

**SUPPLEMENT TO
PRELIMINARY SUMMARY OF LEGISLATION
2019 KANSAS LEGISLATURE**

KL RD

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analysis for the Kansas Legislature*

This updated version of the April 1, 2019 publication contains summaries of selected bills passed by the Legislature from April 1 to adjournment on April 5. Bills that have not yet been signed by the Governor are included.

The first Preliminary Summary, containing summaries of major bills that were passed through the end of the legislative day on March 27, 2019, was distributed on April 1, 2019. A final supplement will be mailed after the wrap-up session in May.

Highlights, a summary of major legislation in newsletter form, will be prepared and mailed to legislators as soon as possible after the Session. *The Summary of Legislation*, which accounts for all bills passed by the 2019 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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ABORTION

Reversal of Medication Abortions Using Mifepristone—Notice and Reporting Requirements, Civil and Criminal Penalties, and Civil Action; SB 67

SB 67 requires certain notifications be posted in facilities where medication abortions that use mifepristone are provided and be given by physicians providing such abortions. The bill provides relevant definitions and creates civil and criminal penalties for violating the notification requirements.

Definitions

The bill defines the following terms:

- “Medication abortion” to mean the use or prescription of any drug for the purpose of inducing an abortion;
- “Abortion” to mean the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy; and
- “Medical emergency” to mean a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Notification Requirements

The bill requires any private office, freestanding surgical outpatient clinic, hospital, or other facility or clinic where medication abortions that use mifepristone are provided to post a conspicuous sign that is clearly visible to patients, is printed with lettering that is legible and at least three-fourths of an inch boldfaced type, and reads as follows:

NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources.

The bill requires the notice include information about the Kansas Department of Health and Environment (KDHE) website, which is required to be maintained under the Woman's -Right-to-Know Act (KSA 65-6710), and other relevant telephone and Internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion. [Note: KDHE is required to publish and distribute certain informational materials, which are updated on an annual basis.]

Facilities

The bill requires any private office or freestanding surgical outpatient clinic where medication abortions that use mifepristone are provided to post the sign in each patient waiting room and patient consultation room used by patients for whom medication abortions are provided.

A hospital or other facility where medication abortions that use mifepristone are provided that is not a private office or freestanding surgical outpatient clinic are required to post the sign in each patient admission area used by patients for whom medication abortions that use mifepristone are provided.

Physician

The bill prohibits a physician from providing, inducing, or attempting to provide or induce a medication abortion that uses mifepristone without informing the woman, in writing as prescribed in the Woman's-Right-to-Know Act and by telephone or in person, at least 24 hours prior to the medication abortion, except in the case of a medical emergency, of the following:

- It may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and
- Information on reversing the effects of a medication abortion that uses mifepristone is available on KDHE's website as required by law (KSA 65-6710), and other relevant telephone and Internet resources containing information on where the patient may obtain timely assistance to attempt to reverse the medication abortion.

The bill requires, after a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of performing a medication abortion, the physician or an agent of the physician to provide a legible, written notice to the patient that includes the same information stated above.

The bill requires, when a medical emergency compels the performance of a medication abortion that uses mifepristone, the physician to inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment an abortion is necessary to avert the woman's death or a 24-hour delay creates serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

KDHE Website

The bill requires, within 90 days after the effective date of the bill, KDHE cause to be published, in English and in each language that is the primary language of 2.0 percent of more of the state's population, in print and on the website required by law, comprehensible materials designed to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The website also includes other relevant telephone and Internet resources containing information on where the patient may obtain timely assistance to attempt to reverse the medication abortion.

Criminal Penalties

The bill provides that upon a first conviction of a violation of failing to provide notification as outlined in the bill, a person is guilty of a class A person misdemeanor and, upon second or subsequent conviction of such violation, a person is guilty of a severity level 10, person felony.

Civil Penalties

The bill requires KDHE to assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital, or other clinic or facility that fails to post the sign. Each day the required sign is not posted is a separate violation. KDHE is required to remit all moneys received from fines to the State Treasurer. The State Treasurer is required to deposit the entire amount of money remitted in the State Treasury to the credit of the State General Fund.

Civil Action

The bill allows the following individuals to bring a civil action against a physician who provided a medication abortion using mifepristone in violation of the provisions in the bill for actual damages, exemplary and punitive damages, and any other appropriate relief:

- A woman to whom such medication abortion has been provided;
- The father of the unborn child who was subject to such medication abortion; or
- Any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

The bill requires such civil action be commenced within two years after the later of:

- The date of the discovery of the violation; or
- The conclusion of a related criminal case.

A court is required to award reasonable attorney fees and costs to a prevailing plaintiff or a prevailing defendant upon a finding that the action was frivolous and brought in bad faith.

Anonymity

In any civil or criminal proceeding or action brought under the provisions of bill, the bill requires the court to rule whether the anonymity of any woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced is to be preserved from public disclosure, if she does not give her consent to such disclosure. The bill requires the court, upon motion of a party or on its own accord, to make such a ruling and, upon determining the woman's anonymity is to be preserved, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The bill requires each such order to be accompanied by specific written findings explaining why the anonymity of the woman is to be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced, any person, other than a public official, who brings an action under this section is required to do so under a pseudonym. The bill is not to be construed to conceal the identity of the plaintiff or witnesses from the defendant.

Severability Clause

The bill provides that if any provision of the bill, or any application thereof to any person or circumstance, is held invalid by court order, then such invalidity does not affect the remainder of the bill and any application thereof to any person or circumstance that may be given effect without such invalid provision or application, and to this end, the provisions of the bill are to be declared severable.

Reporting Requirements

The bill requires any person licensed by the State Board of Healing Arts or the Board of Nursing who prescribes or administers progesterone for the purpose of reversing a medication abortion to:

- Report to KDHE within 14 days of prescription or administration the person has prescribed or administered progesterone to a patient for such purpose;
- If the progesterone treatment fails to reverse the effects of the medication abortion, report to KDHE within 14 days of such failure; and
- If the woman to whom progesterone is prescribed or administered for the purpose of reversing a medication abortion successfully carries the pregnancy to term, report to KDHE the maternal and newborn health conditions at the time of birth within 14 days of the birth.

AGRICULTURE AND NATURAL RESOURCES

Commercial Industrial Hemp Program; Senate Sub. for HB 2167

Senate Sub. for HB 2167 requires the Kansas Department of Agriculture (KDA), in consultation with the Governor and Attorney General, to submit a plan to the U.S. Department of Agriculture (USDA) regarding how the KDA will monitor and regulate the commercial production of industrial hemp within the state, in accordance with federal law. In addition, the bill establishes the Commercial Industrial Hemp Program; makes changes to the Industrial Hemp Research Program; and establishes hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Creation of the Commercial Industrial Hemp Program

Legislative Intent [New Section 1]

The bill declares it is the intent of the Legislature that KDA's implementation of the Commercial Industrial Hemp Act (Act) will be conducted in the least restrictive manner allowed under federal law.

Commercial Plan Requirements [New Section 2(a)-(b)]

The bill requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The bill requires the plan to include the following:

- A procedure to maintain relevant information regarding land on which industrial hemp is produced, including a legal description of the land, for a period of no less than three calendar years;
- A procedure for testing the delta-9 tetrahydrocannabinol (THC) concentration levels of industrial hemp produced by using post-decarboxylation or other similarly reliable methods;
- A procedure for the effective disposal of industrial hemp and hemp products found to be in violation of the Act;
- Any licensing requirements or other rules and regulations the KDA deems necessary for the proper monitoring and regulation of industrial hemp cultivation and production for commercial purposes, including, but not limited to, license fees, license renewals, and other necessary expenses to defray the cost of implementing and operating the plan on an ongoing basis;
- A procedure for creating documentation that all persons in possession of industrial hemp before it is processed may use to prove to law enforcement officers the industrial hemp was lawfully grown under this section of the bill;

- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify industrial hemp is not produced in violation of the Act; and
- Any other necessary procedures to meet federal requirements.

Violations [New Section 2(c)]

The bill states a hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations relating to commercial hemp production under an approved commercial plan is not subject to any state or local criminal enforcement action, but is required to comply with the following corrective actions, as applicable:

- Establish a reasonable date by which the hemp producer must correct the negligent violation; and
- Require the hemp producer to periodically report to the KDA on compliance with the production laws and rules and regulations for a period of not less than the next two calendar years.

A hemp producer who negligently violates the provisions of the bill or any adopted rules and regulations three times in a five-year period is ineligible to produce industrial hemp for a period of five years from the date of the third violation.

The bill requires the KDA to immediately report any violation by a hemp producer with a greater culpable mental state than negligence to the Attorney General; the producer may be subject to criminal enforcement.

Ineligibility [New Section 2(d)]

The bill provides an individual is not eligible to produce industrial hemp if the individual has submitted any materially false information in any application to become a licensed hemp producer.

Fingerprinting Requirements and Background Checks [New Section 2(e)]

The bill mandates the KDA to require, as a qualification for initial or continuing licensing, all individuals seeking a license or renewal as a hemp producer to be fingerprinted and submit to a state and national criminal history background check. The KDA is authorized to submit the fingerprints to the Kansas Bureau of Investigation (KBI) and Federal Bureau of Investigation (FBI) for the background checks.

The KDA is allowed to use the information obtained from fingerprinting and background checks for verifying the identification of the individual and for making a determination of the qualifications for initial or continuing licensing as a hemp producer. Disclosure or use of any information received by the KDA for any purpose other than provided for in the Act is a class A misdemeanor and constitutes grounds for removal from office or termination of employment.

The bill disqualifies an individual who has been convicted of a controlled substances felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

The KBI is authorized to charge a reasonable fee for the background check, and the individual seeking a license or license renewal as a hemp producer must pay the costs of fingerprinting and the state and national background checks.

Rules and Regulations [New Section 2(f)]

The bill requires the Secretary of Agriculture to promulgate rules and regulations to implement the plan submitted to the USDA and to otherwise effectuate the production of commercial industrial hemp.

Fees [New Section 2(h)-(i)]

The bill requires any modification fee established by the KDA for any requested change to a license previously issued by the KDA to not exceed \$50.

The bill also changes the name of the Alternative Crop Research Act Licensing Fee Fund to the Commercial Industrial Hemp Act Licensing Fee Fund (Hemp Fund). Any licensing or other fees collected pursuant to the bill or any adopted rules and regulations will be deposited in the Hemp Fund for all administration costs of the commercial production of industrial hemp.

Changes to the Current Industrial Hemp Research Program

Accepting Applications [New Section 3]

The bill requires the Secretary of Agriculture to continue accepting any applications for licensure submitted under the Industrial Hemp Research Program for the 2019 growing season from March 1, 2019, through June 1, 2019.

Modification Fee [Section 8(c)]

The bill requires any modification fee established by the KDA for any requested change to a license previously issued by the KDA to not exceed \$50.

Disqualifications [Section 8(d)(2)]

The bill disqualifies an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from initial or continuing licensure as a hemp producer.

Rules and Regulations [Section 8(e)]

The bill requires the KDA to promulgate rules and regulations to carry out the provisions regarding the research and development of industrial hemp by December 31, 2019, rather than December 31, 2018. The bill prohibits the KDA from promulgating rules and regulations concerning the recording of license plates.

Discontinuing the Program [New Section 2(g)]

The bill allows the KDA to discontinue the Industrial Hemp Research Program enacted in 2018 if one or more of the following occurs:

- The federal law authorizing states to operate an industrial hemp research program is repealed;
- A federal plan by the USDA allowing for the cultivation and production of commercial industrial hemp is adopted; or
- Rules and regulations by the KDA establishing commercial industrial hemp production in the state are adopted.

Effective Date

Changes to the Industrial Hemp Research Program will not go into effect until on or after July 1, 2019.

Definitions Applicable to Both the Commercial and Research Programs [Section 7]

The bill makes the following changes to definitions in the Act:

- Adds the definitions of “commercial,” “effective disposal,” “hemp producer,” “hemp processor,” “person,” and “authorized seed or clone plants”;
- Deletes the definitions of “certified seed” and “department”; and
- Amends the current definitions of “delta-9 tetrahydrocannabinol concentration,” “hemp products,” and “industrial hemp.”

Crimes and Controlled Substances Exceptions [Section 12(aa), Section 13(h)(1)]

The bill includes “industrial hemp” as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances.

The bill also excludes from the schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;

- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

Hemp Processors [New Section 4]

Hemp Processor Registration [New Section 4(a)-(h)]

The bill requires the KDA to create and maintain a registry of all hemp processors operating within the state. Any person engaged in the processing of industrial hemp must register annually with the Secretary of Agriculture (Secretary) prior to processing industrial hemp. Such processors must apply for registration on a form provided by the Secretary, and the registration expires on April 30 each year. The fee for registration cannot exceed \$200 and will be established by the Secretary through rules and regulations.

The bill requires the annual registration application, provided by the Secretary, to include at least the following:

- The name, address, and telephone number of the applicant;
- The physical location of any hemp processing operations;
- A brief description of the industrial hemp processing methods, activities, and products; and
- Certification an applicant has fully complied with the fingerprinting and criminal history record check requirements, if applicable.

Any applicant providing a false statement of compliance is guilty of a class C nonperson misdemeanor.

The KDA is required to provide, as often as is reasonably required or requested, an updated list of all hemp processors to the KBI and to the county sheriff in each county where a hemp processor is located.

Hemp processors licensed under the Alternative Crop Research Act (ACRA) are exempt from the hemp processor registration requirements; however, the Secretary is required to include the processors licensed under the ACRA in the list of registered hemp processors.

The bill requires all fees collected from the registrations to be deposited in the Hemp Fund.

Violations [New Section 4(i)]

The bill makes it unlawful for any person to operate as a hemp processor without valid registration and provides the following sentencing guidelines:

- Upon first conviction for operating as a hemp processor without valid registration, a person is guilty of a class A nonperson misdemeanor; and
- Upon second or subsequent conviction for this violation, a person is guilty of a severity level 9, nonperson felony.

Hemp Processor Employee Fingerprinting and Criminal Record History Checks [New Section 4(j)]

The bill requires registered hemp processors, or those people applying to become registered hemp processors, to request the KBI to conduct state and national criminal record history checks on any employees who will be involved in the extraction of cannabinoids, including through the disposal of cannabinoids from industrial hemp under Section 6. The bill requires the criminal history record checks to include the individual's fingerprints and a copy of a completed and signed statement furnished by the hemp processor. The bill requires the signed statement to include:

- A waiver permitting the hemp processor to request and receive the criminal history record check for the purpose of determining the individual's qualification and fitness to process industrial hemp;
- The name, address, and date of birth of the individual as it appears on a valid identification document;
- A disclosure if the individual has ever been convicted, or is the subject of pending charges, of a criminal offense and, if convicted, a description of the crime and result of conviction; and
- A notice to the individual subject to the criminal history record check that the individual is entitled to obtain a copy of the criminal history record check report to challenge the accuracy and completeness of any information contained in the report before a final determination is made by the hemp processor.

The bill requires a registered hemp processor or an applicant to become a registered hemp processor to be fingerprinted and submit the fingerprints to the KBI and the FBI for a criminal history record check. The bill requires local and state law enforcement officers and agencies to assist the hemp processor in taking and processing an individual's fingerprints.

The bill requires the registered hemp processor or applicant to use the individual's fingerprints to identify the individual and determine whether the individual has a record of criminal history in Kansas or other jurisdictions or countries. The bill authorizes the processor or applicant to use information obtained by the criminal history checks in the official determination of the individual's qualifications and fitness to process industrial hemp. Disclosure or use of any

information received by the processor or applicant for any purpose other than provided for in the Act is a class A nonperson misdemeanor.

The KBI is required to release to the registered hemp processor or applicant all records of the individual's adult convictions in Kansas and other states, jurisdictions, or countries in order to make a final determination of the individual's qualification to process industrial hemp.

The bill disqualifies an individual who has been convicted of a controlled substance felony violation or a substantially similar offense in another jurisdiction within the preceding ten years from processing hemp.

The bill requires the hemp processor to make the sole determination of the individual's fitness to extract cannabinoids from industrial hemp and does not require the KBI to make such a determination on behalf of any hemp processor.

The bill authorizes the KBI to charge a reasonable fee to conduct a criminal history record check. The bill requires the hemp processor or applicant to pay the costs of fingerprinting and the state and national criminal history record check for the individual seeking employment under the hemp processor.

Rules and Regulations [New Section 4(k)]

The bill authorizes the Secretary to promulgate rules and regulations for registration of hemp processors.

Prohibition on Products and Sentencing Guidelines

Prohibition on Products [New Section 5(a)-(b),(d)]

The bill prohibits the manufacture, marketing, selling, or distribution of the following hemp products:

- Cigarettes containing industrial hemp;
- Cigars containing industrial hemp;
- Chew, dip, or other smokeless material containing industrial hemp;
- Teas containing industrial hemp;
- Liquids, solids, or gases containing industrial hemp for use in vaporizing devices;
and
- Any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs

Act. This does not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

For this purpose, the bill defines the terms “human or animal consumption” and “intended for human or animal consumption.”

In addition, the bill prohibits the marketing, selling, or distribution of industrial hemp buds, ground industrial hemp floral material, or ground industrial hemp leaf material to any person in Kansas who is not registered as a hemp processor by the KDA under a commercial plan.

The bill clarifies this section does not prohibit a state educational institution or affiliated entity from using any hemp product for research purposes or the production, use, or sale of any hemp product otherwise not prohibited by Kansas or federal law.

Sentencing Guidelines [New Section 5(c)]

The bill states, upon first conviction for violation of the section, a person is guilty of a class A nonperson misdemeanor and, upon second or subsequent conviction, a person is guilty of a severity level 9, nonperson felony.

Research Purposes [New Section 5(d)]

The bill ensures nothing in the section prohibits the use of any hemp product for research purposes by a state educational institution or affiliated entity or the production, use, or sale of any hemp product that is otherwise not prohibited by state or federal law.

Waste [New Section 6]

The bill requires all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act be managed in accordance with all applicable solid and hazardous waste laws and regulations.

If the waste can be used in the same manner as, or has the appearance of, a controlled substance, the bill requires the waste to be rendered unusable and unrecognizable before being transported or disposed. This requirement does not apply to waste managed as a hazardous waste and sent to a hazardous waste facility.

