PRELIMINARY SUMMARY OF LEGISLATION
2023 KANSAS LEGISLATURE

KLRD

Providing objective research and fiscal analysis for the Kansas Legislature

This publication contains summaries of selected bills enacted by the Legislature as of the end of the legislative day on March 29, 2023. Bills that have not yet been signed by the Governor are included.

A supplement containing summaries of major bills that were enacted after that date will be distributed during the week of April 10, 2023. An additional supplement will be mailed after the wrap-up session in May.

Highlights, a summary of major legislation, will be prepared after the Legislature adjourns and will be mailed to legislators as soon as possible. *The Summary of Legislation*, which accounts for all bills enacted by the 2023 Legislature, will be distributed at a later date.

These documents are available on the Kansas Legislative Research Department's website: kslegresearch.org.

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AGRICULTURE AND NATURAL RESOURCES

Lesser Prairie Chicken Designation as Threatened Species; SCR 1602

SCR 1602 states the Kansas Legislature disapproves of the designation of the lesser prairie chicken as a threatened species in Kansas by the U.S. Fish and Wildlife Service (USFWS).

The concurrent resolution also states the Kansas Legislature supports the passage in Congress of Senate Joint Resolution 70 and House Joint Resolution 105 that would return control to the farmers, ranchers, and energy producers of Kansas.

[*Note:* Senate Joint Resolution 70 is co-sponsored by U.S. Senators Marshall and Moran; House Joint Resolution 105 is co-sponsored by U.S. Representatives Estes, LaTurner, and Mann. The resolutions would nullify a November 2022 final rule of the USFWS regarding the status of the lesser prairie chicken.]

CHILDREN AND YOUTH

Notice of Qualified Residential Treatment Facility Placement; HB 2240

HB 2240 amends the Revised Kansas Code for Care of Children to clarify and require the clerk of the district court to provide various parties with written notice when a child is placed in a qualified residential treatment program (QRTP), after receipt of such written notice from the Secretary for Children and Families (Secretary).

Current law requires the Secretary to provide written notice to the court when a child is placed in a QRTP. Written notice must also be given to specified parties, but no entity is designated in law to provide notice of such placement. The specified entities who must be notified are 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.

Extension of Statutory Speedy Trial Suspension; Sub. for HB 2121

Sub. for HB 2121 amends law governing statutory speedy trial in the Kansas Code of Criminal Procedure.

The bill extends the suspension of statutory speedy trial rights for defendants in all criminal cases until March 1, 2024. [*Note:* Current law suspends statutory speedy trial rights until May 1, 2023.]

The bill specifies that time between March 19, 2020, and March 1, 2024, may not be assessed against the State for any reason. The bill also provides that any person arraigned before March 1, 2024, is deemed to have been arraigned on that date for the application of statutory speed trial.

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

EDUCATION

Virtual State Assessments for Virtual School Students; HB 2080

HB 2080 enacts law supplemental to the Virtual School Act to allow any student enrolled full-time in a Kansas virtual school to take statewide assessments, required by state law, in a virtual setting.

The bill requires the administration of any virtual statewide assessment to meet the following conditions:

- The assessment must be administered to the student at an assigned date and time;
- The assessment must be administered during a synchronous session that is started and managed by an employee of the virtual school;
- The assessment administered in the virtual setting must be the same assessment administered to students enrolled in a virtual school but taking the assessment in an in-person setting;
- The student must be monitored by the assessment proctor via a camera for the length of the assessment;
- If the assessment's platform does not allow for integrated camera proctoring, the bill would require the student to use two devices during the assessment;
- The device on which the student will be taking the test must be equipped with browser lockdown software which is in operation for the length of the assessment;
- A proctor cannot monitor more than ten students during the administration of the assessment;
- The student cannot exit the assessment platform until instructed to by the proctor; and
- The completed assessment must be verified by the assessment administrator.

The bill requires the State Department of Education to implement the provisions of the bill using the Department's funds for the administration of all statewide assessments.

Fairness in Women's Sports Act; HB 2238

HB 2238 creates the Fairness in Women's Sports Act (Act) and requires interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by public educational entities or any school or private postsecondary educational institution whose

students or teams compete against a public educational entity to be expressly designated based on biological sex.

