result in an undue burden.

An affected individual may bring an action in the appropriate district court for injunctive or other equitable relief if a covered entity violates the provisions of the bill, and the bill requires a district court in such an action to schedule a hearing as soon as possible and apply the same standards in rendering a judgment as would be applied in an action in federal court under the ADA.

The bill states that none of its provisions shall be construed to require a covered entity to make a referral or recommendation for or perform a medically inappropriate organ transplant.

Revised Uniform Anatomical Gift Act Amendments; Designation on Driver's License or Identification Card; Healthcare Provider Liability Exemption; HB 2472

HB 2472 places a question as to an individual's willingness to give his or her authorization to be listed as an organ, eye, and tissue donor in the Kansas Donor Registry (Registry) in accordance with the Revised Uniform Anatomical Gift Act (Act) on the applications for a driver's license, renewal of a driver's license, and an identification card and on the notice of a driver's license expiration. The bill requires the word "donor" be placed on the front of the driver's license or identification card of an individual who provides authorization to be listed in the Registry on an application for a driver's license or an identification card.

Further, the bill amends the Act regarding the persons authorized to make an anatomical gift upon a decedent's death, adds a definition for "healthcare provider," and provides an exemption from liability for such providers.

Declaration of Intent to Gift

The bill removes the requirement that an individual 16 years of age or older to whom a Kansas driver's license has been issued, and who desires to make an anatomical gift, sign a form in the presence of two witnesses stating a desire to make such a gift. Instead, the bill requires an application for a driver's license, a notice of a driver's license expiration or renewal application, and an application for an identification card include a question as to the applicant's willingness to authorize the placement of the applicant's name in the Registry. Such authorization on a driver's license application by a person 16 years of age or older or on an application for an identification card by any person makes the anatomical gift effective upon the death of the donor. [*Note:* Current law requires a parent or guardian of an applicant under 16 years of age to sign the application for a driver's license or identification card submitted by the applicant.] Persons authorizing placement of their names in the Registry will have the word "donor" placed on the front of their driver's license or identification card.

Persons Authorized to Make a Gift

With regard to the classes of individuals authorized to make an anatomical gift of a decedent's body or part for transplantation, therapy, research, or education, the bill removes adult siblings of a decedent from the list of classes requiring approval by a majority of the members of the class if an objection of another member of the class is known. Both parents of a decedent, if living and available to decide, must agree to make the anatomical gift.

Healthcare Provider Liability Exemption

The bill defines "healthcare provider" under the Act to mean the same as in the Health Care Provider Insurance Availability Act. A healthcare provider is exempt from liability in a civil action, criminal prosecution, or administrative proceeding when acting in good faith with the Act or the applicable anatomical gift law of another state.

Nurse Licensure Compact; Kansas Nurse Practice Act Amendments; HB 2496

HB 2496 enacts the Nurse Licensure Compact (Compact) and amends the Kansas Nurse Practice Act (Act) to enable the Board of Nursing (Board) to carry out the provisions of the Compact and establish the duties of registered nurses (RNs) and licensed practical nurses (LPNs) under the Compact. The Compact allows RNs and LPNs to have one multi-state license, with the privilege to practice in the home state of Kansas and in other Compact states physically, electronically, telephonically, or any combination of those.

The bill takes effect from and after July 1, 2019, and upon its publication in the statute book.

Nurse Licensure Compact [Section 1]

The Compact's uniform provisions that are added are outlined below.

Article I: Findings and Declaration of Purpose

The findings outlined in Article I include these: the expanded mobility of nurses and the use of advanced communication technologies as part of the nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation, the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states, and uniformity of nurse licensure requirements among the states promotes public safety and public health benefits.

The general purposes of the Compact include these: facilitating the states' responsibility to protect the public's health and safety, ensuring and encouraging the cooperation of party states in the areas of nurse licensure and regulation; facilitating the exchange of information among party states in the areas of nurse regulation, investigation, and adverse actions; promoting compliance with the laws governing the practice of nursing in each jurisdiction; investing all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party-state licenses; decreasing redundancies in the consideration and issuance of nurse licenses; and providing opportunities for interstate practice by nurses who meet uniform licensure requirements.

Article II: Definitions

A few of the key definitions applicable to the Compact are:

- "Alternative program" means a nondisciplinary monitoring program approved by a licensing board;

- "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators;

- "Coordinated licensure information system" (system) means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws administered by a nonprofit organization composed of and controlled by licensing boards;

- "Home state" means the party state that is the nurse's primary state of residence;

- "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses;

- "Multi-state license" means a license to practice as an RN or LPN/Vocational Nurse (VN) issued by a home-state licensing board that authorizes the licensed nurse to practice in all party states under a multi-state licensure privilege;

- "Party state" means any state that has adopted the Compact;

- "Remote state" means a party state, other than the home state; and

- "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multi-state licensure privilege to practice in any other party state.

Article III: General Provisions and Jurisdiction

Recognition of multi-state license. Each party state is required to recognize a multi-state license to practice as an RN or LPN/VN issued by a home state to a resident in that state as authorizing a nurse to practice in the same capacity under a multi-state license privilege in each party state.

Criminal history background checks and fingerprinting. A state is required to implement procedures for considering the criminal history records of applicants for an initial multi-state license or licensure by endorsement. The procedures required include the submission of fingerprints or other biometric-based information by applicants for use in obtaining an applicant's criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining that state's criminal records.

Uniform multi-state licensure requirements. For an applicant to obtain or retain a multi-state license in the home state, the following is required of the applicant:

- Has met the home state's qualifications for licensure or renewal of licensure, and all other applicable state laws;

- Has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program, or has graduated from a foreign RN or LPN/VN prelicensure education program that has been approved by the authorized accrediting body in the applicable country and has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

- Has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

- Has successfully passed an NCLEX-RN or NCLEX-PN examination or recognized predecessor, as applicable;

- Is eligible for and holds an active unencumbered license;

- Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the FBI and the Kansas Bureau of Investigation;

- Has not been convicted or found guilty nor has entered into an agreed disposition of a felony offense under applicable state or federal criminal law;

- Has not been convicted or found guilty nor has entered into an agreed disposition of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis;

- Is not currently enrolled in an alternative program;

- Is subject to self-disclosure requirements regarding current participation in an alternative program; and

- Has a valid U.S. Social Security number.

Action against a multi-state licensure privilege. In accordance with existing state due process laws, all party states are authorized to take adverse action against a nurse's multi-state licensure privilege, such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multi-state licensure privilege, including cease and desist actions. The Compact outlines notification requirements for such actions.

Compliance with state practice laws. A nurse practicing in a party state is required to comply with the state practice laws of the state in which the client is located at the time the service is provided. The practice of nursing in a party state under a multi-state license subjects the nurse to the jurisdiction of the licensing board, courts, and laws of the party state where the client is located at the time the service is provided.

Single-state license. The Compact permits an individual not residing in a party state to apply for a party state's single-state license provided under the laws of each party state. However, a single-state license in a party state is not recognized as granting the privilege to practice nursing in another party state. The Compact does not affect the requirements established by a party state for the issuance of a single-state license.

Retention and renewal of home state multi-state license. A nurse holding a home state multi-state license on the effective date of the Compact is allowed to retain and renew the multi-state license issued by the nurse's then-current home state, but the Compact provides for certain exceptions.