The bill also defines the term “usable and unrecognizable” with regard to waste derived from the cultivation, production, or processing of industrial hemp under the Act.

The bill makes any violation of this section unlawful under continuing law regarding solid waste.

Effective Date

The bill takes effect upon publication in the *Kansas Register*, except where otherwise noted.

ALCOHOL AND DRUGS

Temporary Permits; Common Consumption Areas; License Terms; Delivery of Alcoholic Liquors; Farm Wine; Official Red and White Wine Grapes; SB 70

SB 70 amends law concerning temporary permits to serve liquor for consumption on premises; amends law concerning common consumption areas; amends law related to the issuance of licenses by the Division of Alcoholic Beverage Control (ABC), Department of Revenue; creates law related to delivery of alcoholic liquors within the state and required reporting of such deliveries; amends the Liquor Control Act to allow for producers of certain fermentative products to sell wine made at a farm winery; and designates the official Kansas red and white wine grapes.

Application for a Temporary Permit

The bill requires applications to be submitted electronically to the Director of Alcoholic Beverage Control (Director). The bill requires a non-refundable \$25 temporary permit application fee to be paid by a check or a credit card. The bill removes the requirement for any check used to pay the permit fee to be from a bank located in Kansas.

The bill requires an application for a temporary permit to include a diagram showing the boundaries of the premises, entrances, and exits and the area where liquor is served as part of the requirement to specify the premises covered by the temporary permit.

The bill authorizes the Director to reject an application for a temporary permit if:

- The applicant has been granted four permits in the current calendar year;
- The application was not filed with the Director at least 14 days prior to the event;
- The applicant, or any officer, director, partner, registered agent, trustee, manager, or owner of the applicant, has previously owned or operated any entity holding a temporary permit, club, drinking establishment, or caterer's license and had to surrender such permit or license and had been ordered to appear and show cause why the permit or license should not be revoked or suspended;
- The applicant has designated an area for an event that was the subject of the order to appear and show cause and it appears that the new application is an attempt to avoid remedial action taken by the Director; or
- The applicant has had a license or permit revoked under the Club and Drinking Establishment Act, or has been convicted of a violation of the Kansas Liquor Control Act, the Club and Drinking Establishment Act, the Kansas Cereal Malt Beverage Act, or laws related to liquor drink tax.

Rights and Responsibilities of Temporary Permit Holders

The bill allows a temporary permit holder to charge an entrance fee for the premises or any portion of the premises.

The bill permits a temporary permit holder to serve liquor for consumption on licensed or unlicensed premises, or on premises otherwise subject to a separate temporary permit. The bill removes the requirement for all proceeds from an event for which a temporary permit is issued to be used only for the purposes stated in the application.

Purchase and Transfer of Liquor

The bill permits a temporary permit holder to purchase and possess liquor for resale three days prior to the first day of sale of such liquor. Temporary permit holders may purchase liquor only from a farm winery or a retailer with a federal wholesaler's permit. Temporary permit holders purchasing liquor from farm wineries or retailers are required to keep the following records for one year after the date of purchase: date of purchase; name and address of the retailer or farm winery; name and address of the temporary permit holder as it appears on the temporary permit; brand, size, proof, and amount of all liquor purchased; and the subtotal of the cost and total cost, including enforcement tax, of all liquor purchased.

The bill requires all liquor purchased on any one day be removed from the licensed premises of any retailer or farm winery within 48 hours. Temporary permit holders are prohibited from warehousing any liquor on the licensed premises of any retailer or farm winery for more than 48 hours.

The bill allows a distributor to deliver liquor to the permit premises, without permission from the Director, so long as the liquor was purchased from a retailer who is a wholesaler under federal law. If a licensee sold liquor to a temporary permit holder and the distributor directly delivered the liquor to a temporary permit holder, but the licensee's normal operating hours prevent immediate payment to the distributor, the licensee may pay the retailer and the retailer may pay the distributor within 48 hours of the sale.

The bill removes the requirement for written permission from the Director for a temporary permit holder to sell back to the retailer or farm winery from whom the liquor was purchased within three business days after the event. However, after four business days, written permission from the Director is still required.

Consumption of Liquor on a Public Street, Alley, Road, or Highway

The bill permits the consumption of liquor on a public street, alley, road, or highway when:

- A temporary permit has been issued pursuant to the provisions of the bill or continuing law;
- A caterer's licensee has provided the required notification for a catered event; or

- A drinking establishment licensee has been authorized to extend its licensed premises.

The bill requires consumption of liquor on public streets, alleys, roads, sidewalks, or highways to be approved by the local governing body where the consumption will occur through an ordinance or resolution. The bill prohibits consuming liquor inside a vehicle while on a public street, alley, road, or highway at any time instead of at any special event or catered event.

Extended Premises

The bill allows a drinking establishment licensee, public venue, hotel, hotel caterer, or drinking establishment caterer to extend its licensed premises.

The bill allows the licensed premises covered by a temporary license to be extended into a city, county, or township street, alley, road, sidewalk, or highway if:

- Such street, alley, road, sidewalk, or highway is closed to motor vehicle traffic by the local governing body during any time that liquor is to be sold or consumed; and
- Such extension has been approved by the city, county, or township by ordinance or resolution that specifies the exact times during which liquor may be sold or consumed on a street, alley, road, sidewalk, or highway.

The bill includes the extended licensed premises of a drinking establishment as one of the boundaries from which liquor provided by the temporary permit holder may not be removed. The bill removes a restriction on possessing or consuming liquor inside the premises licensed as a special event that was not sold or provided by the temporary permit holder.

Premises Boundaries

The bill requires the boundary of any premises covered by a temporary permit to be marked by a line of demarcation.

Dispensing and Removal of Liquor from Premises

The bill allows only temporary permit holders who obtained the permit to sell liquor at a charitable auction or one or more limited-issue porcelain containers containing liquor to sell liquor for removal from or consumption off the licensed premises, except that liquor may be removed to a drinking establishment that has extended its premises into the event area.

The bill requires all liquor sold at an event covered by a temporary permit be dispensed only from original containers. An individual is permitted to carry an original container of liquor onto the event premises with the approval of the temporary permit holder and under the following conditions:

- The temporary permit holder may not store any containers of liquor on the event premises; and
- Each individual carrying such a container onto the premises is required to remove such container when the individual exits the event premises.

The bill repeals provisions related to charitable auctions and limited-issue decanter sales.

Samples

The bill authorizes temporary permit holders to provide samples of wine, beer, and spirits as follows, subject to the provisions of the Liquor Control Act and Club and Drinking Establishment Act:

- All wine, beer, and spirits sampled must come from the inventory of the temporary permit holder. A person other than the temporary permit holder, or a temporary permit holder's employee or agent, may not dispense or participate in the dispensing of alcoholic beverages;
- A supplier's permit holder, or a supplier permit holder's agent or employee, may provide samples of wine, beer, and distilled spirits on the permit premises, and may open, touch, or pour liquor; make a presentation; or answer questions at sampling events. Any liquor sampled must be purchased from a retailer or temporary permit holder on whose premises the sampling event is held;
- No charge may be made for a sample serving;
- A person may be served more than one sample;
- Samples may not be given to minors;
- No samples may be removed from the permit premises; and
- The providing of samples to consumers is exempt from the requirement to hold a Kansas Food Service Dealer license.

The bill defines "sample" in both the Liquor Control Act and the Club and Drinking Establishment Act as a serving of alcoholic liquor that contains not more than one-half ounce of distilled spirits, one ounce of wine, or two ounces of beer or cereal malt beverage. The bill specifies a sample of a mixed alcoholic beverage shall contain no more than one-half ounce of distilled spirits.

Keg Identification Numbers

The bill exempts the retail sales of liquor to temporary permit holders from the Beer and Cereal Malt Beverage Keg Registration Act, which requires affixing a keg identification number to a cereal malt beverage or beer container having a liquid capacity of four or more gallons.

Employees and Services Contracted by Temporary Permit Holders

The bill prohibits temporary permit holders from employing or using the services of any person who:

- Is under 18 years old to serve liquor;
- Is under 21 years old to mix or dispense drinks containing liquor;
- Is under 21 years old and not supervised by the temporary permit holder or an employee who is at least 21 years old;
- Has been convicted of a felony or any crime involving a morals charge to dispense, mix, or serve liquor; or
- Has been convicted within the previous two years of a violation of any intoxicating liquor law of Kansas, any other state, or the United States, to dispense, mix, or serve liquor.

Enforcement

The bill places Sections 1 through 5 under the enforcement of the Kansas Liquor Control Act and the Club and Drinking Establishment Act and the rules and regulations adopted under these acts. The bill authorizes the Secretary of Revenue to adopt rules and regulations for the administration and enforcement of Sections 1 through 5.

The bill specifies the terms used in Sections 1 through 5 have the same meaning as such terms in KSA 2018 Supp. 41-102 (the Kansas Liquor Control Act) or 41-2601 (the Club and Drinking Establishment Act). The bill removes the definition for a “special event” from a statute prohibiting consumption of alcoholic liquor in certain places.

Liability

The bill specifies each temporary permit holder selling liquor for consumption on the permit premises is liable for all violations of laws governing the sale and consumption of liquor in areas covered by multiple temporary permits.

The bill includes employees of temporary permit holders and any person contracting with temporary permit holders to provide services or food in connection with an event, as well as any person dispensing, mixing, or serving alcohol at an event as individuals the temporary permit

holder is responsible for if such an individual were to violate the Club and Drinking Establishment Act while on the permit premises.

Common Consumption Areas

The bill allows licensees that have permission to participate in a common consumption area (CCA) to sell and serve liquor from one non-contiguous service area, in addition to the licensed premise, within the CCA and requires such licensee to prominently display a copy of its drinking establishment license and the approval of the CCA permit holder at the non-contiguous service area.

ABC License Terms

The bill provides the term for licenses issued by ABC commence on the effective date specified on the license.

Additionally, the bill amends law relating to the license term of Class B clubs, drinking establishments, public venues, and caterer's licenses by providing that such licenses will be issued for two years commencing on the effective date specified on the license, rather than such licenses expire two years after issuance.

Delivery of Alcoholic Liquors

The bill requires every express company or other common carrier (carrier) that delivers alcoholic liquors from outside the state to consumers within the state to prepare a monthly report of known alcoholic liquors shipped by the carrier to be filed with the Director.

The bill requires such report to contain the following information:

- The name of the express company or other common carrier that delivered the liquors;
- The period of time covered by the report;
- The name and business address of the consignor of the liquors;
- The weight of the package delivered to each consignee;
- A unique tracking number; and
- The date of delivery.

The bill requires any carrier, upon request by the Director, to make any additional records supporting the report available to the Director. The bill requires such records be kept and preserved for a period of two years unless destruction of the records is authorized in writing by the Director.

The bill imposes a penalty of not more than \$500 upon any carrier that willingly fails, neglects, or refuses to file any report required by the bill.

The bill further provides each report is an open record available for public inspection in accordance with the Kansas Open Records Act. The bill prohibits the inclusion of the name and business address of the consignee of such alcoholic liquors in reports made available to the public. The provisions concerning the exclusion of certain information in reports made available to the public expire on July 1, 2024, unless the Legislature reenacts such provisions.

Sale of Farm Wine by Producer Licensees

The bill allows producers of certain fermentative products to sell wine made at a farm winery. The bill requires the farm wine to meet the minimum Kansas content requirements. A vineyard permit is renamed a producer license, which is available to producers of grapes, with not less than 100 vines; ripe fruit, or berries, not less than 1,000 pounds; or honey, not less than 100 pounds. Each producer licensee is required to secure a \$500 bond under the Liquor Control Act, and is liable for payment of liquor drink and liquor enforcement taxes. A producer license is valid for two years, and it costs \$200. The bill requires licensees to maintain records and sales receipts, which may be inspected by the ABC, the Secretary of Revenue, or any law enforcement officer.

If a producer licensee is also licensed as a club or drinking establishment, the producer license allows for the sale of domestic wine and other alcoholic liquor, as authorized by the Club and Drinking Establishment Act. If the producer licensee also has a cereal malt beverage license, the producer is allowed to sell beer not exceeding 6.0 percent alcohol by volume, as authorized by the Kansas Cereal Malt Beverage Act. The bill allows a producer licensee to prohibit a person from possessing alcoholic liquor or cereal malt beverage not purchased on the licensee's premises.

Official Red Wine and White Wine Grapes

The bill designates the official Kansas red wine grape as chambourcin and the official Kansas white wine grape as vigneoles.

Effective Date

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

CHILDREN AND YOUTH

Revised Kansas Code for the Care of Children Amendments; Family First Prevention Services Act; HB 2103

HB 2103 amends the revised Kansas Code for the Care of Children and enacts statutory provisions to enable the state to meet the requirements of the federal Family First Prevention Services Act (FFPSA). [Note: The FFPSA allows for an enhanced federal match rate toward the use of Social Security Act Title IV-E funds for certain child welfare system evidence-based prevention services and programs beginning October 1, 2019.] The bill defines a qualified residential treatment program (QRTP), establishes notice and hearing requirements when a child is placed in a QRTP, requires certain action to be taken by the court when QRTP placement occurs, and places additional documentation requirements on the court in a permanency hearing involving a child placed in a QRTP.

Further, the bill amends the definition of a secure facility and requires a child in need of care petition to have an attached copy of any existing prevention plan for a child.

Definitions

A QRTP means “a program designated by the Secretary for Children and Families [Secretary] as a qualified residential treatment program pursuant to federal law.”

[Note: The bill also appears to amend the definition of a secure facility to exclude a juvenile detention facility. However, this change was made in 2018 legislation and the amendment in this bill is to reconcile different versions of the statute.]

QRTP Placement Notice and Hearing Requirements

Placement Notice

The Secretary is required to notify the court in writing within seven days of a child’s placement in a QRTP. The bill requires written notice also to be given to the petitioner; the attorney for the parents, if any; each parent at the last known address; the child, if 12 years of age or older; the child’s guardian *ad litem*; any other party or interested party; and the child’s court-appointed special advocate.

Placement Hearing Requirements

Within 30 days after a child is placed in a QRTP, any person to whom written notice of such placement is required is allowed to request, in writing, the court conduct a hearing. The court must conduct the hearing within 60 days of placement in a QRTP and provide a notice of hearing to the persons who are required to receive written notice of placement in a QRTP.

The Secretary is required to provide the court with a written assessment and documentation of the need for QRTP placement.

Within 60 days of placement in a QRTP, the court is required to:

- Consider the assessment and documentation provided by the Secretary;
- Determine whether the needs of the child could be met through placement in a foster family home or whether QRTP placement provides the most effective and appropriate level of care for the child in the least restrictive environment and whether the QRTP placement is consistent with the short-term and long-term goals specified in the child's permanency plan; and
- Approve or disapprove QRTP placement.

Permanency Hearing Requirements for QRTP Placement

In addition to statutory findings and documentation requirements to be made by a court in a permanency hearing, the bill also requires the court to document the following in a permanency hearing involving a child placed in a QRTP:

- The ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster family home, QRTP placement provides the most effective and appropriate level of care for the child in the least restrictive environment, and the placement is consistent with the short-term and long-term goals specified in the child's permanency plan;
- The specific treatment or service needs that are met for the child through QRTP placement and the expected length of time the child needs the treatment or services; and
- The Secretary's efforts to prepare the child to return home or be placed with a fit and willing relative, a legal guardian, or an adoptive parent or in a foster family home.

Additionally, the bill requires the court to set a subsequent permanency hearing within 60 days of a finding that reasonable efforts have not been made by appropriate public or private agencies to rehabilitate the family and achieve the permanency goal in place at the time of the hearing, or the reasonable and prudent parenting standard has not been met.

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

EDUCATION

K-12 School Finance; Kansas School Equity and Enhancement Act Amendments; House Sub. for SB 16

House Sub. for SB 16 amends the Kansas School Equity and Enhancement Act (KSEEA), creates law and amends current statutes relating to public schools, and appropriates funds to the Kansas State Department of Education (KSDE) for fiscal years (FY) 2020 and 2021.

KSEEA Amendments

The bill makes several amendments to the KSEEA, as follows.

Base Aid for Student Excellence (BASE)

The bill amends the BASE for school years (SY) 2019-2020, 2020-2021, 2021-2022, and 2022-2023. The following table shows the BASE former amount and the BASE amount under the bill.

Base Aid for Student Excellence (SY 2019-2020 through SY 2022-2023)			
School Year	Former Amount		House Sub. for SB 16
2019-2020	\$ 4,302	\$	4,436
2020-2021	4,439		4,569
2021-2022	4,576		4,706
2022-2023	4,713		4,846

At-risk Education Programs

The bill requires the Kansas State Board of Education (KSBE) to identify and approve evidence-based programs provided by state-based national nonprofit organizations that:

- Focus on students who are eligible to receive at-risk program services or who face other identifiable barriers to success;
- Provide evidence-based instruction and support services to such students; and
- Evaluate outcomes data for such students, including, but not limited to, school attendance, academic progress, graduation rates, pursuit of postsecondary education, or other career advancement.

The bill also defines “evidence-based instruction” to mean an education delivery system based on peer-reviewed research that consistently produces better student outcomes over a

five-year period than would otherwise be achieved by the same students who are receiving at-risk program services.

School Finance Audits

The bill amends the planned schedule of school finance audits to be completed by the Legislative Division of Post Audit. The bill replaces the planned cost-function performance audit in FY 2021 with an audit of school district unencumbered cash balances and moves the audit of bilingual education from FY 2022 to FY 2021. The new audit schedule is as follows:

- FY 2020: At-risk education;
- FY 2021: School district unencumbered cash balances and bilingual education;
- FY 2023: Virtual school programs; and
- FY 2024: Cost-function performance audit.

Accountability Reports

The bill requires KSDE to create one-page performance accountability reports for the State, each school district, and each school building. The performance accountability reports must include information required by the federal Every Student Succeeds Act, or any successor act, and the college and career readiness metrics developed and implemented by the KSBE.

The bill also requires KSDE to prepare annual longitudinal reports on student achievement on the state assessment for English language arts, mathematics, and science.