Definitions

The bill establishes definitions for six terms, including:

- "Biological sex" means the biological indication of male and female in the context of reproductive potential or capacity, such as sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological or chosen, or subjective experience of gender;

- "Public educational entity" means any public school or postsecondary educational institution;

    - The bill defines a "public school" as any elementary or secondary school maintained and operated by a school district; and

- "School" means any nonpublic school offering any of the grades kindergarten through 12.

Athletic Team Criteria

The bill requires all interscholastic, intercollegiate, intramural, and club athletic teams that are sponsored by public educational entities or any school or private postsecondary institutions whose students compete against teams from other public educational institutions to be expressly designated as one of the following, based on the biological sex of the team members:

- Males, men, or boys;
- Females, women, or girls; or
- Coed or mixed.

The bill further specifies that athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex.

[*Note:* The bill does not exclude students of the female sex from participating on athletic teams designated for males, men, or boys.]

Rules and Regulations

The bill requires the Kansas State High School Activities Association (KSHSAA), the Kansas Board of Regents, and the governing bodies for municipal universities, community colleges, and technical colleges to adopt rules and regulations for the implementation of the designations of their athletic teams.

Prohibition of Complaints

The bill prohibits governmental entities, licensing organizations, accrediting organizations, or athletic associations or organizations from taking the following actions against public educational entities that maintain separate teams for students of the female sex:

- Entertaining a complaint;
- Opening an investigation; or
- Taking other adverse actions.

Resolving Violations

In the event of a violation of the Act, the bill allows the following individuals and organizations to file civil suit and seek relief in the form of monetary damages, reasonable attorney fees, and other appropriate relief:

- Any student deprived of an athletic opportunity or who suffers direct or indirect harm by a violation of the Act;

- Any student subjected to retaliation or other adverse action by a public educational entity or athletic association or organization for reporting a violation of the Act; or

- Any public educational entity that suffers direct or indirect harm as a result of a violation of the Act.

The bill requires all civil actions to be initiated no later than two years after the harm occurred.

Severability

The bill declares all sections of the Act to be severable in the event one or more sections are determined to be invalid.

Affiliation of Northwest Kansas Technical College and North Central Kansas Technical College with Fort Hays State University; HB 2290

HB 2290 authorizes the affiliation of Northwest Kansas Technical College and North Central Kansas Technical College with Fort Hays State University (FHSU).

Affiliated Institutions

The affiliated institutions will be designated as FHSU-Northwest Kansas Technical College and FHSU-North Central Kansas Technical College and operate as technical colleges within FHSU. The powers and duties of the governing boards for these technical colleges are transferred to FHSU, subject to the rules and regulations and supervision of the Kansas Board of Regents (KBOR), and the boards will become industry or regional advisory boards appointed by the President of FHSU.

The bill provides that the affiliated institutions will continue as technical colleges eligible for funding in the same manner as other technical colleges and offer programs approved by FHSU, including credential and degree programs that technical colleges are authorized to award.

Industry and Regional Advisory Boards

The new industry or regional advisory boards are required to:

- Review programs at the affiliated institution with FHSU leadership to ensure alignment with industry and community workforce needs;
- Provide input relating to changes in each advisory board member's industry sector or region that affect academic programs;
- Perform any operational responsibilities or duties specified in the formal affiliation agreement; and
- Perform any other responsibilities as requested by the President of FHSU.

Admissions

The bill provides that admission requirements for each respective institution will not be altered, and FHSU will not admit degree-seeking, first-time freshmen or transfer students to university programs who do not meet the applicable qualified admission standards.

Formal Affiliation Agreement

The bill requires a formal affiliation agreement between the affiliated institutions and FHSU to address the transfer of faculty, employees, and students and, subject to authorization by KBOR, all affiliated institution personnel would become FHSU personnel, with their employment deemed uninterrupted.

The affiliation is effective after approval of the formal agreement by the Higher Learning Commission of the North Central Association of Colleges and Schools. The bill provides that, should only one technical college choose to participate in the affiliation agreement with FHSU, the provisions of the bill will be effective for the remaining institutions.

Legal Proceedings and Contracts

The bill states that no legal proceeding, including criminal actions, will be eliminated by reason of the affiliation, and any legal proceeding can be allowed to be maintained by the affiliated institutions.

The bill also states the affiliation will not affect any contract, agreement, or assurance in effect on the effective date of the bill (July 1, 2023).