Article IV: Applications for Licensure in a Party State

The licensing board in the issuing party state is required to ascertain, through the system, whether an applicant for a multi-state license has ever held or holds a license issued by another state, whether there are any encumbrances or adverse action taken on any license of multi-state licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

The Compact specifies a nurse may hold a multi-state license, issued by the home state, in only one party state at a time. Additionally, the Compact describes the process for a nurse changing primary state of residence and the effects on the multi-state license. If a nurse changes primary state of residence by moving from a party to a non-party state, the multi-state license issued by the prior home state converts to a single-state license, valid only in the former home state.

Article V: Additional Authorities Invested in Party-State Licensing Boards

In addition to the other powers conferred by state law, the Compact authorizes a licensing body to:

- Take adverse action against a nurse's multi-state licensure privilege to practice within that party state, but only the home state has the power to take adverse action against a nurse's license issued by the home state;

- Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state;

- Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations and take appropriate actions; the licensing board is required to promptly report the conclusions of the investigations to the administrator of the system, who is required to promptly notify the new home state of such actions;

- Issue subpoenas for both hearings and investigations, as outlined in the Compact;

- Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the FBI for criminal background checks, receive

the results of the FBI record search, and use the results in making licensure decisions;

- If permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against the nurse; and

- Take adverse action based on the factual findings of the remote state, following its own procedures for taking such adverse action.

Adverse action taken by the home state against a nurse's multi-state license results in the deactivation of the nurse's multi-state licensure privilege to practice in other party states until all encumbrances are removed from the multi-state license.

A home-state licensing board is required to deactivate the multi-state licensure privilege under the multi-state license of any nurse for the duration of the nurse's participation in an alternative program used in lieu of adverse action being taken against the nurse.

Article VI: Coordinated Licensure Information System and Exchange of Information

The Compact requires all party states to participate in a system of all licensed RNs and LPNs/VNs, which includes information on the licensure and disciplinary history of each nurse submitted by party states to assist in the coordination of nurse licensure and enforcement efforts. The Commission, in consultation with the administrator of the system, is required to formulate necessary and proper procedures for the identification, collection, and exchange of information under the Compact.

The Compact requires all licensing boards to promptly report to the system any adverse action, any current significant investigative information, denials of applications citing reasons for such denials, and nurse participation in alternative programs known to the licensing board, regardless of the confidentiality of such participation under state law.

The Compact specifies the restrictions relating to the type of information available for release to party states and non-party states, including provisions allowing party-state licensing boards to designate information that is not to be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state. Provisions for the treatment of personally identifiable information and information subject to expungement is also specified.

The Compact administrator of each party state is required to furnish a uniform data set containing, at a minimum, certain specified data to the Compact administrator of each other party state and is required to provide all investigative documents and information requested by another party state.

Article VII: Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

Under the Compact, the party states create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators, which is an

instrumentality of the party states. Provisions related to venue, alternative dispute resolution proceedings, and non-waiver of sovereign immunity are specified in the Compact.

The Compact requires one administrator representing each party state to serve on the Commission, and it specifies that the removal, suspension, or filling of any administrator vacancy in the Commission be in accordance with the laws of the party state in which the vacancy exists. The Compact specifies the requirements related to voting, the frequency of Commission meetings, and the procedures for holding meetings, including both open and closed meetings.

The Compact requires the Commission to prescribe bylaws or rules to govern its conduct as may be necessary and appropriate to carry out the purposes and exercise the powers of the Compact and to publish its bylaws and rules in a convenient form on the Commission's website. The Commission is required to maintain its financial records in accordance with the bylaws and to meet and take such actions as are consistent with the provisions of the Compact and bylaws.

Additionally, the Compact establishes the Commission's powers and duties, establishes financing authority and restrictions, and provides for immunity from suit and liability, as specified.

Article VIII: Rulemaking

The Compact authorizes the Commission to exercise rulemaking powers. The Compact establishes the requirements for the adoption of final rules; the notice of proposed rulemaking and the content of such notice; the submission of written data, facts, opinions, and arguments by persons prior to adoption of a rule; the opportunity for a public hearing, notice of said hearing, and provisions for the recording of the public hearing; the adoption of emergency rules; and the revision of previously adopted rules and challenges to the revision.

Article IX: Oversight, Dispute Resolution, and Enforcement

Oversight. The Compact requires each party state to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purpose and intent. The Commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the Commission, and it has standing to intervene in such proceeding for all purposes. Failure to provide service of process in such a proceeding to the Commission renders a judgment or order void as to the Commission, the Compact, or promulgated rules.

Default, technical assistance, and termination. If the Commission determines a party state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission is required to provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission, and provide remedial training and specific technical assistance regarding the default.

If a state in default fails to cure the default, the defaulting state's membership in the Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by the Compact may be terminated on the effective date of the termination. Termination of membership in the Compact is to be imposed only after

all other means of securing compliance are exhausted and requires notice of intent to suspend or terminate be given by the Commission to the governor of the defaulting state, the executive officer of the defaulting state's licensing board, and each of the party states.

The Compact provides that a state whose membership has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations extending beyond the effective date of termination. Unless agreed upon in writing between the Commission and the defaulting state, the Commission does not bear any costs related to a state found to be in default or whose membership in the Compact has been terminated.

A defaulting state has the right to appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the Commission has its principal offices. The prevailing party in such litigation is awarded all costs, including reasonable attorney fees.

Dispute resolution. The Compact requires the Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate. Upon request by a party state, the Commission is required to attempt to resolve disputes related to the Compact that arise among party states and between party and non-party states.

If the Commission is unable to resolve disputes among party states arising under the Compact, the party states may submit the issues in dispute to an arbitration panel composed of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute. The decision of the majority of the arbitrators is final and binding.

Enforcement. The Commission, in the reasonable exercise of its discretion, is required to enforce the provisions and rules of the Compact. The Compact specifies the authority of the Commission to initiate and pursue certain legal remedies.

Article X: Effective Date, Withdrawal, and Amendment

The Compact is effective and binding on the earlier of the date of legislative enactment of the Compact into law by no less than 26 states or December 31, 2018. [*Note:* The Compact has been implemented as of January 19, 2018.] Party states to this Compact that were also parties to the prior nurse licensure compact superseded by this Compact are deemed to have withdrawn from the prior compact.

The Compact provides that a party state may withdraw from the Compact by enacting a statute repealing the same. The party state's withdrawal or termination does not take effect until six months after enactment of the repealing statute, and the party state continues to be required to report adverse actions and significant investigations occurring prior to the effective date of withdrawal or termination.

Party states are allowed to amend the Compact, but such amendment does not become effective and binding upon the party states unless and until such amendment is enacted into the laws of all party states.

Article XI: Construction and Severability

The Compact is liberally construed to effectuate the purposes of the Compact. The provisions of the Compact are severable and, if any provision is found unconstitutional or held invalid, the remainder of the Compact and its applicability is not affected.

Amendments to the Act [Sections 2-8]

Definitions Under the Act [Section 2]

The bill moves the definition of "continuing nursing education" in KSA 2017 Supp. 65-1117 to KSA 2017 Supp. 65-1113 without amending the definition.