School District Funding Report

The bill amends law that requires KSDE to prepare annual school funding reports. The bill requires the following to be reported:

- The virtual student full-time equivalent (FTE) enrollment in addition to the full FTE for the school district; and
- All expenditures for legal services challenging the constitutionality of the school finance system under Article 6, Section 6 of the *Kansas Constitution*, including any dues or fees paid to an organization participating in such litigation.

Accountability and Funding Report Publications

The bill establishes uniform Internet publication requirements for all reports the law requires KSDE and school districts to publish. The bill requires KSDE to publish school district budget documents, the one-page performance accountability reports, the annual longitudinal reports on student achievement, and the school district funding report on the homepage of the KSDE website under a prominently displayed link titled "Accountability Reports."

The bill requires school districts to publish school district budget documents and the school district funding report on the homepages of their websites under a prominently displayed link titled “Accountability Reports.” The bill also requires the school district budget documents and the school district funding report be posted on the websites of individual schools in the school district, if such schools have separate websites.

The bill requires school districts to provide a link to the KSDE webpage where the one-page performance accountability reports and longitudinal reports on student achievement are posted. The link must be prominently displayed on the school district’s accountability reports webpage.

ACT and WorkKeys Assessments

The bill requires the KSBE to provide the ACT college entrance exam and the three ACT WorkKeys assessments required to earn a national career readiness certificate to each student enrolled in grades 11 and 12 at no charge to the student. The bill also requires KSBE to provide the PreACT college entrance exam to each student enrolled in grade 9. [Note: Sub. for SB 423 (2018) requires KSDE to provide the ACT and WorkKeys assessments to students in grades 9 through 12 during FY 2019.]

Other Provisions

Low-income Tax-credit Scholarship Program

The bill changes the definition of “public school” in the Low-income Student Scholarship Program from the 100 lowest performing schools to the 100 lowest performing elementary schools. The bill also allows students already receiving scholarships to continue receiving scholarships so no student will become ineligible due to the definition change.

Legislative Task Force on Dyslexia

The bill extends the Legislative Task Force on Dyslexia until June 30, 2022, allowing the Task Force to meet once each year.

Extension of 20-Mill Property Tax Levy

The bill extends the statewide 20-mill property tax levy for schools to FY 2020 and FY 2021. The bill also extends the \$20,000 homestead exemption for the 20-mill levy for the same fiscal years.

School District Capital Improvements

The bill makes Capital Improvement State Aid a revenue transfer from the State General Fund (SGF) for FY 2020, FY 2021, and FY 2022. Capital Improvement State Aid had been scheduled to revert to a demand transfer from the SGF in FY 2020. [Note: This was included in *The Governor’s FY 2020 Budget Report*.]

Methods of Public Education Financing

The bill also adds Jobs for America's Graduates–Kansas (JAG-K) and Boys and Girls Clubs to KSA 72-5193, which lists methods of public education financing included in satisfying the requirements under Article 6 of the *Kansas Constitution*. [Note: Communities in Schools is a listed program under continuing law.]

Appropriations

The bill appropriates \$104.5 million, all from the SGF, for FY 2020 to KSDE. This amount includes \$92.7 million for State Foundation Aid; \$10.3 million for Kansas Public Employees Retirement System (KPERs) employer contributions for school districts; and \$1.6 million for KPERs employer contributions for community colleges, technical colleges, and interlocals.

The bill also appropriates to KSDE \$114.2 million, all from the SGF, for FY 2021. This amount includes \$89.7 million for State Foundation Aid; \$21.2 million for KPERs employer contributions for school districts; and \$3.3 million for KPERs employer contributions for community colleges, technical colleges, and interlocals.

Community College Taxpayer Transparency Act; HB 2144

HB 2144 amends law related to community college student fees and enacts the Community College Taxpayer Transparency Act.

The bill includes findings and conclusions generally noting the structure and financing of community colleges; the duty of transparency owed by community colleges to property taxpayers and students of community colleges; and reaffirming the students and taxpayers of community colleges as the priority in financial decisions, reporting processes, and transparency measures of community colleges.

The bill takes effect on and after July 1, 2020.

Student Fees

The bill requires any student fees to be charged for a specific purpose and that purpose be specified on the community college's website. The bill requires any billing statements or other information provided to students regarding student fees to guide students to the community college's website address. The bill requires revenues from student fees be spent only for the specified purpose of the fee.

Community College Taxpayer Transparency Act

The bill requires community colleges to identify the courses that are fully transferable to four-year colleges governed by the Kansas Board of Regents (KBOR) and prominently specify those courses on the community college's website and on the KBOR's website.

The bill also requires community colleges to publish certain information to the community college's website under an easily identifiable link titled "taxpayer and student transparency data." Information required includes:

- Tuition rates for students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- Fees charged to students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- Total cost per credit hour for each semester, excluding housing and textbooks, for students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- The percentage of students attending each campus of the community college of students residing in the community college district, in-state students residing outside the community college district, out-of-state students, and international students;
- The enrollment percentage of students residing inside and outside of the community college district;
- The enrollment percentage of students residing in the service area of the community college;
- The aggregate amount of property tax revenues and mills levied by the community college for each of the preceding five fiscal years and the annual percent change; and
- The aggregate amount disbursed for the two immediately preceding fiscal years for institutional scholarships, foundation scholarships, and federal Pell Grants, in terms of athletic and non-athletic scholarships, for students residing in the community college district and students residing outside the state. The bill specifies this aggregate information shall not be reported if such information could identify a student with reasonable certainty.

ELECTIONS AND ETHICS

Advance Ballots and Signature Requirements; Polling Places; Municipal Office Filing Date; Oaths of Office for Township Officers; School Board Changes; Sub. for SB 130

Sub. for SB 130 amends law concerning advance ballots and associated signature requirements; polling places; the filing date for municipal offices and the date certain newly elected township officers take the oath of office; and elections, appointments, and dates certain officials take office for school boards, local boards of education, and local school district boards.

Advance Ballots and Signature Requirements

The bill requires county election officers to make an attempt to contact each voter who submitted an advance voting ballot without a signature or with a signature that does not match the signature on file and allow the voter to correct the deficiency before the commencement of the final county canvass.

Polling Places

The bill allows all voters in a county to vote at any polling place on election day, at the discretion of the county election official.

Municipal Office Filing Date

The bill changes the filing deadline for any candidate in a municipal election from September 1 prior to the general election in odd-numbered years, or the next day that is not a Saturday, Sunday, or holiday, if the filing deadline falls on such date, to June 1, or the next day that is not a Saturday, Sunday, or holiday, before the primary election in even- and odd-numbered years, regardless of whether a primary is required.

Oaths of Office for Township Officers

The bill removes from the requirement for a newly elected trustee, clerk, or treasurer of any township or any appointed road overseer in any road district to take the oath of office that the oath be taken within 20 days after being notified of such election.

School Board-related Changes

The bill removes language requiring local board of education (Board) officials who are replacing members of the Board to be appointed by November 15.

The bill requires the first meeting of the Board be on or after the second Monday in January or at a later meeting during the calendar year if so determined by the Board at the first meeting, rather than in July.

The bill requires the Board to adopt a resolution specifying the regular meeting time, the regular hour for the meeting to begin, the day of the week, and the week of the month on or

after the second Monday in January and before February 1, or at a later date during the calendar year if so determined by the Board, instead of during the month of July.

The bill removes the requirement school districts make changes in the method of elections or voting plans, or both, during the period beginning on the first Wednesday in November of each even-numbered year and ending on the first Tuesday in June of each odd-numbered year and requires a change in the method of elections or voting plan, or both, to be submitted to voters at any primary or general election, or at a special election called for that purpose.

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

HEALTH

Professions Licensed by the Behavioral Sciences Regulatory Board; Adult Care Home Licensure Act and Receiverships; Naturopathic Doctors; SB 15

SB 15 provides for licensure by reciprocity for social workers at baccalaureate, master's, and specialist clinical levels; amends requirements for licensure by reciprocity for other professions regulated by the Behavioral Sciences Regulatory Board (BSRB); provides for provisional licenses; amends provisions related to temporary licenses; clarifies the use of professional titles; amends statutes in several named acts for professions regulated by the BSRB; and amends the licensure requirements for a specialist clinical social worker.

The bill also amends the Adult Care Home Licensure Act regarding the application for licensure, financial solvency, and receivership of adult care homes.

Further, the bill revises the Naturopathic Doctor Licensure Act and the Radiologic Technologists Practice Act with regard to the ordering of diagnostic imaging studies.

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

Licensure of Professions Regulated by the BSRB

The bill provides for licensure by reciprocity for social workers at baccalaureate, master's, and specialist clinical levels and amends the requirements for licensure by reciprocity for other professions regulated by the BSRB. The bill allows applicants who are deficient in the qualifications or in the quality of educational experience required for licensure to obtain provisional licenses to allow the applicants time to fulfill remedial or other requirements prescribed by the BSRB. For several professions, the bill also amends provisions related to temporary licenses for applicants who have met all licensure requirements except for taking the required licensing examination. Further, the bill clarifies the allowable use of professional titles for individuals with provisional and temporary licenses, amends the statutes included in several named acts for professions regulated by the BSRB, and makes technical amendments.

The bill also amends the licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience required.

Social Work Licensure by Reciprocity [New Section 1]

Baccalaureate level. The bill authorizes the BSRB to issue a license to an individual who is currently registered, certified, or licensed to practice social work at the baccalaureate level in another jurisdiction, if the BSRB determines:

- The standards for registration, certification, or licensure to practice social work at the baccalaureate level in another jurisdiction are substantially the equivalent of the requirements in the Social Workers Licensure Act and rules and regulations of the BSRB for licensure as a baccalaureate social worker; or
- The applicant demonstrates compliance on forms set by the BSRB and meets the following standards as adopted by the BSRB:

- Registration, certification, or licensure to practice social work at the baccalaureate level for at least 48 of the last 54 months immediately preceding the application, with at least the minimum professional experience established by rules and regulations of the BSRB;
- No disciplinary actions of a serious nature brought by a registration, certification, or licensing board or agency; and
- Completion of a baccalaureate degree in social work from a regionally accredited university.

Master's level. The bill authorizes the BSRB to issue a license to an individual who is currently registered, certified, or licensed to practice social work at the master's level in another jurisdiction, if the BSRB determines the same requirements outlined above for the baccalaureate level have been met, but at the master's level.

Specialist clinical level. The bill requires an applicant seeking reciprocal licensure as a specialist social worker to demonstrate:

- Compliance with the requirements for reciprocal licensure to practice social work at the master's level;
- Current license to practice social work at the clinical level in another state; and
- Competence to diagnose and treat mental disorders by meeting at least two of the following areas acceptable to the BSRB:
 - Passage of a BSRB-approved national clinical examination;
 - Three years of clinical practice with demonstrated experience in diagnosing or treating mental disorders; or
 - Attestation from a professional licensed to diagnose and treat mental disorders in independent practice or licensed to practice medicine and surgery, stating the applicant is competent to diagnose and treat mental disorders.

[*Note:* The requirements for provisional licensure for the practice of social work at the clinical level in KSA 65-6309 (Section 10 of the bill) move from that statute to New Section 1 of the bill and are amended as noted above.]

Application fee for reciprocal licensure. If required by the BSRB, applicants for reciprocal licensure at the baccalaureate, master's, and specialist clinical levels must pay the application fee established by the BSRB and set out in statute.

Licensure by Reciprocity for Other Professions

The bill amends the statutes establishing the requirements for licensure by reciprocity for professions other than the practice of social work to create uniform requirements across the professions licensed by the BSRB. One of the available qualifying requirements for reciprocal

licensure is amended by reducing the number of months an applicant needs to be registered, certified, or licensed to practice a profession in another jurisdiction from at least 60 of the last 66 months immediately preceding the application to at least 48 of the last 54 months preceding the application. The amended time frame is the same as that set out in New Section 1 for the practice of social work at the three levels and applies to the following professions:

- Professional counseling (Section 9) [*Note:* The bill also clarifies a requirement of “at least” a master’s degree in counseling or a related field from a regionally accredited university or college is required.];
- Marriage and family therapy (Section 14) [*Note:* The bill also clarifies the requirement of completion of “at least” a master’s degree in marriage or family therapy or allows for “at least” a master’s degree “in a related field as approved by the Board.”];
- Addiction counseling at the baccalaureate, master’s, and clinical levels (Section 17);
- Doctoral level psychologist (Section 20); and
- Master’s level psychologist (Section 23). [*Note:* The bill also clarifies the requirement of completion of “at least” a master’s degree in psychology from a regionally accredited university or college.]

Provisional License

Remediation of deficiency. The bill authorizes the BSRB to require an applicant for licensure for any of the following professions fulfill remedial or other requirements as prescribed by the BSRB if, after evaluation, the BSRB determines such applicant is deficient in the qualifications or in the quality of the applicant’s educational experience required by the applicable statute or by rules and regulations adopted by the BSRB for that profession:

- Professional counselor (New Section 2);
- Marriage and family therapist (New Section 3);
- Master’s level psychologist (New Section 4);
- Baccalaureate, master’s, and specialist clinical social worker (New Section 5) [*Note:* The bill provides that New Section 5 is part of and supplemental to the Social Workers Licensure Act.];
- Addiction counselor (New Section 6) [*Note:* The bill provides that New Section 6 is part of and supplemental to the Addiction Counselor Licensure Act.]; and
- Psychologist (New Section 7).

Application for provisional license. The bill allows an applicant for licensure for any of the professions listed above who is completing remedial or other requirements prescribed by the BSRB due to a deficiency to apply to the BSRB for a provisional license in the applicable profession. The application for provisional licensure is required to be made on a form and in a manner prescribed by the BSRB.

Expiration, renewal, and reissuance of provisional license. The bill states a provisional license for any of the professions listed under the section on Remediation of Deficiency expires upon the earlier of the date the BSRB issues or denies a license or 12 months after the date of issuance of the provisional license. The renewal or reissuance of a provisional license upon subsequent application for the same license level is prohibited.

Professional title designation. The bill authorizes an individual holding a provisional license for any of the professions listed under the section on Remediation of Deficiency is authorized to use the statutorily permitted title or initials for such profession only if the designation is preceded by the word “provisional.”

Temporary Licenses

When an applicant meets all requirements for licensure except for taking the required examination, the bill allows such applicant to apply for a temporary license pending completion of the examination. The amendments made to temporary licensure statutes for multiple professions are discussed below.

Social worker (Section 10). The bill extends the expiration of a temporary license to practice social work from 6 to 12 months after the date of issuance of the temporary license. Additionally, a person practicing social work with a temporary license is prohibited from using the title “licensed baccalaureate social worker” or “licensed master social worker” or use the initials “LBSW” or “LMSW” unless followed by the words “by temporary license.”

Marriage and family therapist (Section 13). The bill amends the statute pertaining to the temporary licensure of marriage and family therapists to make technical amendments and to include a reference to a statute amended by the bill that establishes a temporary license fee for marriage and family therapists not to exceed \$175 (Section 15).

Addiction counselor (Section 16). The bill amends the statute pertaining to the temporary licensure of addiction counselors and master’s addiction counselors to clarify the requirement to pay both a fee for a temporary license and an application fee for licensure as an addiction counselor, and to correct statutory references.

Practice of psychology (Section 21). The bill amends the statute pertaining to the temporary license to practice psychology to require, absent extenuating circumstances approved by the BSRB, such a temporary license expires upon the earlier of the date the BSRB issues or denies a license to practice psychology or two years after the date of issuance of the temporary license. The renewal or reissuance of a temporary license on any subsequent application for licensure under the Licensure of Psychologists Act of the State of Kansas is prohibited. No limit is placed on the number of times an applicant is allowed to take the required examination for licensure.

Doctoral practice of psychology (Section 21). The bill amends the statute pertaining to the issuance of a temporary license for the doctoral practice of psychology to prohibit the reissuance of a temporary license on any subsequent application for licensure under the provisions of the Licensure of Psychologists Act of the State of Kansas. No limit is placed on the number of times an applicant is allowed to take the required examination for licensure. Technical amendments also are made.

Master's level psychologists (Section 22). The bill amends the statute pertaining to the temporary license to practice of a master's level psychologist to require the practice to be under the direction of a licensed psychologist, licensed clinical psychotherapist, a person licensed by the State Board of Healing Arts to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of mental health disorders.

Licensure of Psychologists [Section 19]

The bill amends the statute providing for the licensure of psychologists to make the required application fee non-refundable.

Exemption from Examination for Social Workers [Section 10]

The bill amends the statute pertaining to an exemption from the examination requirement for licensure as a social worker to require only that the applicant has taken and passed an examination similar to that for which an exemption is sought, as determined by the BSRB.

Change in Licensure Requirement for Specialist Clinical Social Worker [Section 25]

The bill amends the licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience from 4,000 hours to 3,000 hours and the number of hours of clinical supervision from not less than 150 hours to not less than 100 hours.

Changes to Act Citations

The bill amends the statutes and bill sections referenced when citing the named acts cited below.

Professional Counselors Licensure Act (Section 8). The Professional Counselors Licensure Act includes KSA 65-5801 through 65-5818 and New Section 2 of the bill, and amendments made to these statutes and New Section 2.

Social Workers Licensure Act (Section 11). The Social Workers Licensure Act includes KSA 65-6301 through 65-6321 and New Sections 1 and 5 of the bill and amendments to them.

Marriage and Family Therapist Licensure Act (Section 12). The Marriage and Family Therapist Licensure Act includes KSA 65-6401 through 65-6414 and New Section 3 and amendments to them.

Licensure of Psychologists Act of the State of Kansas (Section 18). The Licensure of Psychologists Act of the State of Kansas includes KSA 74-5301 through 74-5350 and New Section 7 and amendments to them.

Licensure of Master's Level Psychologists Act (Section 24). The Licensure of Master's Level Psychologists Act includes KSA 74-5361 through 74-5375 and New Section 4 and amendments to them.

Amendments to Adult Care Home Licensure Act and Receiverships

The bill amends the Adult Care Home Licensure Act regarding the application for licensure, financial solvency, and receivership of adult care homes. The bill requires the application for a license to operate an adult care home include evidence of access to sufficient working capital necessary to operate an adult care home and include a list of current or previously licensed facilities in Kansas or outside the state in which an applicant has or previously had any ownership interest in the operations or the real property of the facility.