Conforming and Technical Amendments

The bill makes other conforming and technical amendments to law regarding the technical colleges affiliated designation.

Campaign Finance Act Reform; House Sub. for SB 208

House Sub. for SB 208 amends provisions in the Campaign Finance Act (Act) on topics including procedures of the Kansas Governmental Ethics Commission (Commission).

The bill will take effect upon publication in the *Kansas Register*.

Governmental Ethics Commission

The bill applies the provisions of the Kansas Administrative Procedure Act (KAPA), the Kansas Code of Civil Procedure, and the Kansas Judicial Review Act (KJRA) to actions by the Commission or Commission staff. This includes, but is not limited to, investigative and enforcement actions of the Commission and applications to the Commission. The bill applies provisions of the Kansas Public Speech Protection Act to all actions filed by the Commission in district court pursuant to this act.

The bill establishes the deadline for bringing any action before the Commission at five years after the first act giving rise to the cause of action or complaint.

The bill requires the Commission to provide through rules and regulations the standards by which any member of the Commission, the Executive Director, or other person employed or engaged by the Commission is to recuse themselves from any matter before the Commission for a reason affecting the ability of the Commission to neutrally and fairly enforce the Act.

Commission Hearings, Procedures, and Findings

Respondent Rights

The bill clarifies no action by the Commission shall require a respondent to waive any civil or legal rights to judicial recourse in any manner.

Hearing Procedures

The bill requires all hearings conducted under the Act to be conducted in accordance with the provisions of KAPA and the Kansas Code of Civil Procedure. The bill authorizes the respondent to request any hearing and pre-hearing procedure under this act to be removed for a hearing before a presiding officer from the Office of Administrative Hearings and conducted as prescribed by KAPA. The bill prohibits the Commission from conducting another hearing on the matter and requires the Commission to make its final determination based on the record.

Commission Procedures

The bill authorizes the Commission to apply to the Shawnee County District Court for an order to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any documents or records that the Commission deems relevant or material to the investigation. The bill requires all applications for a court order to be

made under the seal of the court. The bill requires a 2/3, rather than 3/4, majority vote to issue a subpoena or subpoena *duces tecum* and removes the requirement that the commissioners must be physically present in order to vote. The bill requires that no subpoena or other process issued by the Commission pursuant to this section shall be served upon any person unless an application has been filed in the district court of Shawnee County pursuant to this section and requires the Commission to provide a copy of written findings of fact and conclusions of law to the persons under investigation (this section pertains to investigation by the Commission, KSA 25-4158 amendments).

The bill states the court shall issue the order requiring appearance after review of the sufficiency of the written findings of fact and conclusions of law provided by the Commission, the Commission record, and the reasonableness and scope of the subpoena. The bill allows a person responding to a subpoena to apply to a court for relief from a subpoena.

The bill requires every subpoena so issued to include notices regarding the rights of the person to whom the subpoena was issued. The bill requires any person ordered to testify or produce documents to be informed that the person has a right to be advised by counsel and may not be required to make any self-incriminating statement. The bill directs the judge to appoint counsel if the person is indigent and requests counsel. The bill authorizes said counsel to be present while the witness is testifying and interpose objections on behalf of the witness, but does not authorize counsel to examine or cross-examine any witness.

The bill also requires the Commission to take reasonable steps to avoid imposing undue burden or expense on a person subject to subpoena and requires the court to enforce this duty against the Commission by imposing appropriate sanctions when required.

The bill prohibits any attorney or staff member representing the complainant before the Commission from engaging in *ex parte* communication with the Commission, as well as advising, representing, or assisting the Commission regarding the same or related matter before the Commission. The bill requires the Commission to obtain separate independent legal counsel when needed to comply with these requirements.

The bill authorizes the Commission to enter into a contract with the Office of Administrative Hearings and provide reimbursement for actual and necessary expenses and compensation for such person serving as a presiding officer, and adds duties of confidentiality for hearings to members of the Commission, the Executive Director, or any person employed or engaged by the Commission.

The bill applies duties of confidentiality of complaints and allegations therein only to members of the Commission, Executive Director, or any person employed or engaged by the Commission. The confidentiality statute on records, complaints, documents, reports filed with or submitted to the Commission, and all transcripts of any investigation, inquiries, or hearings of the Commission applies only to members of the Commission, the Executive Director, or any person employed or engaged by the Commission.