Licensure and Notification Requirement [Section 3]

Multi-state licenses under the Compact expire every two years in the same manner as other licenses under the Act. The bill allows any licensed nurse to file a multi-state license application together with the prescribed multi-state license fee at any time the nurse holds an active license.

The bill allows the Board to request persons who hold a multi-state license under the Compact and who engage in the practice of nursing in Kansas to voluntarily provide workforce-related information as reasonably determined by the Board. Refusal to voluntarily provide this information is not a basis for disciplinary action against or restriction of the multi-state license of any such person.

The bill also deletes the language of a subsection that expired on January 1, 2012.

License Fees [Section 4]

RN and LPN single-state license fee caps for applications for licenses, biennial license renewals, license reinstatements, and license reinstatements with a temporary permit increase. The bill adds RN and LPN multi-state license fee caps for applications for licenses, biennial license renewals, license reinstatements, and license reinstatements with a temporary permit.

Disciplinary Action [Section 5]

The bill allows the Board to require a licensee (includes RNs, LPNs, advanced practice registered nurses, and registered nurse anesthetists) to attend a specific number of hours of continuing education in addition to any hours the licensee may already be required to attend in lieu of denying, revoking, limiting, or suspending a license or authorization to practice nursing. The bill adds the new ground for which disciplinary action may be taken against a licensee of being convicted, found guilty, or having entered into an agreed disposition of a misdemeanor offense related to the practice of nursing, as determined on a case-by-case basis.

Reporting of Alleged Incidents of Malpractice or Qualifications, Fitness, or Character of a Licensee [Section 6]

A licensee is required to report to the Board any information the licensee may have relating to alleged incidents of malpractice or the qualifications, fitness, or character of a person licensed to practice professional nursing or practical nursing, including persons holding a multi-state license under the Compact.

Information Technology and Operational Staff [Section 7]

The bill provides that information technology and operational staff remain employees of the Board.

Health Occupations Credentialing Fee Fund; HB 2501

HB 2501 creates in the State Treasury the Health Occupations Credentialing Fee Fund (Fee Fund) to be administered by the Secretary for Aging and Disability Services. Fees collected under provisions of the Adult Care Home Licensure Act, Dietitians Licensing Act, Operator Registration Act, and the act regulating speech-language pathologists and audiologists are to be deposited into the Fee Fund instead of the State General Fund. [*Note:* Health Occupations Credentialing within the Kansas Department for Aging and Disability Services' Survey, Certification, and Credentialing Commission collects these fees for the credentialing of certified nurse aides, certified medication aides, home health aides, registered adult care home operators, licensed adult care home administrators, licensed dietitians, licensed audiologists, and licensed speech-language pathologists.]

State Long-Term Care Ombudsman Program; HB 2590

HB 2590 amends law related to the State Long-Term Care Ombudsman (Ombudsman) and the State Long-Term Care Ombudsman Program (Program).

Monitoring of the Program

The bill requires the Secretary for Aging and Disability Services (Secretary) to monitor the Program and its activities, as set forth in the agreement entered into by the Secretary and Ombudsman for the provision of financial assistance to the Office of the Ombudsman. The monitoring must include an assessment of whether the Program is performing all of the functions, responsibilities, and duties set forth in state and federal laws and regulations.

Definitions

The bill amends and adds definitions used in the Long-Term Care Ombudsman Act (Act). The bill amends the definition of "conflict of interest" to include receipt of gifts, gratuities, money, or compensation from a long-term care facility, its management, a resident, or the resident's representative, in which the Ombudsman or Ombudsman's representative provides services.

The bill defines "resident representative" to mean:

- An individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

- A person authorized by state or federal law, including, but not limited to, agents under power of attorney, representative payees and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications;

- The resident's legal representative, as used in the federal Older Americans Act; or

- The court-appointed guardian or conservator of a resident.

Additionally, the definition of "resident representative" will not be construed to expand the scope of authority of any resident representative beyond the authority specifically authorized by the resident, state, or federal law, or a court of competent jurisdiction.

Qualifications of the Ombudsman

The bill adds additional eligibility requirements to the Ombudsman. The bill prohibits an individual from the appointment to, or holding the office of, Ombudsman if the individual was employed by or participated in the management of a long-term care facility within the previous 12 months. Additionally, the bill specifies no person will be eligible for appointment as the Ombudsman unless the person has experience in negotiation (in addition to investigation and conflict resolution procedures under continuing law), demonstrated expertise in long-term care services and supports or other direct services for older persons or individuals with disabilities, and demonstrated expertise in leadership and program management skills.

Duties of the Ombudsman

The bill amends the duties of the Ombudsman. The Ombudsman is required to investigate and resolve complaints made by or on behalf of the residents:

- Relating to action, inaction, or decisions of providers, or representatives of providers, of long-term care, public agencies, or health and social services. The bill specifies complaints of abuse, neglect, or exploitation of a resident may be referred to the Secretary (current law requires these complaints to be referred to the Secretary), with the resident or resident's representative's consent, or as permitted by federal law; or

- Regarding the welfare and rights of residents with respect to the appointment or activities of resident representatives.

The bill specifies to whom the Ombudsman will be required to provide information, including public and private agencies and the media. Additionally, the Ombudsman is permitted to give the information or recommendations to any directly affected public and private agency or

legislator (current law specifies the information must be provided to any directly affected parties or their representatives).

The bill amends the duty of the Ombudsman to collaborate with the Kansas Department for Aging and Disability Services so the parties will review and maintain (rather than establish, as in current law) the statewide system that collects and analyzes information on complaints and conditions in facilities.

Access of Records

The bill amends law related to access to records and documents concerning residents. The bill updates "guardian of the resident" to "resident representative" so the resident representative, with consent of the resident of the facility, has access to all records and documents kept for or concerning the resident. The bill also updates "guardian" to "resident representative" in all instances related to access of documents by the Ombudsman. The bill specifies an ombudsman or volunteer ombudsman has access to all administrative records, policies, and documents of the facility that the residents have or the general public has access to that are relevant to carry out provisions of the Act. Additionally, the bill deletes the subsection of law related to the volunteer ombudsman having access to the plan of care and other records or documents, because the bill provides the volunteer ombudsman with access to certain administrative records, policies, and documents.

Quarterly Summary Report

The bill requires the Ombudsman to forward to the Secretary a quarterly summary report relating to the health and safety of residents, complaints reported, and resolutions to complaints. The bill permits the summary report to be posted quarterly on the Program's website.

Asbestos Trust Claims Transparency Act; HB 2457

HB 2457 enacts the Asbestos Trust Claims Transparency Act (Act), which shall apply to all asbestos claims (as defined in the Silica and Asbestos Claims Act) filed on or after July 1, 2018.

The bill requires the plaintiff to provide certain statements and materials no later than 30 days prior to the date the court establishes for the completion of all fact discovery. Specifically, the plaintiff is required to conduct an investigation, file all asbestos trust claims that can be made by the plaintiff, and provide a sworn statement indicating the investigation has been conducted and all possible claims filed. The plaintiff is required to provide all parties with all trust claim materials, accompanied by a custodial affidavit from the asbestos trust. If the plaintiff's asbestos trust claim is based on exposure through another individual, the plaintiff is required to produce all trust claim documents submitted by or on behalf of the other individual to any asbestos trust to which the plaintiff has access. The bill also requires the plaintiff to supplement the information and materials within 30 days after the plaintiff, or a person on the plaintiff's behalf, supplements an existing asbestos trust claim, receives additional information or materials related to such a claim, or files an additional asbestos trust claim.