With regard to a receivership, the bill addresses restrictions on licensure; adds a venue for filing an application for receivership; modifies the powers and duties of a receiver; places a restriction on the application or renewal of a license for a licensee and applicant under a receivership; addresses the number of copies of an application for receivership to be sent to and posted at a facility; addresses the timing of hearings and continuances on an application for receivership; modifies the powers and duties of a receiver; and adds operators and any individuals or entities that appear on a license to operate an adult care home to the list of those who are required to repay the payments made by the Secretary for Aging and Disability Services (Secretary) and personnel costs and other expenses to establish a receivership and assist the receiver, and who are subject to a lien on non-exempt personal and real property until amounts owed are repaid.

Further, the bill amends and creates definitions and makes clarifying amendments.

Definitions [Section 26]

The bill defines "insolvent" to mean the adult care home, or any individual or entity that operates an adult care home or appears on the adult care home license, has stopped paying debts in the ordinary course of business or is unable to pay debts as they come due in the ordinary course of business.

As it pertains to the denial, suspension, or revocation of a license to operate an adult care home, the bill amends the definition of "person" to eliminate the requirement that such individual have an indirect or direct ownership interest of 25 percent or more in an adult care home and instead requires the individual have only any indirect or direct ownership interest.

Application for Licensure [Section 27]

In addition to the presently required affirmative evidence of the applicant's ability to comply with reasonable standards and rules and regulations adopted under the provisions of the Adult Care Home Licensure Act, the bill requires an application for a license to operate an adult care home contain the following additional information, if applicable:

- A detailed projected budget for the first 12 months of operation prepared according to generally accepted accounting principles and certified by the principal officer of the applicant, accompanied by evidence of access to sufficient working capital to operate the adult care home in accordance with the budget, in the form of cash on deposit, a line of credit, applicant's equity, or any combination of these; and
- A list of each current or previously licensed facility in Kansas or any other state, territory, or country or the District of Columbia in which the applicant has or previously had any percentage of ownership in the operations or the real property of the facility.

Amendments to Receivership Statutes

Restrictions on new license or reinstatement (Section 28). When the district court appoints a receiver, the bill prohibits the applicant or licensee under the receivership from being eligible to apply for a new or reinstated license for ten years from the date of termination of the receivership action.

Procedural changes. The bill makes the following procedural changes with regard to receiverships:

- Adds Shawnee County District Court as another venue option for filing the application for receivership (Section 30);
- Reduces from five to one the number of copies of the application for receivership the applicant is required to send to the adult care home and requires the adult care home to post only the one copy of the application in a conspicuous place within the adult care home (Section 31);
- Requires an answer to the application for receivership to be filed by a party within five days after the service of process of such application (Section 32);
- Specifies the time frame in which the application for receivership must be heard is no later than the seventh day following the filing of the answer or other responsive pleading, rather than the seventh day following the filing of the application (Section 33);
- Extends the length of time for which the district court is allowed to grant a continuance for good cause from 10 days to not more than 14 days (Section 33); and

- Removes the requirement the receiver must apply for a license to operate an adult care home on forms provided by the licensing agency (Section 33).

Powers and duties of the receiver (Section 34). The bill reorganizes and relocates the statutory powers and duties of the receiver within KSA 39-959 and:

- Adds the receiver is entitled to the immediate use of all proceeds of any accounts receivable to discharge the powers and duties of the receiver;
- Adds the authority to terminate contracts as necessary to carry out the receiver's powers and duties;
- Modifies the receiver's authority to enter into contracts necessary to carry out the receiver's powers and duties and to incur expenses for individual items for repairs, improvements, or supplies without having to procure competitive bids, by removing the requirement that the total amount of such individual item cannot exceed \$500;
- Adds authorization for the receiver to repay the receiver's expenditures from moneys appropriated to the Kansas Department for Aging and Disability Services (KDADS) for receivership purposes set in statute, if incoming payments from the operation of the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties;
- Deletes the requirement the receiver honor all existing leases, mortgages, chattel mortgages, and security interests; and
- Adds, if incoming payments from the operation of the adult care home exceed the costs incurred by the receiver in the performance of the receiver's powers and duties, the receiver may pay post-receivership quality care assessments as established under state law.

Payment and liens (Sections 35 and 36). Continuing law allows the Secretary to authorize expenditures from moneys appropriated for receiverships if incoming payments from the operation of the adult care home are less than the cost incurred by the receiver in the performance of the receiver's functions or for the initial operating expenses of the receivership. Continuing law also requires KDADS to keep an itemized ledger showing costs of personnel and other expenses in establishing the receivership and assisting the receiver and requires KDADS be paid for these costs.

The bill adds "operator" to the list of parties who owe and are required to repay the payments made by the Secretary and the costs of personnel and other expenses described above and against whom a lien on all non-exempt personal and real property is required until the debt is repaid. The bill also clarifies the owner, operator, or licensee responsible for payment of such debt and subject to a lien includes any individuals or entities that appear on the license to operate the adult care home.

Recovery of expenses and costs upon termination of receivership (Section 37). The bill removes the Secretary for Children and Families as an entity eligible to recover

expenses and costs under a receivership, clarifying only KDADS is eligible to recover such expenses.

Naturopathic Doctors [Sections 38 and 39]

The bill revises the Naturopathic Doctor Licensure Act and the Radiologic Technologists Practice Act. The bill amends the definition of “naturopathic medicine” in the Naturopathic Doctor Licensure Act to include ordering diagnostic imaging studies, including, but not limited to, x-ray, ultrasound, mammogram, bone densitometry, computed tomography, magnetic resonance imaging, and electrocardiograms, except that naturopathic doctors are required to refer patients to an appropriately licensed and qualified healthcare professional to conduct diagnostic imaging studies and interpret the results of such studies (Section 38). The bill also amends the definition of “licensed practitioner” in the Radiologic Technologists Practice Act to include a Kansas licensed physician assistant, advanced practice registered nurse, and naturopathic doctor (Section 39).

Electronic Prescription Orders; Administering a Drug by Injection; Authorization of Business Entities to Hire Physicians and Chiropractors; HB 2119

HB 2119 amends the Pharmacy Act of the State of Kansas (Pharmacy Act) to require certain prescription orders be transmitted electronically and to permit a licensed pharmacist to administer a drug by injection in certain situations. The bill also allows a business entity issued a certificate of authorization by the Board of Healing Arts (BOHA) to employ or contract with one or more licensees of BOHA, for the purpose of providing professional services for which such licensees hold a valid license issued by BOHA.

Electronic Prescription Orders

The bill requires every prescription order issued for a controlled substance in schedule II-V that contains opiate to be transmitted electronically except as follows:

- Electronic prescription orders are not possible due to technological or electronic system failures;
- Electronic prescribing is not available to the prescriber due to economic hardship or technological limitations that are not reasonably within the control of the prescriber or other exceptional circumstances exist as demonstrated by the prescriber;
- The prescription order is for a compounded preparation containing two or more components or requires information that makes electronic submission impractical, such as complicated or lengthy instructions for use;
- The prescription order is issued by a licensed veterinarian;

- The prescriber reasonably determines it would be impractical for the patient to obtain the substances prescribed by electronic prescription in a timely manner and such delay would adversely impact the patient's medical condition;
- The prescription order is issued pursuant to drug research or drug therapy protocols;
- The prescription order is by a prescriber who issues 50 or fewer prescription orders per year for controlled substances that contain opiates; or
- The U.S. Food and Drug Administration requires the prescription order to contain elements that are not compatible or possible with electronic prescriptions.

A prescriber is allowed to request a waiver from electronically transmitting prescriptions described above for a period not to exceed six months if the prescriber cannot comply with the electronic transmitting requirements due to economic hardship, technological limitations, or other circumstance demonstrated by the prescriber. The bill allows the prescriber to request renewal of a waiver granted by the State Board of Pharmacy, for a period not to exceed six months. The bill requires requests for waivers or renewals to be submitted to the State Board of Pharmacy in a form and manner prescribed by the State Board of Pharmacy and to include the reason for the request and any other information required by the State Board of Pharmacy.

If a prescriber prescribes a controlled substance by non-electronic prescription, the prescriber is required to indicate the prescription is made pursuant to a waiver. A pharmacist is not required to verify the validity of the waiver, either with the prescriber or the State Board of Pharmacy, but is allowed to do so in accordance with continuing law.

The bill provisions requiring every prescription order issued for a controlled substance in schedule II-V that contains opiate to be transmitted electronically takes effect July 1, 2021. [Note: Substances included in the schedules are listed in KSA 65-4107 *et seq.*]

Administration of a Drug by Injection

The bill also amends the Pharmacy Act to permit a licensed pharmacist to administer a drug by injection that, in the judgment of the prescriber, could safely be self-administered by a patient, to a patient pursuant to a prescription order, unless the prescription order includes the words "not to be administered by a pharmacist," or words of like effect. The bill defines "medication order" to mean an order by a prescriber for a registered patient of a Kansas licensed medical care facility.

Nothing in the provisions of the bill replaces, repeals, or supersedes requirements prescribed in KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas.

Authorization of Business Entities to Hire Physicians and Chiropractors

The bill allows a business entity issued a certificate of authorization by BOHA to employ or contract with one or more licensees of BOHA, for the purpose of providing professional

services for which such licensees hold a valid license issued by BOHA. The bill provides nothing in the Kansas Healing Arts Act is to be construed to prohibit a licensee from being employed by or under contract to provide professional services for a business entity granted a certificate of authorization as set forth in the bill. Medical care facilities in compliance with Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical center, or recuperation center are exempt from the provisions in the bill. The bill shall not be construed to allow a corporation to practice optometry or dentistry, except as otherwise provided in Kansas law. The provisions are added to the Kansas Healing Arts Act.

Definitions

The bill defines the following terms:

- “Business entity” to mean:
 - An employer located in Kansas that utilizes electronic medical records and offers medicine and surgery or chiropractic services solely for its employees and the dependents of such employees at the employer’s work site;
 - An organization licensed to sell accident and sickness insurance in Kansas that is also a mutual or non-profit health carrier that utilizes electronic medical records, or a wholly owned subsidiary of such organization that provides medical services solely for the organization’s enrollees and dependents of such enrollees; or
 - An information technology company that designs, utilizes, and provides electronic medical records for businesses and worksite medical clinics for employers located in Kansas and offers medicine and surgery or chiropractic services solely to its employees and the dependents of such employees at the employer’s work sites in Kansas;
- “Licensee” to mean a person licensed by BOHA to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited, or placed under probationary conditions; and
- “Physician” to mean a person licensed by BOHA to practice medicine and surgery.

The bill specifies “business entity” does not include medical care facilities, corporations, and professional corporations as defined in continuing law.

Certificate of Authorization

The bill allows a business entity to apply to BOHA for a certificate of authorization, on a form and in a manner prescribed by BOHA, and requires the following information to be included:

- The name of the business entity;

- A list of the names of the owners and officers of the business entity;
- A description of the apportionment of liability of all partners or owners, if the business entity is organized as a limited partnership or a limited liability company;
- A list of each responsible official if the business entity is organized as a governmental unit; and
- A list of all licensed physicians and chiropractors to be hired by the business entity.

The bill requires, as a condition of certification, a business entity to provide BOHA evidence of the following:

- The address of the business entity;
- A city or county occupational license; and
- Licensure of all physicians and chiropractors to be employed by the business entity.

The bill requires BOHA to issue a certificate of authorization if it finds the business entity is in compliance with the requirements stated above. The certificate designates the business entity as authorized to employ individuals licensed to practice medicine and surgery or chiropractic.

Application and renewal fee. The bill requires a business entity to remit an application fee set by BOHA through rules and regulations, not to exceed \$1,000. The bill requires a certificate of authorization to be renewed annually and be accompanied by a fee fixed by BOHA.

Liability

The bill provides, except as stated in the Health Care Provider Insurance Availability Act (HCPIAA) [KSA 2018 Supp. 40-3403], no business entity issued a certificate of authorization shall be relieved of responsibility for the conduct or acts of its agents or employees by reason of its compliance with the provisions of the bill, nor shall any individual licensed to practice the healing arts be relieved of responsibility and liability for services performed by reason of employment or relationship with such business entity. The bill specifies nothing in the bill exempts any business entity from the provision of any other law applicable to the business entity.

Restrictions

The bill prohibits a business entity from directly or indirectly interfering with, diminishing, restricting, substituting its judgment for, or otherwise exercising control over the independent professional judgment and decisions of its employed licensees as it relates to the care of patients; or from prohibiting or restricting any employed licensee from discussing with or

disclosing to any patient or other individual any medically appropriate healthcare information that such licensee deems appropriate regarding the nature of treatment options, the risk or alternatives, the process used or the decision made by the business entity to approve or deny healthcare services, or the availability of alternate therapies, consultations or tests, or from advocating on behalf of a patient.

Standards of Professional Conduct

The bill allows a business entity's certificate of authorization to be revoked, suspended, or limited; publicly censured or placed under probationary conditions; or an application for certificate or reinstatement of a certificate denied upon a finding of the existence of any of the following grounds:

- The business entity has committed fraud or misrepresentation in applying for or securing an original, renewal, or reinstated certificate;
- The business entity has willfully or repeatedly violated the provisions in the bill, the Pharmacy Act, or the Uniform Controlled Substances Act, or any rules and regulations adopted pursuant thereto, or any rules and regulations of the Secretary of Health and Environment that are relevant to the practice of the healing arts;
- The business entity has had a certificate, or equivalent authorization, to employ licensees to practice the healing arts revoked, suspended, or limited; has been censured or has had other disciplinary action taken; or an application for a certificate or license denied, by the proper licensing authority of another state;
- The business entity has violated any lawful rule and regulation promulgated by BOHA;
- The business entity has failed to report or reveal the knowledge continuing law requires to be reported or revealed;
- The business entity has failed to report to BOHA any adverse action taken against the business entity by another state or licensing jurisdiction, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under provisions of the bill;
- The business entity has engaged in conduct likely to deceive, defraud, or harm the public;
- The business entity has engaged in conduct that violates patient trust and exploits the licensee-patient relationship for corporate gain;

- The business entity has used any false, fraudulent, or deceptive statement in any document connected with the practice of the healing arts, including the intentional falsifying or fraudulent altering of a patient healthcare record;
- The business entity has failed to furnish BOHA, or its investigators or representatives, any information legally requested by BOHA;
- The business entity has had, or failed to report to BOHA, any adverse judgment, award, or settlement against the business entity resulting from a medical liability claim related to acts or conduct similar to the acts or conduct that would constitute grounds for disciplinary action under provisions of the bill; or
- The business entity has been convicted of a felony or class A misdemeanor, or substantially similar offense in another jurisdiction, related to the practice of the healing arts.

A business entity that holds a certificate of authorization is allowed to operate under an assumed name.

Health Care Stabilization Fund

The bill requires, for the purposes of determining the impact on the Health Care Stabilization Fund (Fund) of requiring business entities to comply with the provision of the HCPIAA, the Fund to conduct such actuarial and operational studies as are necessary to determine such impact, and to report the finding to the Legislature on or before January 1, 2020.

Rules and Regulations

BOHA is required to adopt rules and regulations as necessary to implement and administer the provision in the bill.

Effective Date

The provisions of the bill authorizing business entities to hire physicians and chiropractors takes effect on March 1, 2020.

INSURANCE

Insurance Code Amendments and Law—Fixed Index Annuities; RBC Instructions; Enterprise Risk Reports; Fraudulent Insurance Act; HB 2177

HB 2177 creates law and amends the Insurance Code to:

- Permit life insurance companies that offer fixed index annuities (FIAs) to utilize an alternative methodology accounting for certain reserves;
- Amend the effective date specified for risk-based capital (RBC) instructions;
- Amend registration requirements in the Insurance Holding Company Act related to a filing exemption for enterprise risk reports; and
- Amend provisions governing fraudulent insurance acts and associated criminal penalty provisions to add clarifying definitions and repeal nearly identical provisions also addressing fraudulent insurance acts.

Fixed Index Annuities [New Section 1]

The bill creates law permitting life insurance companies that offer FIAs to utilize an alternative methodology accounting for FIA hedging and associated reserves.

Definitions

The bill defines several terms, including:

- “Eligible derivative asset” to mean an option (as defined in law relating to financial futures contracts [KSA 40-2b25]) that is purchased or written to hedge the growth in interest credited to an indexed product as a direct result of changes in each related external index;
- “Option,” as defined by KSA 40-2b25, means an agreement giving the buyer the right to buy or receive, sell or deliver, enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests;
- “External index” to mean a list of securities, commodities, or other financial instruments that is published or disseminated by a source other than an insurance company, including Standard & Poor’s, NASDAQ, and Dow Jones; and
- “Indexed annuity products” and “indexed life products” to each mean life insurance policies that:
 - Provide a minimum guaranteed interest accumulation on a portion of all premium payments; and

- Include provisions under which interest is credited based upon the performance of one or more external indices.

The term “hedging transaction” is assigned its definition in KSA 40-2b25: a financial instrument transaction which is entered into and maintained to reduce the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring, or the currency exchange-rate risk or the degree of exposure as to assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring.

The bill also defines “indexed products” and “interest-crediting period.”

Criteria for Eligible Derivative Assets and Life Insurers

The bill will permit insurance companies to account for eligible derivative assets at amortized cost if the insurer can demonstrate these assets meet the following criteria for an economic hedge at the inception of the hedge, or as of the date the insurer begins using the accounting practices established by the bill:

- There must be a formal documentation of the economic hedging relationship and the insurer’s risk management objective and strategy for undertaking the economic hedge, including certain information described by the bill; and
- At the end of each quarterly reporting period, the insurer must maintain documentation that the economic hedge is expected to be and continues to be highly effective in achieving offsetting changes in fair value attributable to the hedged risk during the period the economic hedge is designated.

The bill further provides that eligible derivative assets purchased or written within a year or less to maturity or expiration shall not be required to be amortized.

Accounting Practices Applying to FIA Reserves

The bill establishes the following accounting practices and further states this practice will not apply to the calculation of indexed life insurance product reserves:

- Indexed annuity product reserve calculations must be based on Actuarial Guideline XXXV assuming the market value of the eligible derivative assets associated with the current interest crediting period is zero, regardless of the observable market for the eligible derivative assets; and
- At the conclusion of each interest-crediting period, the interest credited to such product must be reflected in the indexed annuity product reserve as realized, based on the actual performance of the relevant external index or internal indices.