Penalties and Fines

The bill caps the fine the Commission could impose to not exceed an amount triple the applicable fine for a single violation of the matter. If the respondent derived pecuniary gain from the specific violations, the bill authorizes a larger fine but not to exceed double the pecuniary gain derived from the violation. The bill's provisions do not prevent a court from imposing a

separate fine in a criminal proceeding. Further, the bill directs civil fines assessed by the Commission to the State General Fund instead of the Governmental Ethics Commission Fund.

The bill prohibits the Commission from:

- Ordering community service or any other specified performance in lieu of a civil fine as part of a consent decree or final order; and

- Entering into any agreement with any person that legally binds the Commission from enforcing any law against that person in exchange for the person's cooperation with or assistance of the Commission in any matter unless that person has received immunity from criminal prosecution in the matter from a county or district attorney or the Attorney General.

These provisions do not prohibit the Commission from requiring training regarding or compliance with any provision of the Act as part of a consent decree or final order.

Campaign Finance

Definitions

The bill defines "agent" to mean an individual who is a candidate; a chairperson of a candidate, political, or party committee; a treasurer; or any director, officer, employee, paid consultant, or other person authorized in writing to act on behalf of a person previously listed.

Filing Fees and Requirements

The bill creates a new category of registration by a political committee and changes the thresholds for annual registration fees for political committees. A political committee anticipating receiving within a calendar year:

- More than $15,001, a new category, is required to pay a $750 registration fee;

- At least $7,500 and less than $15,001 is required to pay a $500 registration fee;

- At least $2,500 and less than $7,501 is required to pay a $250 registration fee; and

- Less than $2,500 is required to pay a $50 registration fee.

The bill makes technical amendments to continue requiring a political committee that receives more contributions than anticipated, up to $7,501, to pay the difference between the fee owed and the amount of the fee accompanied by current registration.

Campaign Solicitation

The bill states no solicitation from January 1 through *Sine Die* is a violation if it is a general public solicitation and accompanied with a disclaimer that it is not intended for lobbyists, political committees, or persons other than individuals.

Campaign Expenditures and Contributions

The bill expands allowable personal use of moneys received by any candidate or candidate committee to include:

- Expenses, compensation, or gifts provided to any volunteer, staff member, or contractor of the candidate's campaign or provided to any volunteer or staff of the candidate's political office, provided that the total amount provided from all sources does not exceed the total fair market value of services provided;

- Payment of any civil penalty imposed by the Commission pursuant to the Act related to the candidate's campaign and that is incurred by the candidate, candidate committee, treasurer, or other agent of the candidate; and

- Payment of legal fees related to any matter under the Act.

Presidential Electors; HB 2087

HB 2087 amends law regarding the selection of presidential electors, the day presidential electors meet and perform their required duties, and contests to the election of the presidential electors. [*Note:* This will update Kansas statutes to reflect new federal law, the Electoral Count Reform and Presidential Transition Improvement Act, included in the Consolidated Appropriations Act of 2023, P.L. 117-328.] The bill also repeals statutes related to presidential electors and political parties that are no longer in current use.

Selection of Presidential Electors

The bill requires recognized political parties to adopt procedures for the party's selection of presidential electors and select electors in accordance with such procedures. [*Note:* Current state law provides for presidential electors to be nominated in the same manner as candidates for office.]

The bill also provides the procedures for certifying the names of presidential electors to the Secretary of State (Secretary):

- For a political party with a state organization, the names of the presidential electors must be certified to the Secretary by the chairperson of the state political party;

- For a political party that does not have a state organization, the names of the presidential electors must be certified to the Secretary by the chairperson of the national political party; and

- For an independent presidential candidate, the names of the presidential electors must be selected and certified to the Secretary by the candidate.

The bill requires the names of the presidential electors to be certified to the Secretary by September 1 in a presidential election year. The bill requires the Secretary to provide each elector a certificate on or before the first Wednesday in December.

Electoral College Meeting Day

The bill changes the day presidential electors convene at the state capital and perform their duties from the first Monday after the second Wednesday in December after their election to the first Tuesday after the second Wednesday in December after their election.