The bill outlines circumstances under and procedures by which a defendant may file and the court may grant a motion for the completion of all fact discovery regarding the plaintiff's asbestos trust claims.

Additionally, the bill defines "asbestos," "asbestos claim," "asbestos trust," "plaintiff," "trust claim materials," and "trust governance documents"; establishes evidentiary standards for asbestos claims; provides a procedure to reopen and adjust judgment in an asbestos claim if the plaintiff subsequently files an asbestos trust claim with an asbestos trust in existence at the time of judgment; and requires defendants and judgment debtors to file any motion under the bill within a reasonable time and not more than one year after the judgment was entered.

Civil Asset Forfeiture; Kansas Asset Seizure and Forfeiture Repository; HB 2459

HB 2459 creates and amends law related to civil asset forfeiture, as follows.

Creation of Kansas Asset Seizure and Forfeiture Repository and Related Reporting Requirements

The bill creates a new section within the Kansas Standard Asset Seizure and Forfeiture Act (SASFA) requiring the Kansas Bureau of Investigation (KBI) to establish, on or before July 1, 2019, the Kansas Asset Seizure and Forfeiture Repository (Repository), which will gather information concerning each seizure for forfeiture made by a seizing agency pursuant to SASFA. The information gathered will include, but not be limited to:

- The name of the seizing agency or name of the lead agency if part of a multi-jurisdictional task force and any applicable agency or district court case numbers for the seizure;

- The county where and date and time the seizure occurred, a description of the initiating law enforcement activity leading to the seizure, and the specific location where the seizure occurred;

- Descriptions of the type of property and contraband seized and the estimated values of the property and contraband;

- Whether criminal charges were filed for an offense related to the forfeiture and court and case number information of such charges;

- A description of the final disposition of the forfeiture action, including any claim or exemption asserted under SASFA;

- Whether the forfeiture was transferred to the federal government for disposition;

- Total cost of the forfeiture action, including attorney fees; and

- Total amount of proceeds from the forfeiture action, specifying the amount received by the seizing agency and the amount received by any other agency or person.

The bill requires the KBI to maintain the Repository and an associated public website and requires the KBI to promulgate rules and regulations before July 1, 2019, to implement the new section.

On and after July 1, 2019, each seizing agency must report the specified information concerning each seizure for forfeiture to the Repository, with the prosecuting attorney submitting information to the seizing agency within 30 days after the final disposition of the forfeiture, and the seizing agency submitting the required information to the Repository within 60 days after the final disposition of the forfeiture.

On or before February 1 of each year, beginning in 2020, each law enforcement agency (agency) must annually compile and submit a forfeiture fund report to the Repository. If the agency is a state agency, the report must include the agency's state forfeiture fund balance on January 1 and December 31 of the preceding calendar year and the total amount of the deposits and a listing, by category, of expenditures during the preceding calendar year. If the agency is a city or county agency, the report must include the agency's special law enforcement trust fund balance on January 1 and December 31 of the preceding calendar year and the total amount of deposits and a listing, by category, of expenditures during the preceding calendar year.

The reports for each agency must separate and account for deposits and expenditures from proceeds from forfeiture credited to the agency's fund pursuant to the SASFA section governing disposition of forfeited property, deposits and expenditures from proceeds from forfeiture actions under federal law, and amounts held by the agency related to pending forfeiture actions under SASFA.

On March 1 of each year, beginning in 2020, the KBI must determine whether each agency's financial report matches the agency's seizing report. If the agency has not submitted

the required financial report, or if the agency's financial report does not substantially match the agency's seizing report, the KBI must notify the agency of the difference in reports. If the agency does not correct the reporting error within 30 days, the KBI must send the agency and the county or district attorney for the county where the agency is located a certified letter notifying the agency it is out of compliance. Upon receipt of the letter, no forfeiture proceedings may be filed on property seized by the agency. Once the agency has achieved compliance with the reporting requirements, the KBI must send the agency and the county or district attorney a certified letter notifying the agency it is in compliance and forfeiture proceeding filings may continue under SASFA. Each year, on or before April 15, the KBI must report to the Legislature any agencies in the state that have failed to come into compliance with the reporting requirements for the agencies' funds.

The bill amends the Kansas Open Records Act to provide that, except for requests of summary data compiled from information submitted by multiple agencies or as otherwise provided by law, requests for records submitted to the Repository shall be directed to the agency from which the records originated.

Amendments to SASFA Sections

The bill amends multiple sections of SASFA, as follows.

Exemptions

The statute governing exemptions is amended to require a common carrier be an actual consenting party or privy to a violation of SASFA before the carrier's conveyance is subject to forfeiture, rather than allowing forfeiture upon the appearance of consent or being privy to a violation. This statute is also amended to clarify a reference to owners or interest holders who acquire the property after the conduct giving rise to forfeiture.

Seizure of Property—County or District Attorney and Attorney General Requirements

The bill amends the statute governing the seizure of property to clarify that the county or district attorney has 14 days to accept or decline a written request for forfeiture from a local or state agency. For those cases where the county or district attorney approves another attorney to represent a local agency in the forfeiture proceeding, the bill prohibits the county or district attorney from approving an attorney with whom the county or district attorney has a direct or indirect financial interest. Similarly, for state agencies, the Attorney General is prohibited from approving an attorney with whom the Attorney General has a direct or indirect financial interest. A county or district attorney and the Attorney General are prohibited from requesting or receiving any referral fee or personal financial benefit from any proceeding under the SASFA.

Commencement of Forfeiture Proceedings—Service of Notice

The statute governing commencement of forfeiture proceedings is amended by specifying that the various types of service of the required notice are to be accomplished and are effective pursuant to the Code of Civil Procedure. The bill extends the circumstances under which service by publication is allowed, to include where service by certified mail was attempted but was not effective.

The bill requires an affidavit describing the essential facts supporting forfeiture and copies of Judicial Council forms for petitioning for recognition of an exemption and for making a claim be included with the notice.

Recognition of Exemption

The statute governing recognition of exemption is amended to require, rather than allow, the plaintiff's attorney to make an opportunity to file a petition for recognition of exemption available, and to require the plaintiff's attorney to acknowledge this opportunity in the notice of pending forfeiture.

The time provided for an owner of or interested holder in the property to file a claim or a petition for recognition of exemption is extended from 30 days to 60 days, and the bill states that such claims or petitions must "substantially comply" with the requirements for claims. The time for the plaintiff's attorney to provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests in response to each petitioning party is reduced from 120 days to 90 days after the effective date of the notice of pending forfeiture.

The time provided for an owner of or interest holder in any property declared nonexempt to file a claim is extended from 30 days to 60 days after the effective date of the notice of the recognition of exemptions and statement of nonexempt interests.

The time before the recognition of exemption and statement of nonexempt interests becomes final if no claims are filed is extended from 30 days to 60 days, in keeping with the time extensions described above.