Reporting Requirements; Rules and Regulations

The bill requires insurers opting to use the alternative accounting practices established in the bill to report quarterly to the Commissioner of Insurance (Commissioner) for analysis purposes, the market value of its eligible derivative assets, and what the Actuarial Guideline XXXV reserve would be, using the market value of such assets. The bill further prescribes that an insurer electing to use this methodology shall not change its accounting practices back to those that would apply in the absence of the statute without the prior approval of the Commissioner.

The bill also states the Commissioner shall have the power to adopt all reasonable rules and regulations necessary to implement provisions of the bill related to fixed index annuities.

Risk-based Capital Instructions [Section 2]

The bill changes the effective date specified in the Insurance Code for the RBC instructions promulgated by the National Association of Insurance Commissioners (NAIC) for property and casualty companies and for life insurance companies from December 31, 2017, to December 31, 2018.

Enterprise Risk Reports [Section 3]

The bill amends registration requirements in the Insurance Holding Company Act related to a filing exemption for enterprise risk reports. Specifically, the bill requires an enterprise risk report filed by the ultimate controlling person of every insurer subject to registration to be appropriate to the nature, scale, and complexity of the insurer.

The bill exempts the ultimate controlling person of a domestic insurer from submitting an enterprise risk report if the domestic insurer is authorized, admitted, or eligible to engage in the business of insurance only in Kansas with total direct and assumed annual premiums of less than \$300.0 million, unless the ultimate controlling person of the domestic insurer also controls other insurers not meeting the requirements of the subsection. The bill specifies an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in Kansas if the insurer directly or indirectly writes or assumes insurance in any other manner in another state.

Fraudulent Insurance Acts [Section 4; Repealer]

The bill amends provisions governing fraudulent insurance acts and associated criminal penalty provisions to add clarifying definitions (KSA 2018 Supp. 40-2,118) and repeals nearly identical provisions also addressing fraudulent insurance acts (KSA 2018 Supp. 40-2,118a).

The bill creates the following definitions and updates references in criminal penalty provisions to specify “amount involved” as the term relates to the severity level of the crime:

- “Amount involved” to mean the greater of:
 - The actual pecuniary harm resulting from the fraudulent insurance act;

- The pecuniary harm that was intended to result from the fraudulent insurance act; or
 - The intended pecuniary harm that would have been impossible or unlikely to occur, such as in a government sting operation or a fraud in which the claim for payment or other benefit pursuant to an insurance policy exceeded the allowed value. The aggregate dollar amount of the fraudulent claims submitted to the insurance company shall constitute *prima facie* evidence of the amount of intended loss and is sufficient to establish the aggregate amount involved in the fraudulent insurance act, if not rebutted; and
- “Pecuniary harm” to mean harm that is monetary or that otherwise is readily measurable in money, and does not include emotional distress, harm to reputation, or other non-economic harm.

Cybersecurity Insurance; Life Insurance; Unfair Trade Practices; Expansion of AHPs; Exemption from Jurisdiction of the Commissioner of Insurance; Third Party Administrators and Fees; HB 2209

HB 2209 creates and amends law pertaining to insurance.

The bill amends and makes several updates to the Insurance Code, including:

- Establishing the Unclaimed Life Insurance Benefits Act;
- Amending the unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals;
- Amending license and renewal application fees and establishing an annual report fee in the Third Party Administrators (TPA) Act;
- Amending several health insurance provisions related to the regulation of association health plans (AHPs) and small employer plans and designating certain statutes as the Small Employer Health Insurance Availability Act; and
- Exempting an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner of Insurance (Commissioner).

The bill also permits the Kansas Board of Regents (KBOR) to purchase cybersecurity insurance.

Effective Dates

Provisions pertaining to cybersecurity insurance and expansion of AHPs become effective upon publication in the *Kansas Register*. Provisions pertaining to the Unclaimed Life Insurance Benefits Act, unfair trade practices relating to the refusal to insure or limiting of life

insurance coverage to certain individuals, TPAs and fees, and exempting certain non-insurance healthcare benefits from the jurisdiction of the Commissioner become effective on July 1, 2019.

Unclaimed Life Insurance Benefits Act [New Sections 1-3]

The bill establishes the Unclaimed Life Insurance Benefits Act.

Definitions [New Section 2]

The bill establishes definitions for the following terms under the Unclaimed Life Insurance Benefits Act:

- “Contract” to mean an annuity contract. The term “contract” does not include an annuity used to fund an employment-based retirement plan or program where the insurer does not perform the record keeping services, or the insurer is not committed by terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants;
- “Death Master File” to mean the U.S. Social Security Administration’s (SSA) Death Master File (DMF) or any other database or service that is at least as comprehensive as the SSA’s DMF for determining that a person has reportedly died;
- “Death Master File match” to mean a search of the DMF that results in a match of the Social Security number (SSN) or the name and date of birth of an insured, annuity owner, or retained asset account holder;
- “Knowledge of death” to mean receipt of an original or valid copy of a certified death certificate, or a DMF match validated by the insurer in accordance with the bill;
- “Policy” to mean any policy or certificate of life insurance that provides a death benefit. The term “policy” does not include:
 - Any policy or certificate of life insurance that provides a death benefit under an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) [29 USC Section 1002] or under any federal employee benefit program;
 - Any policy or certificate of life insurance used to fund a preneed funeral contract or prearrangement;
 - Any policy or certificate of credit life or accidental death insurance; or
 - Any policy issued to a group master policyholder for which the insurer does not provide record keeping services;
- “Record keeping services” to mean those circumstances under which the insurer has agreed with a group policy or contract customer to be responsible for

obtaining, maintaining, and administering in its own or its agents' systems information about each individual insured under an insured's group insurance contract, or a line of coverage thereunder, at least the following information: SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status; and

- "Retained asset account" to mean any mechanism whereby the settlement of proceeds payable under a policy or contract is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or its agent, pursuant to a supplementary contract not involving annuity benefits other than death benefits.

Requirements of Insurers; Prohibitions; Unclaimed Property; Unfair or Deceptive Acts [New Section 3]

Comparison of policies and accounts against a DMF. The bill requires an insurer to compare its insureds' in-force policies, contracts, and retained asset accounts against a DMF, on at least a semi-annual basis, by using the full DMF once and then using the DMF update files for future comparisons to identify potential matches of its insureds.

Confirmation of death and location of beneficiary or beneficiaries within 90 days. The bill requires the insurer, for those potential matches identified as a result of the DMF match, within 90 days of the match:

- Complete a good faith effort documented by the insurer to confirm the death of the insured or retained asset account holder against other available records and information; and
- Determine whether benefits are due in accordance with the applicable policy or contract and, if benefits are due, use good faith efforts documented by the insurer to locate the beneficiary or beneficiaries and provide the appropriate claim forms or instructions to the beneficiary or beneficiaries to make a claim, including the need to provide an official death certificate, if applicable under the policy contract.

Confirmation of death for group life insurance policy or certificate. The bill requires insurers, for group life insurance, to confirm the possible death of an insured when the insurers maintain at least the SSN or name and date of birth, beneficiary designation information, coverage eligibility, benefit amount, and premium payment status of those covered under a policy or certificate.

Implementation of procedures. The bill requires insurers to implement procedures to account for common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names; compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names; transposition of the month and date portions of the date of birth; and incomplete SSNs.

Disclosure of personal information. The bill authorizes an insurer to disclose minimum, necessary personal information about the insured or beneficiary to a person who the insurer reasonably believes may be able to assist the insurer locate the beneficiary or a person otherwise entitled to payment of the claims proceeds, as permitted by law.

Prohibition on charging fees. The bill prohibits an insurer or its service provider from charging any beneficiary or other authorized representative for any fees or costs associated with a DMF search or verification of a DMF match under the bill.

Application of the Unclaimed Property Act; notification to State Treasurer. The bill requires the benefits from a policy, contract, or a retained asset account, plus any applicable accrued contractual interest, to first be payable to the designated beneficiaries or owners. The bill states, in the event the beneficiaries or owners cannot be found, these benefits and interest revert to the State as unclaimed property pursuant to the Uniform Unclaimed Property Act (KSA 58-3936), which provides general rules for taking custody of intangible unclaimed property. The bill specifies interest payable on life insurance proceeds under KSA 40-447 is not payable as unclaimed property.

The bill requires an insurer to notify the State Treasurer upon the expiration of the statutory time period for those benefits to revert to the State that a policy or contract beneficiary or retained asset account holder has not submitted a claim with the insurer, and the insurer has been unable, after good faith efforts, documented by the insurer, to contact the retained asset account holder, beneficiary, or beneficiaries. The insurer is required, upon such notice, to immediately submit the unclaimed policy or contract benefits or unclaimed retained asset accounts, plus any applicable accrued interest, to the State Treasurer.

Unfair or deceptive acts (comparison against a DMF). The bill states the failure to meet any requirement of this section with such frequency as to constitute a general business practice is considered an unfair or deceptive act or practice under the unfair trade practices law (KSA 40-2404) and subject to the penalties contained under the unfair trade practices law (KSA 40-2401 *et seq.*). The bill also specifies the bill should not be construed to create or imply a private cause of action for a violation of this section (provisions pertaining to comparison against a DMF).

Unfair Trade Practices Law—Life Insurance Coverage [Section 4]

The bill amends a provision in the unfair trade practices law to add the refusal to insure or limiting of life insurance coverage to an individual, solely because of that individual's status as a living organ donor, to the list of unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

The bill specifies this "unfair discrimination" to mean "refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available for life insurance to an individual, or charging the individual a different rate for the same coverage, solely because of such individual's status as a living organ donor."

The bill further provides, with respect to all other conditions, living organ donors shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as persons who are not organ donors.

Third Party Administrators and Fees [Sections 5-7]

The bill amends license and renewal application fees and establishes an annual report fee in the TPA Act.

The bill amends the initial license application fee for home state and non-resident TPAs from “as provided for by rules and regulations” to the specified amount of \$400 and requires an annual report fee of \$100 for both home state and non-resident TPAs. The bill establishes a \$200 renewal application fee for each non-resident administrator renewal application.

[*Note:* A TPA is any person who directly or indirectly underwrites, collects charges or premium from, or adjusts or settles claims on residents of this state in connection with life, annuity, or health insurance coverage offered or provided by a payor.]

Expansion of AHPs; Exemption from Jurisdiction of the Commissioner [Sections 8-17]

The bill amends several health insurance provisions in the Insurance Code related to the regulation of AHPs and small employer plans. The bill amends the Insurance Code to exempt an entity providing certain non-insurance healthcare benefits coverage from the jurisdiction of the Commissioner. The bill also designates certain statutes as the Small Employer Health Insurance Availability Act.

Group Insurance Policies—Fully-insured AHPs and Plan Membership [Section 8]

The bill removes a membership limitation placed on AHPs that requires the association have at least 25 members, employees, or employees of members to be offered group accident and health insurance coverage.

Designation of the Small Employer Health Insurance Availability Act; Stated Purpose and Intent; Definitions [Sections 9-10]

The bill designates KSA 40-2209b through 40-2209j and 40-2209m through 40-2209o as the Small Employer Health Insurance Availability Act. The bill states the purpose and intent of the Small Employer Health Insurance Availability Act is to “promote the availability of health insurance coverage to small employers regardless of their health status or claims experience, to prevent abusive rating practices, to require disclosure of rating practices to purchasers, to establish rules regarding renewability of coverage, to establish limitations on the use of pre-existing condition exclusions, to provide for development of ‘basic’ and ‘standard’ health benefit plans to be offered to all small employers, to provide for establishment of a reinsurance program, and to improve the overall fairness and efficiency of the small group health insurance market.”

The bill modifies the definition of “small employer” to remove “association” for entities eligible for group sickness and accident insurance and separately require, when determining the number of eligible employees, employees participating in an AHP be counted in the aggregate at the association level.

The bill also creates two definitions:

- “Association health plan” or “AHP” to mean a coverage for the payment of expenses described in KSA 2018 Supp. 40-2222 offered by a qualified trade, merchant, retail or professional association or business league that complies with the provisions of KSA 2018 Supp. 40-2222a and 40-2222b; and
- “Qualified trade, merchant, retail or professional association or business league” to mean any *bona fide* trade merchant, retail or professional association or business league that:
 - Has been in existence for at least five calendar years;
 - Is composed of five or more employers; and
 - Is incorporated in Kansas, has a principal office located in Kansas, or has a principal office within a metropolitan area that has boundaries within Kansas.

AHPs—Exemption from Regulation under the Small Employer Health Insurance Availability Act [Section 11]

The bill exempts certain AHPs from regulation under the Small Employer Health Insurance Availability Act.

Exemptions from the Commissioner’s Jurisdiction; Computation of Premium Tax [Sections 12-17]

Exemption from Commissioner’s jurisdiction. The bill amends provisions pertaining to authorized multiple employer welfare arrangements exempted from the jurisdiction of the Commissioner. The bill amends the exemption previously authorized for a professional association of dentists to remove a specified date and instead provide for the association through an established trust. The bill also amends an exemption granted to any other qualified trade, merchant, retail, or professional association or business league to remove a requirement the entity be incorporated in Kansas and instead specifies such entity provides coverage for the payment of expenses described to or for the members of the association, their employees, and dependents.

The bill removes the definition assigned to a qualified trade, merchant, retail, or professional association or business and also eliminates two requirements placed on these entities: the entity be in existence for at least five years and be composed of five or more employers. [*Note:* A definition for these entities and the associated requirements deleted in this section are established in the bill under KSA 2018 Supp. 40-2209d.]

Exemption from Commissioner’s jurisdiction—Kansas Farm Bureau. The bill exempts a nonprofit agricultural membership organization incorporated in Kansas on June 23, 1931 (the Kansas Farm Bureau), or an affiliate thereof, that provides healthcare benefit coverage for the payment of expenses to or for the members of the organization and their dependents from the jurisdiction of the Commissioner.

The bill specifies the healthcare benefit coverage provided by the nonprofit agricultural membership organization is not considered insurance, notwithstanding any provision of law to

the contrary. The bill permits the risk under such coverage to be reinsured by a company authorized to conduct reinsurance in Kansas.

The bill requires providers of this healthcare benefit coverage to file a signed, certified actuarial statement of plan reserves annually with the Commissioner.

Computation of premium tax. The bill also amends law providing for the payment of an annual premium tax by self-insured AHPs exempted from the jurisdiction of the Commissioner to provide a computation method for the premium tax applicable to the location of such association. [Note: Under current law, an exempted AHP is subject to a 1.0 percent annual tax on its annual Kansas gross premium and must be incorporated in Kansas.] The bill updates “association” to “person or entity” in the statute and provides, for persons or entities having a principal office within a metropolitan area that has boundaries in Kansas and associations having their principal office located within the borders of Kansas and offering policies to non-residents of Kansas, the tax owed shall be based upon the gross premium collected during the preceding year relating to health benefit plans issued to members that have a principal place of business in Kansas.

[Note: For the purposes of conforming amendments to KSA 40-2222, 40-2222a, and 40-2222b, previously contained in two separate bills, relevant statutes appear in HB 2209 twice.]

Cybersecurity Insurance [Section 18]

The bill amends law pertaining to the Committee on Surety Bonds and Insurance to permit KBOR to purchase cybersecurity insurance as KBOR deems necessary to protect student records, labor information, and other statutorily protected data KBOR maintains, independent of the Committee on Surety Bonds and Insurance, and without complying with the purchasing procedures of the Department of Administration.

The term “cybersecurity insurance” includes, but is not limited to, first-party coverage against losses such as data destruction, denial of service attacks, theft, hacking, and liability coverage guaranteeing compensation for damages from errors, such as the failure to safeguard data.

JUDICIARY

Residential Real Estate; Insurance; Assigning Rights or Benefits to Residential Contractors; Tenants; Domestic Violence; Housing Protections; SB 78

SB 78 creates law regarding assignment of certain rights or benefits under an insurance policy on residential real estate and protections related to housing for victims of domestic violence, sexual assault, human trafficking, or stalking, as follows.

Assignment of Rights or Benefits to a Residential Contractor under an Insurance Policy on Residential Real Estate

The bill creates law regarding a post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate (assignment). Specifically, the bill states an assignment may authorize a residential contractor (as defined by the bill to include certain persons involved in repair or replacement of roof systems, other exterior work or cleanup, or interior or exterior repair and cleanup on residential real estate) to be named as a co-payee for the payment of benefits under a property and casualty insurance policy insuring residential real estate. Such assignment must include a specified notice in capitalized, 14-point type. The residential contractor must provide a copy of the assignment to the insurer of the residential real estate within three business days of the signing of the assignment, and the assignment must provide, in addition to any other right to revoke, the named insured has the right to cancel the assignment within five business days after execution.

The bill states an assignment shall not, under certain circumstances, impair the interest of a mortgagee or prevent or inhibit an insurer from communicating with the named insured or mortgagee. An assignment is void if the residential contractor violates any of the provisions of the new section or is not in compliance with the requirements of the Kansas Roofing Registration Act.

The bill directs the Commissioner of Insurance to strictly enforce statutory provisions requiring insurers to promptly provide a named insured a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Any violation of the new section constitutes a deceptive act or practice under the Kansas Consumer Protection Act.

In addition to “assignment” and “residential contractor,” the bill defines “residential real estate” and “roof system.”

Housing Protections for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking

The bill creates law prohibiting certain actions being taken against a tenant, lessee, or applicant for a lease because such person is a “protected person,” defined by the bill to be a person who, during the preceding 12 months, has been, is, or is in imminent danger of becoming a victim of domestic violence, sexual assault, human trafficking, or stalking.

Specifically, an applicant cannot be denied tenancy on the basis of or as a direct result of being a protected person, if the applicant otherwise qualifies for tenancy or occupancy.

A tenant or lessee cannot be evicted from the premises or found to be in violation of a rental or lease agreement on the basis of or as a direct result of being a protected person, if the tenant or lessee otherwise qualifies for tenancy or occupancy.