Contesting the Election of a Presidential Elector

The bill requires any contest to the election of presidential electors to be made in accordance with federal law (3 U.S.C. § 5).

Advanced Recycling; SB 114

SB 114 defines advanced recycling and related terms and provides exceptions to the definition of solid waste management systems and similar terms regarding advanced recycling.

Definitions

The bill defines the term "advanced recycling" as a manufacturing process where already sorted post-use polymers and recovered feedstocks are purchased and then converted into basic raw materials, feedstocks, chemicals, and other products through processes that include, but are not limited to, pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis, chemolysis, and other similar technologies.

The bill states "advanced recycling" does not include the incineration of plastics or waste-to-energy processes or products sold as fuel.

The bill defines the following terms:

- "Advanced recycling facility" means a manufacturing facility that:
    - Receives, stores, and converts post-use polymers and recovered feedstocks that are processed using advanced recycling;
    - Is a manufacturing facility subject to applicable Kansas Department of Health and Environment (KDHE) manufacturing regulations; and
    - KDHE could inspect to ensure that post-use polymers are used as a raw material for advanced recycling and are not refuse or solid waste;
- "Mass balance attribution" means a chain of custody accounting methodology with rules defined by a third-party certification system that enables the attribution of the mass of advanced recycling feedstocks to one or more advanced recycling products;
- "Post-use polymer" means a plastic that:
    - Is derived from any industrial, commercial, agricultural, or domestic activities and includes pre-consumer recovered materials and post-consumer materials;
    - Has been sorted from solid waste and other regulated waste but may contain residual amounts of waste such as organic material and incidental contaminants or impurities;
    - Is not mixed with solid waste or hazardous waste on site or during processing at the advanced recycling facility;
    - Is used or intended to be used as a feedstock for the manufacturing of feedstocks, raw materials, or other immediate products or final products using advanced recycling; and

  - Is processed at an advanced recycling facility or held at such facility prior to processing;

- "Recovered feedstock" means one or more of the following materials that has been processed so that it may be used as feedstock in an advanced recycling facility:

  - Post-use polymers; or
  - Materials for which the U.S. Environmental Protection Agency has made a non-waste determination or has otherwise determined are feedstocks and not solid waste;

- "Recycled plastics" means products that are produced:

  - From mechanical recycling of pre-consumer recovered feedstocks or plastics and post-consumer plastics; or
  - From the advanced recycling of pre-consumer recovered feedstocks or plastics and post-consumer plastics through mass balance attribution under a third-party certification system; and

- "Third-party certification system" means an international and multi-national third-party certification system that consists of a set of rules for the implementation of mass balance attribution approaches for advanced recycling of materials. Third-party certification systems include, but are not limited to:

  - International sustainability and carbon certification;
  - Underwriter Laboratories;
  - SCS recycled content;
  - Roundtable on sustainable biomaterials;
  - Ecoloop; and
  - REDcert2.

Exceptions

The bill adds an exception to the definition of solid waste for post-use polymers and recovered feedstocks that are converted at an advanced recycling facility or held at such a facility prior to conversion through an advanced recycling process.

The bill exempts advanced recycling facilities from the definitions of solid waste management system, solid waste processing facility, and waste-to-energy facility.

Water System Approval; Extending the Period for Repayments to the Kansas Water Pollution Control Revolving Fund; SB 120

SB 120 authorizes the Secretary of Health and Environment to adopt certain rules and regulations regarding public water supply systems and increases the amount of time a municipality will have to repay a loan from the Kansas Water Pollution Control Revolving Fund (Fund).

Rules and Regulations

The bill allows the Secretary of Health and Environment to adopt rules and regulations authorizing approval of, as part of a continuing program of annual certification by public water supply systems, the replacement of segments of distribution systems. The program already approves the extension of distribution systems.

Kansas Water Pollution Control Revolving Fund

Current law states the Secretary of Health and Environment may enter into an agreement with a municipality to loan the municipality moneys from the Fund. The agreement provides that repayment of a loan from the Fund must begin within one year after completion of a project, and the loan must be repaid in full no later than 20 years thereafter. The bill extends the repayment period to 30 years for agreements made on and after July 1, 2023.

Designating the State Land Fossil; SB 3

SB 3 designates *Silvisaurus condrayi*, a one-ton armored ankylosaur that walked across Kansas during the late Cretaceous period, as the official state land fossil. [*Note:* The official state marine fossil, the *Tylosaurus*, and the official state flying fossil, the *Pteranodon*, were designated by 2014 HB 2595.]