Claims; In Rem *Proceedings*

The sections governing claims and *in rem* proceedings are amended to extend the time provided for an owner or interest holder in property to file a claim or answer from 30 days to 60 days. Attestation requirements that the claim or answer and all supporting documents be in affidavit form, signed under oath, and sworn to by the affiant are removed, leaving only the requirement that the claim or answer be signed by the claimant under penalty of perjury. A possible penalty of making a false writing is removed.

The bill removes requirements that the claim or answer set forth the date, identity of the transferor, and a detailed description of the circumstances of the claimant's acquisition of an interest in the property; the specific provision of SASFA relied on in asserting the property is not subject to forfeiture; all essential facts supporting each assertion; and the specific relief sought. It adds a requirement that the claim or answer include a detailed description of when and how the claimant obtained an interest in the property.

The bill specifies substantial compliance with the claim or answer requirements shall be deemed sufficient and add a provision allowing the right against self-incrimination to be asserted in a claim or answer. If the right is asserted, the court may, at its discretion, draw an adverse inference from the assertion against the claimant, but the adverse inference may not, by itself, be the basis of a judgment against the claimant.

The bill amends the section governing claims by removing a prohibition against granting an extension of time to file a claim except for good cause.

The bill further amends the section governing *in rem* proceedings to remove provisions governing discovery and a requirement the court hold a hearing on the claim within 60 days after service of the petition.

Time to File a Claim in In Personam *Proceedings*

The statute governing *in personam* proceedings is amended to extend the time in which an owner of or interest holder in property that has been forfeited and whose claim is not precluded may file a claim from 30 days to 60 days after initial notice of pending forfeiture or after notice following the entry of an order of forfeiture, whichever is earlier.

Rebuttable Presumptions and Elements

The bill amends the section governing judicial proceedings to remove a rebuttable presumption that certain items found in close proximity to contraband or an instrumentality of conduct giving rise to forfeiture are the proceeds of conduct giving rise to forfeiture or were used or intended to be used to facilitate the conduct.

A rebuttable presumption that property is subject to forfeiture if the seizing agency establishes three elements is amended to remove the presumption and instead state that the totality of the circumstances shall determine if the property of a person is subject to seizure, while the elements in continuing law are changed to non-exclusive factors to be considered and a fourth factor (proximity to contraband or an instrumentality giving rise to forfeiture) is added.

The bill removes a rebuttable presumption that property in or upon which controlled substances are located at the time of seizure was being used or intended for use to facilitate an act giving rise to forfeiture.

A provision preventing a defendant convicted in a criminal proceeding from denying the essential allegations of the criminal offense in a later forfeiture proceeding is changed to prevent the defendant from denying the elements of the criminal offense.

A provision allowing only the plaintiff's attorney to file a motion to stay discovery against the criminal defendant and seizing agency in civil proceedings during a related criminal proceeding is amended to remove the language limiting filing to the plaintiff's attorney.

Disposition of Forfeited Property

The statute governing disposition of forfeited property is amended to specify an exclusive list of 12 special, additional law enforcement purposes for which proceeds from forfeiture may be used. The bill requires moneys in the funds containing forfeiture proceeds to be separated and accounted for in a manner that allows accurate tracking and reporting of deposits and expenditures of proceeds from forfeiture credited to the fund, proceeds from pending forfeiture actions under SASFA, and proceeds from forfeiture actions under federal law.

Previously existing reporting requirements are moved within this section and a sunset date for these requirements of July 1, 2019, is added in light of the bill's new reporting requirements.

Technical Amendments

The bill makes various technical changes to update or correct statutory references and ensure consistent wording throughout statutes.

Civil Immunity for Entry into Vehicle to Remove a Vulnerable Person or Domestic Animal; HB 2516

HB 2516 creates law providing for immunity from civil liability for damage to a motor vehicle for a person who enters the vehicle, by force or otherwise, to remove a vulnerable person or domestic animal, if the person entering:

- Determines the vehicle is locked or there is otherwise no reasonable method for the vulnerable person or domestic animal to exit the vehicle without assistance;

- Has a good faith and reasonable belief, based upon known circumstances, that entry is necessary because the vulnerable person or domestic animal is in imminent danger of suffering harm;

- Ensures law enforcement is notified or calls 911 before or immediately after entering the vehicle;

- Uses no more force to enter the vehicle and remove the vulnerable person or domestic animal than is necessary; and

- Remains with the vulnerable person or domestic animal in a safe location in reasonable proximity to the vehicle until law enforcement or a first responder arrives.

The bill defines "domestic animal" to include a dog, cat, or other animal that is domesticated and may be kept as a household pet. This does not include livestock, as defined elsewhere in statute, or other farm animals.

The bill defines "vulnerable person" to mean an adult whose ability to perform the normal activities of daily living or to provide for such adult's own care or protection is impaired or a minor.

The bill defines "motor vehicle" by reference to the definition in the statutes governing vehicle registration.

Protection from Abuse Act; Protection from Stalking or Sexual Assault Act; Transfer of Wireless Telephone Number; HB 2524

HB 2524 creates law allowing a court, at a hearing on a petition filed pursuant to the Protection from Abuse Act (PFAA) or Protection from Stalking or Sexual Assault Act (PFSSAA), to issue an order directing a wireless services provider (provider) to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner is not the account holder, to ensure the petitioner and any minor children in the care of the petitioner may maintain their existing wireless telephone numbers. The forms for the petition and order shall be prescribed by the Judicial Council and supplied by the clerk of the court.

This order shall be a separate order directed to the provider and must list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers will be transferred, and each telephone number to be transferred.

If the order is made in conjunction with a PFSSAA petition, the court must ensure the petitioner's address and telephone number are not disclosed to the account holder. If the order is made in conjunction with a petition filed under the PFAA, the court must direct that the petitioner's information remain confidential if the court finds the petitioner's address, telephone number, or both need to remain confidential.

The order must be served on the provider's agent for service of process listed with the Secretary of State. The provider must notify the petitioner if the provider cannot operationally or technically effectuate the order due to circumstances including, but not limited to:

- The account holder already terminating the account;
- Differences in network technology preventing the functionality of a device on the network; or
- Geographic or other limitations on network or service availability.

Upon transfer of billing responsibility for and rights to a number or numbers to the petitioner, the petitioner shall assume all financial responsibility for the transferred number or numbers, monthly service costs, and costs for any wireless device associated with the number or numbers.

The bill states a provider is not prohibited from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility, including, but not limited to, identification, financial information, and customer preferences.

The bill states it will not affect the ability of the court to apportion the assets and debts of the petitioner and account holder or the ability to determine the temporary use, possession, and control of personal property pursuant to the statute governing division of property under the Revised Kansas Family Law Code.

The bill states, notwithstanding any other provision of law, no wireless services provider or its officers, employees, assigns, or agents would be liable for civil damages or criminal liability in connection with compliance with a transfer issued under its provisions or for failure to process such order.

The bill requires any provider operating in Kansas to adhere to an order issued under its provisions and prohibits a provider from charging a fee for the services provided pursuant to the bill.

The bill provides the definitions of “wireless services” and “wireless services provider” are the same as provided in the statute governing siting of wireless infrastructure.