A tenant or lessee is not liable for rent for the period after vacating rented or leased premises if the tenant or lessee is a protected person and notifies the landlord or property owner in accordance with provisions set forth in the bill. In an action brought against a tenant or lessee under Kansas law seeking recovery of rent, the tenant or lessee will have an affirmative defense and no liability for rent for the period after vacating the premises if, by preponderance of the evidence, the court finds the tenant or lessee was a protected person on the date the tenant or lessee vacated the premises at issue and the tenant or lessee provided the required notice. The protections do not affect the tenant or lessee's liability for late or unpaid rent or other amounts owed for the period prior to vacating the premises at issue.

An applicant, tenant, or lessee qualifies for the protections of the bill if the applicant, tenant, or lessee is a protected person and provides a statement regarding the qualifying circumstances to the landlord or property owner, who may request the applicant, tenant, or lessee provide additional documentation specified by the bill. Such documentation can include a document signed by the victim and any one of various specified licensed persons from whom the victim sought assistance, declaring under penalty of perjury the licensed person holds the opinion, in their professional judgment within their scope of practice, the qualifying incident occurred, or a court order granting relief to the protected person relating to the alleged qualifying circumstances. The submission of false information by an applicant, tenant, or lessee may be a basis for denial of tenancy, eviction, or violation of a rental or lease agreement.

A landlord or property owner may impose a reasonable termination fee, not to exceed one month's rent, on a tenant or lessee requesting termination pursuant to the bill before the expiration date of the lease, but only if such fee is contained in the terms of the rental or lease agreement.

The bill states the rights under this section shall not be waived (and a landlord or property owner shall not require a tenant or lessee to waive) in a rental or lease agreement, and a rental or lease agreement will continue for any remaining tenants or lessees upon termination of a protected person's agreement pursuant to the above provisions.

The bill allows a court to award statutory damages of \$1,000 and reasonable attorney fees and costs in an action against a landlord or property owner for a violation of the provisions created by the bill.

The bill states the definitions of "domestic violence," "human trafficking," "sexual assault," and "stalking" are the same as those provided by continuing statutes regarding substitute mailing addresses for victims of such offenses.

Kansas Probate Code—Inheritance Rights; Automatic Revocation; Divorce; HB 2038

HB 2038 creates law within the Kansas Probate Code providing for the automatic revocation of certain inheritance rights of a former spouse or former spouse's relatives upon divorce, as follows.

Automatic Revocation and Severance

The bill provides, on and after July 1, 2019, the divorce or annulment of a marriage revokes any revocable:

- Disposition or appointment of property made to an individual's former spouse or relative of such spouse in a governing instrument;
- Provision in a governing instrument conferring a general or nongeneral power of appointment on a former spouse or relative of such spouse; and
- Nomination in a governing instrument of a former spouse or relative of such spouse to serve in any fiduciary or representative capacity.

A divorce or annulment also severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms these interests into equal tenancies in common. Such severance will not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses, unless a written declaration of the severance has been noted, registered, filed, or recorded in a manner further specified by the bill.

Provisions of a governing instrument will be given effect as if the former spouse and relatives of such spouse disclaimed all automatically revoked provisions, or, for a revoked nomination in a fiduciary or representative capacity, as if the former spouse and such spouse's relatives died immediately before the divorce or annulment.

An exception to the automatic revocation or severance will apply if provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment.

No change of circumstances other than those described in the bill and in a similar continuing section of the Probate Code applicable to wills will effect a revocation.

Liability of Payors or Third Parties

The bill states a payor or other third party is not liable for making a payment, transferring an item of property or any other benefit to a beneficiary designated by a document affected by the operation of the provisions of the bill, or taking any other action in good faith reliance on the validity of the governing instrument before receiving written notice of the claimed forfeiture or revocation. A payor or third party is liable for such payments or actions taken after receiving such notice. The bill provides specific requirements for the written notice required, including

manner of service. Upon receiving such notice, the payor or third party may pay any amount owed or transfer or deposit any item of property held by the payor or third party to or with the court having jurisdiction of the relevant probate proceedings or, if no proceedings have commenced, with the court having jurisdiction of probate proceedings located in the county of the decedent's residence. This would discharge the payor or third party from all claims related to the amounts paid or property transferred to the court. The court would then hold the funds or property and order disbursement or transfer in accordance with its determination.

Obligations of Those Purchasing or Receiving Payment or Items of Property; Effect of Federal Preemption

The bill states its provisions do not obligate a purchaser for value without notice, or a receiver of a payment or property in partial or full satisfaction of a legally enforceable obligation, to return the payment, property, or benefit, and the purchaser or receiver is not liable for the amount of payment or value of the property or benefit.

A former spouse, former spouse's relative, or other person who, not for value, receives a payment, property, or other benefit to which the person is not entitled under the provisions of the bill is obligated to return the same, or is personally liable for the payment or value of the property or benefit, to the person entitled to it. A similar provision applies where federal law preempts the bill's provisions.

The bill states that, if its provisions are preempted by federal law with regard to any property item, the provisions of the bill will not apply to such preempted item, but will apply in all other circumstances.

Definitions

The bill defines "disposition or appointment of property," "divorce or annulment," "divorced individual," "governing instrument," "relative of the divorced individual's former spouse," and "revocable," and provides exclusions to the term "surviving spouse."

Registration of Animal Shelters; Limited Liability Companies; HB 2039

HB 2039 amends the Charitable Organizations and Solicitations Act to exempt from its registration requirement any charitable organization that is an animal shelter licensed pursuant to the Kansas Pet Animal Act.

The bill also creates and amends law related to limited liability companies (LLCs) in the Kansas Revised Limited Liability Company Act (RLLCA), Business Entity Standard Treatment Act (BEST Act), and other statutes, as follows.

Series LLCs

The bill creates and amends law related to series LLCs, as follows. [*Note: Series LLCs were originally implemented in the RLLCA by 2012 Sub. for HB 2207.*]

Merger or Consolidation of Series LLCs [Section 3]

The bill creates law effective July 1, 2020, allowing merger or consolidation by one or more series with or into one or more other series of the same LLC with such series as the agreement provides being the surviving or resulting series.

Unless otherwise provided by the operating agreement, the bill requires merger or consolidation to be approved by the vote of the members of each series that is to merge or consolidate who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all the members of the series.

The bill allows exchange or conversion of rights or securities of or interests in the constituent series, or allows them to be canceled or remain outstanding. An agreement of merger or consolidation can be terminated or amended pursuant to a provision for such in the agreement.

The bill requires the surviving or resulting series to file with the Secretary of State a certificate of merger or consolidation, executed by authorized persons, which must include:

- The name of the series to be merged or consolidated and the name of the LLC that formed the series;
- That a merger or consolidation agreement has been approved by each series that is to merge or consolidate;
- The name of the surviving or resulting series;
- Any amendment to the certificate of designation of the surviving or resulting series to change the name of the surviving series through the merger;
- The future effective date or time certain, if not effective upon filing;
- That the agreement is on file at a place of business of the surviving or resulting series or the LLC company that formed the series, with the address; and
- That a copy of the agreement will be furnished upon request and without cost to any member of any merging or consolidating series.

Unless otherwise provided in the certificate, the merger or consolidation is effective upon the filing of the certificate with the Secretary of State.

A certificate of merger or consolidation acts as a certificate of cancellation of the certificate of designation of the series that is not the surviving or resulting series, and a certificate amending the name of the surviving or resulting series is deemed to be an amendment to the certificate of designation of the surviving or resulting series, with no further action required for such amendment. Any requirement in this section that a certificate of merger or consolidation be filed is deemed satisfied by the filing of a merger or consolidation agreement containing the information required in a certificate of merger or consolidation.

A merger or consolidation agreement may amend the operating agreement of the constituent series, and any amendment relating solely to such series is effective at the effective time or date of the merger or consolidation. Such amendment or adoption is effective notwithstanding any provision in the operating agreement regarding amendment, other than such a provision applicable in connection with a merger or consolidation. These provisions may not be construed to limit the accomplishment of a merger or of any of the referenced matters by any other means provided by an operating agreement or other agreement, or otherwise by law.

The bill provides for various items upon a merger or consolidation becoming effective, including vesting of rights, privileges, powers, property, and debts and attachment and enforcement of rights of creditors, liens upon property, debts, liabilities, and duties.

Unless otherwise agreed, a merger or consolidation of a series that is not the surviving or resulting series does not require such series to wind up its affairs or pay its liabilities and distribute its assets, and the merger or consolidation does not constitute a dissolution of such series.

An operating agreement may provide that a series of the LLC shall not have the power to merge or consolidate.

Series Reinstatement [Section 4]

The bill creates law effective July 1, 2020, allowing a series whose certificate of designation has been canceled to be reinstated by filing with the Secretary of State a certificate of reinstatement, accompanied by payment of the required fee, annual report fee, and all penalties and interest due at the time of the cancellation. The bill requires the certificate to contain the name of the LLC at the time of cancellation and at the time of reinstatement, if changed; the name of the series at the time of cancellation and the name under which the series is to be reinstated, if the original name is not available; a statement that the certificate is filed by persons authorized to do so; and any other matters such persons include.

The certificate of reinstatement is deemed to be an amendment to the certificate of designation, and upon its filing, the series will be reinstated with the same force and effect as if the certificate of designation had not been canceled. The bill sets forth the effect of reinstatement on contracts; acts; matters and things made, done, and performed by the series, its members, managers, employees, and agents during cancellation; real and personal property; all rights and interests; and liability for all contracts, acts, matters, and things made, done, or performed in its name prior to reinstatement.

Restated Certificate of Designation [Section 21]

Effective July 1, 2020, the bill amends the RLLCA statute governing restated articles of organization to add provisions regarding restated certificates of designation. These provisions allow an LLC series to integrate into a single instrument all the provisions of its certificate of designation that are then in effect and operative as a result of certificates or other instruments previously filed with the Secretary of State. The series may, at the same time, further amend its certificate of designation by adopting a restated certificate of designation.

A restated certificate of designation that restates and integrates, but does not further amend, is specifically designated a “restated certificate of designation” and is executed by an

authorized person and filed with the Secretary of State as provided in the BEST Act. A restated certificate of designation that restates and integrates, and also further amends, is specifically designated an “amended and restated certificate of designation” and is executed and filed in the same manner as described above.

The bill requires a restated certificate of designation to state the name of the LLC, the present name of the series, the name under which the series was originally filed (if different), and the future effective date or time certain of the restated certificate (if not effective upon filing). The certificate also must state it was duly executed and is being filed in accordance with this section. If the restated certificate only restates and integrates, without further amendment, and there is no discrepancy in provisions, the bill requires the certificate also state this fact.

Upon filing of the restated certificate (or upon the future effective date or time, if provided), the initial certificate of designation is superseded, and the restated certificate is the certificate of designation of the series, but the original effective date of formation of the series remains unchanged.

Any amendment or change effected in connection with the restatement and integration of a certificate of designation is subject to any other provision of the RLLCA, not inconsistent with these provisions, which applies if a separate certificate of amendment were filed to effect such amendment or change.

Restructuring and Amendment of Series LLC Requirements [Section 39]

Effective July 1, 2020, the main statute governing series LLCs is extensively amended, restructured, and expanded, as follows.

The bill removes much of the current law regarding names, formation, limits on liability, certificates of designation, dissolution, standing, resident agents, management, applicability of law, and foreign LLCs.

Some provisions within the removed law are moved or reworded (without substantive changes) within the statute, including provisions regarding:

- Formation by filing of a certificate of designation with the Secretary of State;
- Notice of limitation on liabilities provided by the articles of organization on file with the Secretary of State;
- Providing for classes or groups of members or managers and voting in an operating agreement;
- Effect of events on a member or manager of a series with regard to any other series or the LLC; and
- Dissolution of a series without dissolving the LLC or affecting the limitation on liabilities.

The bill adds numerous provisions to law governing series LLCs, as follows.

The bill states a series may be formed by complying with this statute if an operating agreement provides for the establishment or formation of one or more series. A series is prohibited from merging, converting, or consolidating pursuant to any section of the RLLCA, the BEST Act, or any other statute, other than pursuant to the provisions included elsewhere in the bill.

The bill requires notice of the limitation on liabilities of a series be set forth in the articles of organization of the LLC, which is sufficient regardless of whether the LLC has formed any series when such notice is included in the articles of organization, without any specific series of the LLC being referenced in the notice.

The bill adds language stating current and amended language regarding limitation on liability does not restrict a series or LLC from agreeing that debts, liabilities, obligations, and expenses of the LLC may be enforceable against the assets of the series, or *vice versa*. The bill adds additional provisions regarding holding of assets associated with a series, accounting for the assets of a series, and references to assets, members, or managers of or associated with a series.

The bill provides a series may carry on any lawful business, purpose, or activity, whether or not for profit, except for granting insurance policies, assuming insurance risks, or banking. The bill states a series shall have the power and capacity to contract, hold title to assets, grant liens and security interests, and sue and be sued.

No member or manager of a series is obligated personally for any debt, obligation, or liability of the series, unless the member or manager otherwise agrees or as otherwise provided in the RLLCA.

The bill sets forth various voting provisions that may be included in an operating agreement and states voting may be on any basis, including several specifically listed.

Unless otherwise provided in an operating agreement, the bill vests management of a series in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of such series owned by all of the members associated with such series, with the decision of members owning more than 50 percent of such percentage controlling. However, if an operating agreement provides for management by a manager, management is vested in the manager accordingly, and the bill gives effect to other operating agreement provisions regarding managers. A series may have more than one manager.

The bill adds provisions regarding distributions with respect to a series, including status and remedies of a member entitled to a distribution, establishment of a record date by an operating agreement, limitations on distributions related to certain liabilities and the fair market value of the series assets, liability of a member for a distribution in certain circumstances, and the effect of these provisions on certain obligations or liabilities of members.

Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the rights and powers of a member of the series upon the assignment of all the member's LLC interest in the series.

The bill states a series is dissolved and its affairs shall be wound up upon dissolution of the LLC or upon the first of the following: at the time specified in the operating agreement; upon

the happening of events specified in the operating agreement; unless otherwise provided by the operating agreement, upon the vote of series members who own two-thirds or more of the then-current percentage or other interest in the profits of such series of the LLC owned by all the members of the series; or the dissolution of the series under this statute.

Unless otherwise provided in the operating agreement, a series manager who has not wrongfully dissolved the series, or the series members or a person consented to or approved by the series members, by a vote of the members who own more than 50 percent of the then-current percentage or other interest in the profits of such series owned by all of the series members, may wind up the affairs of the series. The district court, upon cause shown, may wind up the affairs of a series and appoint a liquidating trustee upon application by certain persons. The bill sets forth the authority and requirements of the persons winding up the affairs of the series, which do not affect the liability of members or impose liability on a liquidating trustee. On application by or for a member or manager associated with a series, the district court may decree dissolution of the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement. A series is an association for all purposes of Kansas law, regardless of the number of members or managers.

The bill sets forth required contents of a certificate of designation filed to form an LLC series, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020, is deemed to comply with these requirements. The bill requires the certificate of designation be executed and filed in accordance with the BEST Act and states a certificate of designation is not an amendment to the articles of organization of the LLC.

The bill permits amendment of a certificate of designation pursuant to requirements set forth in the bill for a certificate of amendment, but a certificate of designation properly filed with the Secretary of State prior to July 1, 2020, changing a previously filed certificate of designation, is deemed to be a certificate of amendment.

The bill requires a manager or member of a series who becomes aware that any statement in a certificate of designation was false when made, or that any matter has changed making the certificate false in any material respect, to promptly amend the certificate of designation. A certificate of designation may be amended at any time for any other proper purpose.

Unless otherwise provided in the RLLCA or unless a later effective date or time certain is provided in the certificate of amendment, the certificate is effective at the time of filing.

The bill sets forth the circumstances under which a certificate of designation must be canceled, including by the filing of a certificate of cancellation pursuant to requirements set forth by the bill. A certificate of designation properly filed before July 1, 2020, dissolving a series is deemed a certificate of cancellation. The bill provides for correction of a certificate of cancellation and prohibits the Secretary of State from issuing a certificate of good standing for a series if the certificate of designation is canceled or if the LLC has ceased to be in good standing.

The bill specifies requirements for the name of the series to be set forth in the certificate of designation.

The bill modifies the required statements related to series to be included in an application for registration as a foreign LLC.

Other Series LLC Amendments in RLLCA

The bill amends the RLLCA definitions statute to define “series” as a designated series of members, managers, LLC interests, or assets established in accordance with the RLLCA series statute.

Effective July 1, 2020, the bill amends RLLCA statutes regarding cancellation of articles of organization, notice by filing with the Secretary of State, fees for documents provided by the Secretary of State, and reinstatement of canceled or forfeited articles of organization to incorporate LLC series. [Section 17, 19, 36, and 41]

Effective July 1, 2020, the bill amends the RLLCA statute regarding annual reports to include LLC series in its continuing requirements. Additionally, if applicable law does not prescribe a time for filing an annual Kansas income tax return for a series, the bill requires the annual report to be filed at, and its tax period deemed to be, the time prescribed by law for filing the annual Kansas income tax return for the LLC company to which the series is associated. [Section 38]

Series LLC Amendments in other Acts and Codes

The bill amends BEST Act statutes regarding service of process and resignation of resident agents to incorporate LLC series. [Sections 44 and 48]

Effective July 1, 2020, the bill amends BEST Act statutes regarding LLC filings, names of covered entities, reservation of entity names, and name requirements for foreign covered entities to incorporate LLC series, merger or consolidation of series LLCs, and series LLC certificates of designation, as appropriate. [Sections 43, 46, 47, and 49]

The bill amends the Code of Civil Procedure section governing service of process to provide that service on an LLC series may be made in the same manner as continuing methods of service on various corporate entities or resident agents. If service is made on the resident, managing, general, or other agent of the LLC upon which service may be made or the Secretary of State on behalf of any series, the bill requires the service to include the name of the LLC and the name of the series. [Section 50]

The bill amends the Uniform Commercial Code (UCC) general definitions statute (effective July 1, 2020) to include a series within the definition of “person” and amends the UCC Article 9 definitions statute to include a series of a registered organization within the definition of “registered organization,” if the series is formed or organized under the law of a single state and the statute of the state governing the series requires the public organic record of the series be filed with the state. [Sections 51 and 52]

Statutory Public Benefit LLCs [Sections 5-12, 18]

The bill creates (Sections 5-12) and amends (Section 18) law to create a type of LLC known as a “statutory public benefit limited liability company” (SPBLLC), as follows.

Applicability [Section 5]

Sections 5 through 12 of the bill apply to all SPBLLCs, and any SPBLLC is subject to all provisions of the RLLCA except to the extent Sections 5 through 12 impose different requirements, and such requirements may not be altered in an operating agreement.

Definitions and Name [Section 6]

The bill defines “statutory public benefit limited liability company” as a for-profit LLC formed under and subject to the requirements of the RLLCA that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner. An SPBLLC is managed in a manner balancing the members’ pecuniary interests, the best interests of those materially affected by the SPBLLC’s conduct, and the public benefit or benefits set forth in its articles of incorporation. Within its articles of organization, the SPBLLC is required to identify specific public benefit or benefits to be promoted and state it is a SPBLLC.

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

The bill defines “public benefit provisions” to mean the provisions of the articles of organization, an operating agreement, or both, contemplated by Sections 5 through 12.

The bill requires, if the name of the SPBLLC does not contain the term “statutory public benefit limited liability company” or the abbreviation “S.P.B.L.L.C.” or designation “SPBLLC,” the SPBLLC must provide advance notice to any person to whom it is issuing any LLC interest that it is an SPBLLC, unless the issuance is being made pursuant to certain provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934.

Voting Requirements [Section 7]

Unless otherwise provided in the operating agreement, the consent or approval of members who own at least two-thirds of the then-current percentage or other interest in the profits of the LLC owned by all members is required to:

- Amend its articles of organization to delete or amend a provision required to comply with the above definition of SPBLLC;
- Merge, consolidate, or divide the LLC, if the resulting interests would not be in an SPBLLC with public benefit or benefits and other specified provisions comparable in all material respects to those set forth by the original LLC; or
- Cease to be an SPBLLC.

Duties [Section 8]

The members, managers, or other persons with authority to manage or direct the business and affairs of an SPBLLC (managing person) are required to manage or direct the

business and affairs of the SPBLLC in a manner balancing the pecuniary interests of the members, the best interests of those materially affected by the SPBLLC's conduct, and the specific public benefits set forth in the articles of organization. Unless otherwise provided by the operating agreement, such managing person does not have any liability for monetary damages for the failure to manage or direct in the manner required above.

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

Statements [Section 9]

An SPBLLC is required to provide to members, at least annually and at the time of the filing of the SPBLLC's annual report, a statement regarding the LLC's promotion of the public benefits set forth in the articles of organization and of the best interests of those materially affected by the SPBLLC's conduct. The bill requires this statement to include objectives established and standards adopted, as well as objective factual information based on those standards regarding the SPBLLC's success in meeting the objectives and an assessment of the SPBLLC's success in meeting the objectives and promoting the public benefits and interests. The bill requires the statement be based on a third-party standard, as defined in this new section.

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

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

Derivative Lawsuit [Section 10]

Members of or assignees of LLC interests in an SPBLLC may maintain a derivative lawsuit to enforce the managing and directing duties set forth in Section 8 of the bill if those members or assignees own (individually or collectively), as of the date of instituting such derivative suit, at least 2 percent of the then-current percentage or other interest in the profits of the LLC, or, for an LLC with LLC interests listed on a national securities exchange, the lesser of such percentage or LLC interests of at least \$2.0 million in market value, unless a different percentage or market value is provided by the operating agreement.

Other Provisions

Section 11 states Sections 5 through 12 shall not affect a statute or rule of law applicable to any LLC formed under the RLLCA that is not a SPBLLC. Section 12 states Sections 5 through 12 shall not be construed to limit the accomplishment by another means permitted by

law of the formation or operation of an LLC formed or operated for a public benefit, including an LLC designated as a public benefit LLC, that is not a SPBLLC.

A provision of the RLLCA regarding notice provided by documents on file with the Secretary of State is amended to reference the content required to be included in an SPBLLC's articles of organization by Section 6 of the bill. [Sections 18]

Division of LLCs [Sections 2, 16, 20, 35, and 42]

The bill creates and amends law to provide for division of LLCs, as follows.

New Section—Domestic LLCs [Section 2]

The bill creates law allowing a domestic LLC to divide into two or more domestic LLCs, which are not deemed to affect liabilities of persons or obligations or liabilities of the dividing company prior to the division. Such obligations or liabilities are allocated to the division company or companies pursuant to the plan of division. Each resulting company is required to be formed in compliance with the RLLCA and the provisions created by the bill. The bill defines key terms related to division.

A manner of adopting a plan of division may be specified in an operating agreement. Otherwise, a plan of division may be adopted in the same manner as specified in the operating agreement for a merger or consolidation, if the operating agreement does not prohibit division. If the operating agreement does not provide for merger or consolidation and does not prohibit division, a plan for division may be authorized by the affirmative vote of members who own more than 50 percent of the then-current percentage or other interest in the profits of the dividing company owned by all members.

Unless provided otherwise in the division plan, division does not require an LLC to wind up its affairs or pay its liabilities and distribute its assets and does not constitute a dissolution of the LLC.

The bill allows exchange or conversion of rights or securities of, or interests in, the dividing company, or allows them to be canceled or remain outstanding.

A plan of division may amend the operating agreement of or adopt a new operating agreement for the dividing company if it survives the division and effects the adoption of a new operating agreement for each resulting company, which is effective at the effective time or date of the division. Such amendment or adoption is effective notwithstanding any provision in the operating agreement of the dividing company regarding amendment or adoption of a new operating agreement, other than such a provision applicable in connection with a division, merger, or consolidation.

The bill requires the plan of division to include the terms and conditions of the division, including those regarding conversion, exchange, or cancellation of LLC interests of the dividing company, or if such shall remain outstanding; allocation of assets, property, rights, series, debts, liabilities, and duties of the dividing company among the division companies; names of the resulting and surviving companies; name and business address of a division contact, who serves for six years following the division and has custody of a copy of the plan of division,

which the bill requires the contact to provide to creditors as specified in the bill; and any other matters the dividing company includes.

The bill requires the surviving company and any other division company to file a certificate of division with the Secretary of State for each resulting company. The bill specifies required contents of such certificate of division. The bill requires the articles of organization for each resulting company to be filed simultaneously with the certificate of division, with the same effective date or time if not effective upon filing. A certificate of division acts as a certificate of cancellation for a dividing company that is not a surviving company.

An operating agreement provides that a domestic LLC shall not have the power to divide.

The bill provides for various items upon a division of a domestic LLC becoming effective, including the effect upon the resulting companies and the dividing company if it is not a surviving company; allocation and vesting of rights, privileges, powers, property, and debts; liability for allocated debts, liabilities, and duties of the dividing company; allocation and enforcement of debts, liabilities, and duties; liability for fraudulent transfer; liability for non-allocated debts and liabilities; reasonable identification of assets, property, rights, series, debts, liabilities, and duties; vesting of allocated rights, privileges, powers, and interests in property; and continuation of actions or pending proceedings against surviving or resulting companies.

The bill provides, in applying the provisions of the RLLCA on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution. The new division provisions are not be construed to limit the means of accomplishing a division by any other means provided for in an operating agreement or other agreement or as otherwise permitted by the RLLCA or other law.

The bill provides this section applies to all LLCs formed on and after July 1, 2019. Additionally, it applies to all LLCs formed prior to that date, except that any restriction, condition, or prohibition regarding merger or consolidation in any written contract, indenture, or agreement entered into prior to that date to which the dividing company is a party is deemed to apply to a division.

Amendments to Law

The bill amends the RLLCA statute governing cancellation to include cancellation upon the filing of a certificate of division if the LLC is a dividing company that is not a surviving company. [Section 16]

The RLLCA statute governing restated articles of organization is amended to include a reference to division. [Section 20]

A \$20 fee is added for filing of a certificate of division. [Section 35]

The BEST Act statute regarding LLC filings is amended to include certificates of division. [Section 42]

Power of Attorney [Sections 1 and 45]

The bill amends the power of attorney statute in the BEST Act by removing provisions related to formation, internal affairs, or termination of a covered entity or granted by persons in certain roles and focusing the statute on those documents filed with the Secretary of State pursuant to the BEST Act. The statute's applicability also is limited as otherwise provided in a covered entity's public organic document or organic rules.

The bill creates a new section in the RLLCA addressing power of attorney. This section provides that, unless otherwise provided in an operating agreement, a person may enter into an operating agreement or amendment by an agent, including an attorney-in-fact, and authorization to do so need not be in writing, sworn, verified, or acknowledged. The section also contains provisions regarding irrevocable powers of attorney and proxies substantially similar to those previously applicable under the BEST Act statute discussed above. Finally, the section states it shall not be construed to limit enforceability of a power of attorney or proxy that is part of an operating agreement.

Other RLLCA Provisions

Domestic and Foreign LLCs [Sections 14 and 37]

The definitions section and taxation section are amended to clarify language relating to domestic LLCs and foreign LLCs.

Time of Formation [Section 15]

The bill adds language providing that an LLC is formed at the time provided by the BEST Act statute governing effective date if there has been substantial compliance with RLLCA requirements regarding execution and filing of articles of organization.

Certain Effective Time or Date Limitations Removed [Sections 16, 20, and 22]

The bill removes limitations on the future effective date or time of certificates of cancellation, restated articles of organization, and certificates of merger or consolidation.

Merger or Consolidation [Section 22]

A provision allowing exchange or conversion of rights or securities of or interests in an LLC that is a constituent party to a merger or consolidation into rights or securities of, or interests in, an LLC that is not the surviving or resulting LLC in the merger or consolidation is amended to instead allow exchange or conversion into rights or securities of, or interests in, an entity as defined in the BEST Act that is not the surviving or resulting LLC. This provision also is amended to specify the rights or securities of or interests in the constituent party LLC may remain outstanding.

Voting [Sections 22, 32, and 33]

The bill changes certain default voting requirements for those LLCs formed after June 30, 2019. For votes on agreements of merger or consolidation or to dissolve and wind up an LLC, the required vote must be by the members owning more than the specified percentage of the then-current percentage or other interest in the profits of the LLC owned by all the members. Continuing voting requirements for those LLCs formed on or prior to June 30, 2019, are by each class or group of members, if the LLC has more than one class or group of members.

Access to Information; Records [Section 25]

A statute regarding LLC records and access to information is amended to permit an attorney or other agent for an LLC member to obtain certain information that may be obtained by the member under continuing law. Such demand on behalf of a member must be accompanied by a power of attorney or other writing authorizing the attorney or other agent to so act on the member's behalf.

This statute also is amended to require an LLC to maintain a current record identifying the name and last known business, residence, or mailing address of each member and manager, and to allow the use of electronic networks or databases, including distributed electronic networks or databases, to maintain records.

Delegation [Section 27]

The statute governing the delegation of rights and powers to manage is amended to allow the delegation of duties. The bill removes a phrase specifically allowing the delegation of the right or power to delegate. The bill adds that a delegation by a member or manager must be irrevocable if it states it is irrevocable, unless otherwise provided in the operating agreement. The bill also adds that no other provision of the RLLCA shall be construed to restrict the power and authority to delegate as provided in this section.

Limitation of Remedies [Section 30]

The RLLCA currently provides the entry of a charging order is the exclusive remedy by which a judgment creditor of a member or assignee may satisfy a judgment out of the judgment debtor's LLC interest. The bill adds to this provision that attachment, garnishment, foreclosure, or other legal or equitable remedies are not available to the judgment creditor, regardless of the number of members of the LLC.

Membership of Single Assignee [Section 31]

The bill adds a provision that, unless otherwise provided in the operating agreement by specific reference or in connection with the assignment, an assignee of an LLC interest becomes a member where there is voluntary assignment by the sole member of an LLC of all the LLC interests in the LLC to a single assignee. An assignment is voluntary if it is consented to or approved by the member at the time of the assignment and is not effected by foreclosure or similar legal process.

Fiduciary Duties [Section 34]

The bill specifies the rules of law and equity relating to fiduciary duties are among those rules of law and equity that are to apply where not otherwise provided in the RLLCA.

Revocation of Dissolution [Section 40]

The bill amends the statute preventing dissolution in certain circumstances to specify a dissolution may be revoked in a manner specified in an operating agreement or an operating agreement may prohibit revocation of dissolution. Provisions describing the default circumstances under which dissolution may be revoked are restructured and amended to allow revocation of:

- A dissolution effected by vote, consent, or approval; by vote, consent, or approval and by approval of any others as required by the operating agreement;
- A dissolution at a specified time or upon a specified event, by vote, consent, or approval required to amend the provision of the operating agreement effecting the dissolution and by approval of any others as required by the operating agreement; and
- A dissolution effective upon the last remaining members ceasing to be a member, by vote, consent, or approval of the personal representative of the last remaining member of the LLC or the assignee of all the LLC interests in the LLC and by approval of any others required by the operating agreement.

This statute also is amended to include the assignee of all the LCC interests in the LLC in the procedure to be followed to admit a nominee or designee in certain circumstances, and to provide that the statute shall not be construed to limit the accomplishment of revocation of dissolution by other means permitted by law.

Consent and Approval

The bill adds provisions allowing a person to give consent or approval as a member or manager of any matter and make such consent or approval effective at a future time, including upon the happening of an event. Such consent or approval is effective as long as the person is a member or manager at the future time specified, unless otherwise provided in an operating agreement. [Sections 23 and 26]

Throughout the bill, requirements that consent or approval be in writing are removed. References to consent or to approval are standardized with references to both consent and approval.

Electronic Networks and Databases

Throughout the bill, provisions are added allowing the use of electronic networks or databases, including distributed electronic networks or databases, for certain electronic transmissions.

Non-substantive and Technical Amendments

The bill amends the RLLCA section governing resignation from an LLC to replace a reference to a previous version of the section with the actual language (with slight non-substantive revisions) of the previous version of the section. [Section 28]

Throughout the RLLCA, the bill replaces references to “this act” with “the Kansas revised limited liability company act.” Additional technical amendments are made.

OPEN RECORDS

Peer Support Counseling Sessions; National Guard Members; HB 2365

HB 2365 amends law concerning the peer support counseling session communication privilege within the Code of Civil Procedure. The bill adds references to National Guard members (such members are defined by the bill as a regularly enlisted, officer, or civilian member of the Kansas National Guard) throughout the section, to make notes, records, or reports arising out of peer support counseling sessions involving National Guard members confidential, exempt from the Kansas Open Records Act, and inadmissible and not subject to disclosure or discovery in judicial and other proceedings. The exemption for records arising out of peer support counseling sessions are not required to be reviewed by the Legislature and do not expire.

RETIREMENT

Retirement—KP&F Service-connected Benefits; Working After Retirement; KPERS Membership Eligibility; Administration of the Retirement System; HB 2031

HB 2031 makes several revisions to the Kansas Public Employees Retirement System (KPERS or the Retirement System) pertaining to the Kansas Police and Firemen’s Plan (KP&F), provisions relating to working after retirement, membership eligibility, and the administration of the Retirement System.

KP&F

The bill allows agents of the Kansas Bureau of Investigation (KBI) to participate in the Kansas Deferred Retirement Option Program (DROP) of the KP&F, which was authorized previously for troopers, examiners, and officers of the Kansas Highway Patrol (KHP). The sunset date for the program is extended from January 1, 2020, to January 1, 2025.

The bill also revises the definition for “service-connected,” as that term is used to determine death and disability benefits in KP&F. Under prior law, service-connected causes for death and disability benefits included heart disease, lung or respiratory disease, and cancer. The bill adds bloodborne pathogens, which include any disease present in human blood and designated as infectious or contagious by the Secretary of Health and Environment through rules and regulations. With regard to cancer, the bill includes, but is not limited to, cancer of the brain, skin, digestive system, hematological system, or genitourinary system. Clear and precise evidence must be shown to KPERS demonstrating the bloodborne pathogen was caused by an act of duty as a policeman or fireman. Previously, this provision applied to disease of the lung or respiratory tract or cancer.

Working After Retirement

The bill revises the working-after-retirement provisions of KPERS by adding a new category of positions exempt from the law and reimbursing certain suspended benefits for a specific period of time. The bill adds individuals employed by the Kansas academies of the U.S. Department of Defense STARBASE Program to the list of exemptions. The participating employer is not required to enroll retirees into KPERS or report compensation to the Retirement System. The participating employer will not make contributions to KPERS. However, retirees must continue to serve their 60- or 180-day waiting period, as applicable, before returning to covered employment, provided there is no prearranged agreement for employment. In addition to the new exemption, there are eight categories of retirees who may work after retirement:

- Nurses or practical nurses employed at certain state institutions;
- Certain school district positions defined by KSA 74-4937 (3), (4), and (5);
- Law enforcement officers employed by the Law Enforcement Training Center;
- Members of the Kansas Police and Firemen’s Retirement System;

- Substitute teachers or certain legislative positions;
- Poll workers;
- Persons employed prior to May 1, 2015; and
- State or local elected officials.

In instances prior to July 1, 2019, where benefits have been suspended due to either the employer or the individual, who retired during the period of July 1, 2016, through July 1, 2019, violating working-after-retirement law, the bill authorizes KPERS to reimburse a retiree's benefits, provided the retiree had stopped working when notified of the violation. Starting on July 1, 2019, the Executive Director of KPERS may waive working-after-retirement penalties if one of the following conditions are satisfied:

- The retiree's period of reemployment is less than 21 days;
- The retiree's compensation during the period of reemployment is less than 10.0 percent of the retiree's KPERS benefit that is suspended as provided by law; or
- Other facts and circumstances indicate the retiree would not have been reemployed but for an error on the part of the KPERS-participating employer or the Retirement System in verifying that person's retirement status and the retiree immediately terminated employment upon notice of the violation.

Currently, if a retiree violates working-after-retirement law, KPERS benefits cease until six months after the retiree stops working.

KPERS Membership Eligibility

The bill delays KPERS membership eligibility by two years for employees employed in direct-support positions in community development disability organizations. Under the bill, an employee becomes a member of KPERS on the first day of the payroll period coinciding with or following completion of a two-year training period. Generally, individuals become KPERS members when they start employment.