Professional Counselors Licensure Act; SB 386

SB 386 amends the Professional Counselors Licensure Act. In continuing law, an individual making an application to the Behavioral Sciences Regulatory Board for licensure as a professional counselor is required to, among other things, have earned a graduate degree in counseling. The bill allows licensure for an applicant who earned a graduate degree in a counseling-related field as long as all the remaining qualifications set forth in statute are met. The change is applicable to individuals applying for initial licensure and to individuals applying for licensure who are licensed to practice professional counseling in another jurisdiction.

The bill clarifies that the licensure requirement of 45 graduate semester hours in various areas set forth in statute is counseling coursework.

Cosmetology Senior Status License; SB 398

SB 398 changes the requirements for an individual to qualify for a senior status cosmetologist license by lowering the age and reducing the number of years of practice required. The bill allows the Kansas Board of Cosmetology (Board) to issue a senior status license to any person who has held a license issued by the Board for at least 10 years and is 60 years or older, if the individual is not regularly engaged in the practice of cosmetology in Kansas and has paid a one-time senior status license fee. Current law allows a senior status license to be issued to a person 70 years of age or older who has held a license for at least 40 years.

Kansas Highway Patrol, Rank; SB 369

SB 369 requires members of the Kansas Highway Patrol (Patrol) appointed to the rank of major be returned to a rank not lower than that held at the time of appointment when the appointment is terminated. This provision would be added to those requiring a member of the Patrol appointed to the rank of superintendent or assistant superintendent be returned to a rank not lower than that held at the time of appointment when the appointment is terminated.

Conveyance of Certain Property in Lansing; Department of Corrections; Leavenworth County Fire District No. 1; HB 2608

HB 2608 authorizes and directs the Secretary of Corrections (Secretary), on behalf of the Kansas Department of Corrections and the State of Kansas, to convey by quitclaim deed a 1.09 acre parcel of land in Lansing to Leavenworth County Fire District No. 1. The legal description of the parcel is provided in the bill, but if the Secretary determines the description is incorrect, the Secretary is authorized to convey the property using the correct legal description, with the deed subject to the approval of the Attorney General.

The bill requires the quitclaim deed be in a form approved by the Attorney General.

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

Transfer of Motor Carrier License Fees Funds; SB 276

SB 276 increases the statutory limit on unencumbered balances in the Motor Carrier License Fees Fund from $700,000 to $2.8 million. Amounts exceeding the limit are transferred to the State Highway Fund on July 30 and January 30 of each fiscal year.

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

Powers of Certain Redevelopment Authorities; SB 185

SB 185 revises the powers of Johnson and Labette counties pertaining to certain redevelopment districts and authorities.

The bill allows the board of county commissioners in either county that has established a redevelopment district that includes property located within a federal enclave to authorize the installation, maintenance, and operation of utilities to serve the redevelopment district. Utilities include water, sewer, electricity, gas, telecommunications, and rail services.

If a redevelopment authority board has been established by the county to oversee the redevelopment district, the abilities described above may be delegated by the county to the redevelopment authority board. Any franchise for utilities authorized by the bill must be adopted by resolution; may not be exclusively granted to any person, firm, or corporation; and shall be limited in time to no more than 20 years. The bill allows for franchise fees up to 6.0 percent of a customer's gross charges for utility service.

The bill also authorizes a redevelopment authority in either county to incur debt and issue bonds to pay for the costs of developing and improving the utilities and other properties within the redevelopment district. A redevelopment authority may secure debt using property it owns in the district. It is permissible to use lease-purchase agreements to acquire and finance property. The maximum maturity of issued bonds may not exceed 20 years. Debt incurred is solely the responsibility of the redevelopment authority to repay.

Construction of a Statue Honoring Dwight D. Eisenhower; SB 262

SB 262 authorizes the Capitol Preservation Committee to approve plans to place a permanent statue of Dwight D. Eisenhower on the Kansas Capitol grounds.

The bill also authorizes the Department of Administration to receive moneys from grants, gifts, contributions, or bequests to finance the construction of the statue and its pedestal. All funds received shall be remitted to the Dwight D. Eisenhower Statue Fund, which is created by the bill and used solely for the purpose of creating and constructing the statue and its pedestal or other purposes specifically indicated in the bequest. No public funds shall be used to construct the statue or pedestal.

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

Kansas 911 Act; HB 2435

HB 2435 amends the Kansas 911 Act. The bill changes the frequency the Legislative Division of Post Audit is required to conduct an audit of the state 911 system from every three years to every five years. The next audit will be due on or before December 31, 2018. The change in timing will synchronize the legislative review requirement and the performance auditing requirement.

National Day of the Cowboy; HB 2437

HB 2437 amends law concerning observance of the National Day of the Cowboy by stating the fourth Saturday in July shall be designated as the National Day of the Cowboy.

Current law requires state officials to issue proclamations inviting people of the state to observe the National Day of the Cowboy, directing the U.S. flag be displayed on all state buildings, and authorizing display of the National Day of the Cowboy flag on the grounds of the State Capitol Building on the last Friday of July. The bill specifies such proclamations and flag displays shall occur on the Friday immediately preceding the National Day of the Cowboy.

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

Tribal Regalia and Objects of Cultural Significance; HB 2498

HB 2498 prohibits state agencies and municipalities from prohibiting individuals from wearing tribal regalia or objects of cultural significance at public events.

The bill defines the following terms:

- "Municipality" means any county, township, city, school district, or other political or taxing subdivision of the state, or any agency, authority, institution, or other instrumentality thereof;

- "Public event" means an event held or sponsored by a state agency or municipality, including, but not limited to, an award ceremony, a graduation ceremony, or a meeting of a governing body; and

- "State agency" means the State of Kansas and any department or branch of state government, or any agency, authority, institution, or other instrumentality thereof.

The bill requires the Secretary of State to send a copy of the bill to each tribal government on the four reservations in Kansas on the effective date of the bill.

The bill states the Kansas Legislature declares the purpose of the bill is to help further the State's recognition of the distinct and unique cultural heritage of Native Americans and the State's commitment to preserving Native Americans' cultural integrity.

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

Procedure for Dissolution of an Airport Authority; HB 2628

HB 2628 allows the City of Pratt (City) to dissolve, *via* adoption of an appropriate ordinance, any airport authority (authority) created and established by the City. If such an airport authority is dissolved, the City would acquire the property of the authority subject to any leases or agreements made by the authority.

The bill requires an ordinance adopted by the City dissolving an authority to provide for the following:

- The provisions of the ordinance are deemed adequate for the payment or retirement of any authority debts or obligations; and

- All property, funds, and assets of the authority are vested in the City.

Upon the effective date of the ordinance, the following occurs:

- Transfer of all of the powers, duties, and functions of the authority to the City;

- Transfer of all balances for all funds or accounts for the authority to the City;

- Transfer of all liabilities of the authority, including the accrued compensation or salaries of officers and employees, to the City; and

- Vesting in the City of all assets of the authority.

If the City dissolves the authority, the bill makes the City the successor in every way to the powers, duties, and functions of the dissolved authority, and the City is considered the continuation of the authority. If dissolution occurs, the City is required to make adequate provisions for the payment or retirement of all authority debts and obligations.

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

The bill allows suits, actions, or other proceedings maintained by or against the successor of the authority, or any affected officer, commenced prior to its dissolution to proceed. The bill specifies that any such legal action is not be diminished due to the governmental reorganization under the ordinance adopted by the City.

If the Authority is dissolved, the bill requires the City to offer the opportunity to become officers or employees of the City to any officers and employees of the authority deemed necessary in the performance of the powers, duties, or functions of the City.

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

Taxation of Beer Sold by Cereal Malt Beverage Licensees; HB 2502

HB 2502 provides for newly authorized sales by cereal malt beverage (CMB) licensees of beer containing no more than 6.0 percent alcohol by volume to be subject to state and local sales taxes instead of the state liquor enforcement tax. Pursuant to legislation enacted in 2017, starting on April 1, 2019, CMB licensees will be allowed to sell beer containing no more than 6.0 percent alcohol by volume.

CMB licensees are under the oversight of the Director of Alcoholic Beverage Control (Director) [the Division of Alcoholic Beverage Control is within the Department of Revenue]. The Director is permitted to impose a fine, not exceeding $1,000, for each violation of the Kansas Cereal Malt Beverage Act. Moneys collected from fines will be deposited in the State General Fund.

The bill clarifies the Director will conduct the market impact study, required by continuing law to be submitted to the Legislature following the tenth anniversary of the effective date of the 2017 legislation, using information available to the Director.

SGT Gregg Steimel and PFC Richard Conrardy Memorial Highway; SB 256

SB 256 designates a portion of US-50 in Ford County, from the east city limits of Dodge City to 118 Road (near the city of Wright), as the SGT Gregg Steimel and PFC Richard Conrardy Memorial Highway. The bill removes that portion of US-50 (approximately six miles) from designation as the Turkey Wheat Trail Highway.

According to testimony, Sergeant Steimel and Private Conrardy, both from Wright, were killed in combat in July 1970 in Vietnam. For their actions, Sergeant Steimel was posthumously awarded the Distinguished Service Cross, a Bronze Star, and a National Defense Service Medal, and Private Conrardy was posthumously awarded a Silver Star.

The bill requires the Secretary of Transportation (Secretary) to place highway signs along the highway right-of-way at proper intervals to indicate the designation of the SGT Gregg Steimel and PFC Richard Conrardy Memorial Highway once the Secretary has received reimbursement for the cost of placing such signs, plus an additional 50.0 percent for future maintenance or replacement. The Secretary may accept and administer gifts and donations to aid in obtaining and installing suitable signs.

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

Vehicle Salesperson License Renewal; SB 294

SB 294 removes a requirement in the Vehicle Dealers and Manufacturers Licensing Act that the holder of a vehicle salesperson license be tested by written examination at license renewal. The bill allows the Director of Vehicles (Director) to require retesting for any salesperson licensee at renewal based on terms and conditions established by the Director.

Gas Safety and Reliability Surcharge; SB 279

SB 279 amends the Gas Safety Reliability Policy Act (Act). Specifically, the bill makes changes related to definitions used throughout the Act, cost recovery for infrastructure expenses, and gas safety reliability surcharges (GSRS).

Definitions

The bill makes the following changes to existing definitions:

- "Appropriate pretax revenues" is changed to mean the revenues necessary to produce net operating income equal to the natural gas public utility's weighted cost of capital last approved by the Kansas Corporation Commission (KCC) multiplied by the net original cost of eligible infrastructure system investments, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system investments that are included in a currently effective GSRS;

- References to "replacements" are changed to "investments," such as in the definition of "eligible infrastructure investments," which means natural gas public utility plant projects that do not increase revenues directly connecting the infrastructure investments to new customers, are in service and used and required to be used, and were not included in the natural gas public utility's rate base in its most recent general rate case;

- "Meters" are added to the list of pipeline system components that may be installed under the definition of "natural gas utility plant projects"; such projects include infrastructure installed to replace, upgrade, or modernize obsolete facilities, including, but not limited to, installation to comply with state or federal safety requirements replacing existing facilities;

- "Natural gas utility projects" is clarified to state that projects extending the useful life or enhancing the integrity of pipeline system components include, but are not limited to, projects undertaken to comply with state or federal safety requirements; and

- System security costs, including allocated corporate costs incurred by a natural gas public utility and investments made in accordance with the utility's safety and risk management programs, are added to the definition of "natural gas utility projects."

The bill adds the following definitions:

- "Obsolete facility" means a facility composed of materials that are no longer produced or supported by the manufacturer, that shows signs of physical deterioration, or does not meet current safety codes or industry standards. The definition also includes the cost-effective replacement of other facilities that are

not considered obsolete when the replacement of such is done in conjunction with the replacement of an obsolete facility; and

- "System security" means capital expenditures to protect a utility's capital assets, including both physical assets and cyber assets, such as networks, computers, servers, operating systems, storage, programs, and data, from attack, damage, or unauthorized use and access.

Cost Recovery and GSRS

The bill allows natural gas public utilities to recover costs for eligible infrastructure system investments; current law allows recovery for eligible infrastructure system replacements. The bill also changes the amount of a GSRS that may be approved by the KCC to an amount that results in GSRS revenues exceeding 20 percent of the utility's base revenue as determined in the most recent general rate proceeding; current law allows GSRS revenues to exceed no more than 10 percent of a utility's base revenue level. In determining a utility's pretax revenue, the KCC considers factors involving eligible infrastructure system investments rather than eligible infrastructure system replacements.

The bill raises the cap on the GSRS monthly charge from $0.40 to $0.80 per residential customer over the base rates in effect for the initial filing and each filing thereafter. KCC approval of the GSRS is not binding on any KCC decision in determining rates to be applied to eligible infrastructure system investments or regulatory assets during a subsequent general rate proceeding reviewing the reasonableness and prudence of such costs. If a natural gas public utility is disallowed to recover costs associated with eligible infrastructure system investments previously included in a GSRS, the utility is able to offset its GSRS in the future as necessary. Nothing in the bill is to be construed as limiting the authority of the KCC to review and consider the costs of infrastructure system investments or regulatory assets during any general rate proceeding of any natural gas public utility.

Effective Date

The bill becomes effective on and after January 1, 2019, and upon publication in the statute book.

Retail Electric Suppliers, Municipal Energy Agencies, and Electric Cooperatives; Sub. for SB 323

Sub. for SB 323 amends law related to Kansas municipal energy agencies (MEAs), the oversight of electric cooperatives by the Kansas Corporation Commission (KCC), and retail electric suppliers.

Kansas Municipal Energy Agencies

Under continuing law, any MEA is authorized to operate as a public utility without obtaining a certificate of public convenience (certificate requirements described in KSA 2017 Supp. 66-131). The bill requires a MEA to file for a certificate for transmission rights for any electric facilities used to transmit electricity constructed in the certificated territory of a retail

electric supplier. In determining convenience and necessity, the KCC applies provisions set forth in KSA 66-1,170 *et seq.*, to a MEA to the same extent it does to a retail electric supplier.

A MEA is allowed to elect to be exempt from the jurisdiction, regulation, supervision, and control of the KCC by having an election of its voting members, not more often than once every two years, by complying with the following:

- An election may be called by the governing body of the MEA or shall be called not less than 180 days after receipt of a valid petition signed by not less than 10.0 percent of the MEA members;

- The proposition for deregulation shall be presented to a meeting of the members, the notice of which shall set forth the proposition for deregulation and the time and place of the meeting. Notice to the members shall be written and delivered not less than 21 days nor more than 45 days before the date of the meeting;

- If the MEA mails information to its members regarding the proposition for deregulation, other than the notice of the election, the MEA shall include any information in opposition to the proposition that is submitted by petition signed by not less than 1.0 percent of MEA members. All expenses incidental to mailing the additional information shall be paid by the signatories to the petition; and

- If the proposition is approved by the affirmative vote of not less than a majority of the members voting, the MEA shall notify the KCC in writing of the results within ten days after the date of the election.