Administration of the Retirement System

The KPERS Board of Trustees (Board) may develop policies and procedures to procure goods and services based upon sound business practices and in accordance to the Professional Services Sunshine Act. The bill authorizes in- and out-of-state travel by KPERS employees and Board trustees in accordance to current laws dictating mileage allowance rates for private vehicles. The Board has the authority to procure its contracts for professional and consultant services, including actuarial consulting, investment management and consulting, and legal services.

Retirement

**Retirement—KP&F Service-connected Benefits; Working After Retirement; KPERS Membership Eligibility;
Administration of the Retirement System; HB 2031**

Starting with the 2020 Regular Session, the Executive Director of KPERS will report information annually to the Joint Committee on Pensions, Investments and Benefits, the Senate Committee on Financial Institutions and Insurance, and the House Committee on Financial Institutions and Pensions pertaining to the number of working-after-retirement waivers issued.

TRANSPORTATION AND MOTOR VEHICLES

Tolled Highway Projects; Senate Sub. for HB 2007

Senate Sub. for HB 2007 amends requirements for tolled projects of the Kansas Turnpike Authority (KTA) and the Secretary of Transportation (Secretary).

KTA Requirements

The bill removes from a definition of “project” that such project be constructed by the KTA.

The bill authorizes the KTA to issue revenue bonds payable solely or partly from revenues to finance turnpike projects. The bill requires the KTA, before undertaking a toll road project, to find construction of a toll expressway can be financed solely or partly through the investment of private funds in toll road revenue bonds and that such project and any indebtedness incurred for it can be financed solely or partly through tolls and other project-related income, rather than such project and indebtedness be entirely self-liquidating.

The KTA is authorized to issue turnpike revenue bonds payable solely or partly from the tolls and revenues pledged for bond repayment. Bonds and expenses will be payable solely or partly from funds provided under the authority of statutes governing the KTA. [*Note: Under continuing law, such bonds and expenses are not obligations of the State.*]

The bill amends the authority of the KTA to fix and collect tolls over each turnpike project to remove the requirement that such project be constructed by the KTA.

Secretary of Transportation Requirements

The bill authorizes the Secretary to study the feasibility of constructing new toll or turnpike projects and removes authority to designate existing highways or any portion of such highways as a toll or turnpike project. The bill requires a study by the Secretary of a project for its feasibility as a toll or turnpike project to determine, after consulting with local officials, that traffic volume, local contribution, or other relevant reasons make such tolling project feasible. The bill requires at least one local public meeting to review the project during the feasibility study process. The bill requires any toll or turnpike project be constructed only to add capacity to existing highways or bridges or as a new facility where such did not exist.

The bill requires, prior to constructing a toll project or turnpike project, the Secretary and local units of government to prepare and present a joint proposal for construction of a toll or turnpike project to the KTA and the State Finance Council. The bill requires the Secretary and local units of government to receive resolutions approving the construction from the KTA and the State Finance Council. The bill defines “local unit or units of government” and “approving” for this purpose. The bill characterizes the approvals by the State Finance Council as matters of legislative delegation.

The bill requires tolls be charged only on users of the additional capacity of the highway or bridge constructed and on all users of any new project, regardless of class, size, or kind of traffic. The bill requires the Secretary to use toll revenue to pay for the cost of the project for

which the toll was collected and forbids the Secretary from using toll revenue for payment of costs not associated with the project for which the toll was collected.

The bill removes a requirement the Secretary recommend to the Legislature the construction of a new toll project or turnpike project or designation of an existing highway or portion thereof and authorizes the Secretary to construct such toll road after meeting the proposal and approval requirements described above. The bill states the Secretary must determine such new or added capacity is feasible.

John Armstrong Memorial Highway; SGT Kevin A. Gilbertson Memorial Bridge; HB 2070

HB 2070 designates the portion of US-75 from the junction of US-75 and NW 46th Street in Shawnee County to the junction of US-75 and I-70 as the John Armstrong Memorial Highway and removes this portion of US-75 from designation as the Purple Heart/Combat Wounded Veterans Highway. (The designation of US-75 as the Purple Heart/Combat Wounded Veterans Highway generally extends from the Nebraska state line to the Oklahoma state line, with several exceptions in law.) [Note: According to testimony, Mr. Armstrong was an abolitionist who was active with the Underground Railroad and used a route that closely followed the route of the highway to be so designated.]

The bill also designates bridge No. 018-011 on US-77 in Cowley County as the SGT Kevin A. Gilbertson Memorial Bridge. According to testimony, Sergeant Gilbertson served in the U.S. Army's 1st Infantry Division and died August 31, 2007, while serving in Iraq. The bridge to be so designated crosses the Arkansas River near the Oklahoma state line.

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

Definition of "School Bus" for Motor-Fuel Tax Purposes; HB 2087

HB 2087 amends the definition of "school bus" in the Motor-Fuel Tax Law to remove a requirement the vehicle be designed for carrying more than ten passengers and to remove use for the transportation of school personnel. The bill retains in the definition that a school bus be any motor vehicle used by a school district or nonpublic school to transport pupils or students to or from school or to or from school-related functions or activities; the vehicle may be owned and operated by the school district or privately owned and contracted for, leased, or hired by a school district or nonpublic school. Under continuing law (KSA 79-3453), any person who uses motor-vehicle fuels for which tax has been paid for school buses (or any purpose other than operating motor vehicles on the public highways) is entitled to a refund of motor-fuel tax if certain requirements are met.

Release of State Motor Vehicle Records; HB 2126

HB 2126 amends law restricting access to motor vehicle records. The bill removes from state law certain purposes for which state motor vehicle records may be released, but also authorizes release for any purpose not listed in Kansas law that is permissible under the federal Driver's Privacy Protection Act as it existed on January 1, 2018.

The bill makes corresponding changes to provisions directing \$1 from fees for each record requested to the Highway Patrol Training Center Fund.

The federal Driver's Privacy Protection Act (in 18 USC 2721(b)) includes various permissible uses, including these: to carry out a governmental function, by any government agency or private person or entity working on its behalf; in connection with matters of motor vehicle or driver safety and theft, emissions, product recalls or advisories, motor vehicle market research, and updating manufacturer owner records; for use by insurers, in connection with claims investigation or antifraud activities, rating, or underwriting; to give notice to owners of towed or impounded vehicles; for response to requests for individual records if the State has obtained express consent of the person to whom such personal information pertains; and for any other use specifically authorized under state law if the use is related to the operation of a motor vehicle or public safety.

Registration Fees for Electric and Hybrid Vehicles; Senate Sub. for HB 2214

Senate Sub. for HB 2214 adds passenger vehicle registration categories and establishes fees for those categories: \$100 for all-electric vehicles and \$50 for motor vehicles that are electric hybrid or plug-in electric hybrid vehicles. The new fees will be effective on and after January 1, 2020.

Permit Fees for Oversize or Overweight Vehicles; Escort Vehicle Companies; Senate Sub. for HB 2225

Senate Sub. for HB 2225 increases fees for certain permits authorizing oversize or overweight vehicles to operate on designated routes and requires registration of escort vehicle companies.

Permit Fees

The bill increases these permit fees as of January 1, 2020:

- For each single-trip permit, from \$20 to \$40;
- For each single-trip permit for a large structure, from \$30 to \$200;
- For each single-trip permit for a superload, from \$50 to \$200; and
- For each annual permit, from \$150 to \$200.

Escort Vehicle Companies

The bill requires, on and after January 1, 2020, each company that operates an escort service in the state to register annually with the Secretary of Transportation (Secretary) in accordance with rules and regulations adopted by the Secretary.

The bill requires each application for registration be accompanied by the name and address of the agent for service of process; proof of insurance, self-insurance, or other financial security for each vehicle operated; proof that each driver of an escort vehicle has a valid operator's license issued by a U.S. state or territory; proof each driver has successfully completed an escort vehicle training course approved by the Secretary; and other information the Secretary may require.

The bill authorizes the Secretary to revoke, suspend, or refuse to issue a registration for violation of these provisions.

UTILITIES

Amending the Kansas 911 Act; HB 2084

HB 2084 revises the Kansas 911 Act (Act) and repeals three outdated statutes not included in the Act. The bill makes changes to definitions, the membership of the 911 Coordinating Council (Council), administration of funds by the Council, the Council's rules and regulations authority, Local Collection Point Administrator (LCPA) expenses, public safety answering point (PSAP) geographic information service (GIS) data requirements, PSAP annual report requirements, 911 fee funds, 911 fees, PSAP distributions, PSAP expenditures, liability provisions, audit expenses, and county restrictions.

Definitions

The bill adds the following definitions to the Act:

- "GIS" to mean a geographic information system for capturing, storing, displaying, analyzing, and managing data and associated attributes that are spatially referenced;
- "GIS data" to mean the geometry and associated attributes packaged in a geodatabase that defines the roads, address points, and boundaries within a PSAP's jurisdiction; and
- "Non-traditional PSAP" to mean a PSAP not operated by a city or county, including, but not limited to, PSAPs operated by universities, tribal governments, or the state [or] federal government.

The bill amends two definitions in the Act. The law defines "local collection point administrator" to mean the person designated by the Council to collect and distribute 911 fees and 911 state grant fund moneys. The bill creates the 911 Operations Fund and requires the LCPA also collect and distribute 911 Operations Fund moneys. The law defines "Next Generation 911" (NG911) to mean a 911 service that enables PSAPs to receive Enhanced 911 service calls and emergency calls from Internet protocol-based technologies and applications that may include text messaging, image, video, and data information from callers. The bill adds to the definition that NG911 service conforms with National Emergency Number Association i3 standards.

911 Coordinating Council

Membership

The Council has 13 voting members and the bill eliminates the member representing PSAPs without regard to size and adds a member representing the Kansas chapter of the Association of Public Safety Communications Officials.

The bill adds two members representing non-traditional PSAPs, one of whom shall be a representative of tribal government, to the non-voting membership of the Council. These members are appointed by the Governor.

Expenses

Prior law required the Council-related expenses to be reimbursed from the 911 State Grant Fund. The bill requires the expenses to be reimbursed from the 911 Operations Fund, which is created by the bill. The bill limits payments for administration expenses of the Council to 2.0 percent of the total receipts from providers and the Kansas Department of Revenue (Department) received by the LCPA. The Council is authorized to reimburse state agencies or independent contractors for expenses incurred effectuating the Act, from the 911 Operations Fund.

Rules and Regulations

The Council's authority to adopt rules and regulations necessary to effectuate the provisions of the Act is expanded to include establishing training standards and programs related to the technology and operations of the NG911 hosted solution; establishing data standards, maintenance policies, and data reporting requirements for GIS data; and assessing civil penalties upon a finding that a provider has violated any provision of the Act.

The bill prohibits the Council from adopting rules and regulations or imposing any requirements that create a mandatory certification program of PSAP operations or PSAP emergency communications personnel.

Local Collection Point Administrator

Expenses

Prior law required the LCPA-related expenses be reimbursed from the 911 State Grant Fund. The bill requires the expenses to be reimbursed from the 911 Operations Fund.

Selection

The bill requires the Council to receive approval from the Legislative Coordinating Council (LCC) in selecting the LCPA. Prior law stated the Council shall receive advice and consent from the LCC in selecting the LCPA.

GIS Data Oversight

The bill sets forth a process for the Council to ensure the GIS data for PSAPs remains up to date. If a PSAP does not provide certification of up-to-date GIS data or update its GIS data, the Council is allowed to contract with a third party to update the GIS data and is required to assess the governing body of the PSAP with any costs incurred in updating the GIS data.

Public Safety Answering Points' Annual Reports

The bill requires the Council to provide notice to the governing body of a PSAP that failed to file and finalize an annual report, as required by the Act. If after 60 days the report is not filed or finalized, 10.0 percent of each subsequent distribution of 911 fees will be withheld from such PSAP until such report has been submitted.

911 Operations Fund

The bill requires the LCPA, upon approval of the Council, to establish the 911 Operations Fund for administrative costs of the Council and deployment and maintenance of the Statewide NG911 system outside of the State Treasury.

911 Fees

Subscriber Accounts

The law imposes a 911 fee per month, per subscriber account of any exchange telecommunications service, wireless telecommunications service, voice over Internet protocol service, or other service capable of contacting a PSAP. The bill increases the 911 fee from \$0.53 to \$0.90 per month, per subscriber account. The Council has the authority, through rules and regulations, to lower the fee. The law requires service providers collect the 911 fees and remit such fees to the LCPA for distribution to the PSAPs pursuant to the Act.

Prepaid Purchases

The law imposes a prepaid wireless 911 fee per retail transaction to be collected by the seller and remitted to the Department. The Department remits the fees to the LCPA for distribution as provided in the Act. The bill increases the fee from 1.20 percent to 2.06 percent per transaction. The bill requires the Council, through rules and regulations, to lower the prepaid wireless fee proportionally to any reduction in the 911 subscriber fee. Prior law required the Council to adjust the 911 subscriber fee and required the prepaid 911 fee to be adjusted proportionately, either up or down, upon adjustment of the 911 subscriber fee.

Distribution to PSAPs

The law states 911 fees will be distributed to PSAPs in each county based upon the amount of 911 fees collected from service users located in that county, based on place of primary use information provided by the providers, by using the distribution method set forth in statute. The bill does not change the distribution method; however, the bill increases the minimum county distribution from \$50,000 to \$60,000.

The bill requires, prior to the distribution of 911 fees to the PSAPs, the LCPA withhold \$0.23 from every 911 fee remitted by service providers and deposit such amount in the 911 Operations Fund for deployment and maintenance of the statewide NG911 system and standardized functionality upgrade to that system. The bill states if these funds withheld from PSAP distribution exceed 15.0 percent of the total receipts received by the LCPA from providers and the Department over the prior three years, the bill requires such funds in excess of the 15.0

percent total to be deposited in the 911 State Grant Fund and used for PSAP grants based on demonstrated need.

The bill requires the LCPA withhold \$0.01 from every 911 subscriber fee remitted to the LCPA prior to PSAP distribution, if the balance in the 911 State Grant Fund is less than \$2.0 million, and deposit such amount in the 911 State Grant Fund. Additionally, if the balance in the 911 State Grant Fund exceeds \$2.0 million, the LCPA is not required to withhold such amount.

The bill requires all moneys remaining after distribution, moneys withheld to deploy and maintain the statewide NG911 system, and any money that cannot be attributed to a specific PSAP be transferred to the 911 Operations Fund.

The bill requires all moneys in the 911 State Fund collected from the prepaid wireless 911 fee be deposited in the 911 Operations Fund unless \$3.0 million of such moneys have been deposited in any given year, then all remaining moneys will be distributed to the counties in an amount proportional to each county's population as a percentage share of the population of the state.

PSAP Expenditures

The bill requires the Council, pursuant to rules and regulations, to establish a process for a PSAP, at the discretion of the PSAP, to seek pre-approval of an expenditure. The Council is required to respond in writing to any pre-approval request within 30 days and inform the PSAP the requested expenditure is approved or disapproved. The bill requires, if the expenditure is disapproved, the written notification state the reason for the disapproval and such PSAP can, within 15 days after service of the notification, make a written request to the Council to appeal the decision and for a hearing to be conducted in accordance with the Kansas Administrative Procedure Act.

The bill requires the Council annually to review expenditures of 911 funds reported on the annual report for each PSAP and to appoint a committee to review such expenditures. The bill states if the committee determines a reported expenditure was not authorized by the Act, the committee is required to request the expenditure be refunded by the PSAP to the PSAP's 911 account. The PSAP is allowed to request a review of the decision of the committee before the Council. Upon a finding that an unauthorized expenditure was made intentionally, the Council is allowed to assess a fine to the PSAP. Any final action of the Council is subject to review in accordance with the Kansas Judicial Review Act.

The law prohibits PSAPs from using 911 fees to purchase subscriber radio equipment. The bill further prohibits the use of 911 fees for the procurement, maintenance, or upgrade of such equipment. The bill also prohibits the use of 911 fees to pay salaries for training of personnel.

Liability

The bill provides, except for action or inaction that constitutes gross negligence or willful and wanton misconduct, the LCPA, PSAPs, and each provider and seller, and their respective employees, agents, suppliers, and subcontractors, shall not be liable for payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency

communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service.

Audit Expenses

Audits authorized by the Act shall be paid or reimbursed from the 911 Operations Fund.

Restrictions on Counties

Counties shall not be allowed to exempt from or effect changes in the Act.

Outdated Statutes

The bill repeals three outdated statutes regarding enhanced wireless 911 provisions. These statutes are not included in the Act.

Marking of Underground Facilities; HB 2178

HB 2178 amends law concerning the duty of an operator to mark the tolerance zone (the area not less than 24 inches of the outside dimensions in all horizontal directions) around an underground facility within the Kansas Underground Utility Damage Prevention Act (KUUDPA).

Specifically, the bill amends the definition of “operator” to specify an electric public utility is not considered an operator of any portion of an underground facility that is on another person’s side of the point where ownership of the facility changes from the electric public utility to another person as determined by the electric public utility’s rules and regulations, tariffs, service or membership agreements, or other similar documents. The bill provides, if the operator of a facility used for transporting, gathering, storing, conveying, transmitting, or distributing gas, electricity, communications, crude oil, refined or reprocessed petroleum, petroleum products, or hazardous liquids is also a provider of electricity, the duty of the operator to mark the tolerance zone does not extend to another person’s side of the point where ownership of the facility changes from the operator to another person as determined by the operator’s rules and regulations, tariffs, service or membership agreements, or similar documents. The bill makes a clarifying amendment to the definition of “operator” to include any person who leases (rather than operates) an underground Tier 1 or Tier 2 facility.

The bill also amends law concerning the notification center established by KUUDPA to require, on and after July 1, 2019, the notification center notify any person or excavator requesting identification of the location of underground facilities that utilities are only required to identify the location of utility-owned facilities and not the location of privately owned facilities.

Finally, the bill adds the definition of “electric public utility,” as defined by statutes governing the powers of the Kansas Corporation Commission, to KUUDPA, and makes a technical amendment to a statutory reference.

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

WATER

Groundwater Management Districts; Public Water Supply Systems Loan Repayment Period; HB 2085

HB 2085 clarifies, if a rural water district has available capacity, the board of such district must adhere to the benefit unit reinstatement requirements in continuing law. Also, the bill increases the maximum repayment period from 20 years to 40 years for loans provided by the Secretary of Health and Environment to municipalities for the payment of all or part of a project associated with a public water supply system.

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