Voting on the proposition shall be in accordance with the governing documents of the MEA. MEAs exempt from KCC jurisdiction may elect to terminate their exemptions by following the same process.

Even if a MEA elects to be exempt from the KCC's jurisdiction, the KCC shall still investigate all rates, joint rates, tolls, charges and exactions, classifications, and schedules of charges or rates (rates) of such MEA if there is filed with the KCC, not more than one year after a change in such MEA's rates, a petition signed by not less than 20.0 percent of the MEA's voting members. The bill requires that if, after investigation, the KCC finds such rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the KCC has the power to fix and order substituted rates as are just and reasonable. The complained of rates remain in effect subject to change or refund pending the KCC's investigation and final order. If a MEA is exempt, not less than ten days' notice of time and place of any meeting of the voting members at which rate changes or charges are to be discussed and voted on shall be given to all members of the MEA and the meeting shall be open to all members. Violations of this process are subject to civil penalties and enforcement in the same manner as set forth in the Kansas Open Meetings Act.

Any exempt MEA is required to maintain a schedule of rates and charges at the MEA headquarters and make copies available for the general public during regular business hours, and failure to comply with these requirements shall subject the MEA to a civil penalty of not more than $500.

Additionally, a MEA that has elected to be exempt is required to include a provision in its notice to members, either before or after a rate change, of the member's right to request the KCC to review the rate change.

These provisions shall not be construed to affect the single certificated retail service territory of any retail electric supplier or the authority of the KCC, as otherwise provided by law over a MEA with regard to service territory; certain charges, fees, or tariffs for transmission services; sales of power for resale, other than sales to its own members; and wire stringing, transmission line siting, and the extension of electric facilities used to transmit electricity.

KCC Oversight of Electric Cooperatives

The bill allows the KCC's oversight role of electric cooperatives to be limited as it relates to charges or fees for transmission services that are recovered through an open access transmission tariff of a regional transmission organization and that has its rates approved by the Federal Energy Regulatory Commission.

Nothing in the bill shall be construed to affect the authority of the KCC pursuant to KSA 66-144 (application for relief from interstate rates or regulations).

Retail Electric Suppliers

When a city proposes to annex land located within the certified territory of a retail electric supplier, the city is required to provide notice to the retail electric supplier no less than 30 days prior to the city making a selection for a franchise agreement.

When a city is making a franchise agreement selection, it is required by continuing law to consider certain factors. The bill adds the following two factors for a city to consider:

- Proposals from any retail electric supplier holding a certificate in the annexed area; and

- Whether the selection is in the public interest as it relates to all the factors considered by the city.

The city is required to produce a record of its deliberations and findings upon each factor and the basis for its selection. The record shall be available as a public record within ten days after the city makes a selection.

Under continuing law, within 30 days after a city makes its selection, any supplier aggrieved may file an appeal in the district court of the county in which the annexed area is located. The bill requires the appeal determine whether the city met the requirements set forth in previously enacted law and the new requirements set forth in the bill, and whether the city's selection is based upon substantial, competent evidence. The appeal shall be docketed as a new civil action and the docket fee collected. The district is allowed to take additional evidence on the factors set forth in continuing law and in the bill. The review of the city's selection shall be limited to the record produced and supplemented by any additional evidence received by the court.

Under continuing law, if an appeal is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service. The bill inserts language to state the service shall be provided at the retail electric supplier's ordinary rates until such time as the appeal has been concluded and service rights terminated. Also under continuing law, if the service rights of a supplier are terminated, the KCC is required to certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation. If the new retail electric supplier does not affect the assumption of electric service to the annexed area at the termination of a retail electric service provider's service rights, then the originally certified supplier has the right to continue service to the annexed area until such supplier does assume service to the annexed area, subject to time lines set forth in continuing law.

Under continuing law, whenever the service rights of a retail electric supplier are terminated, fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. The bill adds to such compensation an amount equal to 8.5 percent of the gross revenues of total retail sales attributable to new customers in the territory in which service rights have been terminated for a period of ten years following the date of termination of service rights of the retail electric supplier. The payments shall be made in annual installments to the retail electric supplier whose service rights are terminated. Gross revenues shall be determined based on the rates charged and billed at the time each annual payment is made. Such retail electric supplier is required to have the right to review, audit, or cause to be audited the subsequent supplier's financial records with respect to retail electric service in the territory in which service rights have been terminated to determine the amount payable. A retail electric supplier shall be entitled to compensation if a franchise agreement between a city and a retail electric supplier was agreed to but was terminated within ten years after such agreement was effectuated by the parties.

Effective Date

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

Controlled Shooting Areas; HB 2558

HB 2558 extends the season for hunting and collecting game birds on controlled shooting areas from September 1 to March 31 to September 1 to April 30.

WORKERS COMPENSATION

Certain Death and Related Benefits Allowed by the Workers Compensation Act; Senate Sub. for HB 2184

Senate Sub. for HB 2184 increases certain death and related benefits allowed by the Workers Compensation Act (Act).

When an employee dies at the workplace, the Act allows for an initial payment to be shared between the surviving spouse and the dependent children. The spouse receives 50.0 percent, and the children, if applicable, receive 50.0 percent. The bill increases the initial payment from $40,000 to $60,000. After the initial payment, the Act generally allows for those dependents to receive weekly payments, subject to minimum and maximum amounts that are specified by law. Under the Act, a wholly dependent child may receive subsequent weekly benefits until the age of 18 or age of 23, provided the child is either incapable of earning wages or enrolled as a full-time student in a college or vocational institution. The bill clarifies that benefits for a dependent child 18 years old continue until May 30 of the child's senior year of high school or until the child turns 19, whichever happens earlier. If a deceased employee leaves behind a spouse, dependent children, or both, then no other dependents or heirs may receive benefits under the Act.

The remainder of the bill revises certain minimum and maximum benefits payable for other individuals. Pursuant to the Act, other individuals who were wholly dependent upon a deceased employee's earnings are eligible for a benefit. The bill increases the maximum benefit from $18,500 to $100,000. In situations where a deceased employee leaves behind persons who were partially dependent, the minimum benefit increases from $2,500 to $25,000, and the maximum benefit increases from $18,500 to $100,000.

The Act allows legal heirs to receive a lump-sum payment of $25,000, but they are exempt from receiving that benefit if there is a life insurance policy that was procured by an employer worth not less than $18,500 and with beneficiaries designated by the deceased employee. The bill increases the lump-sum benefit to heirs from $25,000 to $100,000. However, if the employer procured a life insurance policy in an amount not less than $50,000, then the benefit paid to the heirs is reduced by the amount of the life insurance, up to $100,000.

The maximum amount paid by the employer for burial expenses increases from $5,000 to $10,000. When a court-appointed conservator is necessary, the maximum costs paid by an employer increases from $1,000 to $2,500.

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