Tobacco 21; HB 2269

HB 2269 amends the Kansas Cigarette and Tobacco Products Act (Act) to raise the minimum age to 21 to sell, purchase, or possess cigarettes, electronic cigarettes, or tobacco products.

Licensing

The bill amends a statute concerning licensing to raise the minimum age to receive a license governed by the Act to age 21.

The bill amends a related statute to require the Kansas Department of Revenue Director of Taxation (Director) to notify licensees who are not yet age 21 of the Director's intention to suspend or revoke such person's license due to them being under 21 years of age.

Unlawful Acts and Related Penalties

The bill amends the Act's unlawful act provisions concerning cigarettes, electronic cigarettes, or tobacco products. Specifically, the bill amends references to the minimum age in statutes concerning the following:

- Sale, furnishing, or distribution of cigarettes, electronic cigarettes, or tobacco products;
- Possession or attempt to possess such products;
- The age listed on required notice of the minimum age to be sold such products;
- Distribution of samples within 500 feet of a school when the facility is primarily used by persons under the minimum age;
- Distribution of samples in an area to which persons under the minimum age are allowed access; and
- Use of a self-service display in a facility where the retailer allows persons younger than the minimum age to be present or permitted to enter at any time.

Criminal Penalty

The bill amends provisions setting out criminal penalties for the unlawful acts of selling, giving, furnishing, or buying such cigarettes or tobacco products to reflect the raising of the minimum age from 18 to 21. The bill also makes related amendments to provisions concerning defenses to such offenses.

Civil Penalty

The bill also amends provisions setting out civil penalties for unlawful acts related to selling, giving, furnishing, or buying cigarette or tobacco products for persons under the minimum age to reflect the raising of the minimum age from 18 to 21. The bill makes a related amendment to a provision specifying certain sale-avoidance training shall be a mitigating circumstance in determination of a fine by the Director.

Firearm Safety Education Programs in Public School Districts; HB 2304

HB 2304 creates law related to firearm safety education programs conducted in public school districts.

The bill allows local school boards (local board) to provide firearm safety education programs. The State Board of Education (State Board) is directed to establish curriculum guidelines for a standardized firearm safety education program, which is required to include accident prevention.

The bill provides that specific programs are to be based on the grade level of students, as follows:

- Kindergarten through grade 5 guidelines shall be based on the Eddie Eagle Gunsafe program (Eddie Eagle program) offered by the National Rifle Association (NRA) or any successor program;

- Grades 6 through 8 guidelines shall be based on either the Eddie Eagle program, or any successor program, or the Hunter Education in Our Schools program (Hunter Education), offered by the Kansas Department of Wildlife and Parks, or any successor program; and

- Grades 9 through 12 guidelines shall be based on Hunter Education or any successor program.

The bill provides that if a local board elects to provide firearm safety education, such instruction must be in accordance with the guidelines established by the State Board. Further, if a local board elects to provide firearm safety education courses, such instruction shall be offered to ensure that all students are provided the opportunity to take the course.

Amending Employer Definitions for Purposes of Insurance Coverage for Autism Spectrum Disorder; SB 24

SB 24 amends the definitions of "small employer" and "large employer" in a statute pertaining to insurance coverage for autism spectrum disorder. The definitions of "small employer" and "large employer" pertain to group health benefit plans and are specified by the number of people employed on business days during the preceding calendar year, with at least one employee on the first day of the benefit plan year.

The bill amends the definition of "small employer" from an average of at least 1 but not more than 100 employees to an average of at least 2 but not more than 50 employees. The bill amends the definition of "large employer" from an average of at least 101 employees to an average of at least 51 employees.

First-time Home Buyer Savings Account Act—Amendments; HB 2197

HB 2197 amends provisions in the First-time Home Buyer Savings Account Act (Act) to clarify the process for the designation and determination of an account holder's payable on death beneficiary. The bill also enacts law supplemental to the Act to authorize the State Treasurer to market the First-time Home Buyers Savings Account Program (Program) to account holders and financial institutions. The bill also makes technical changes.

[*Note:* This act permits savings accounts to be used to pay or reimburse a designated beneficiary's eligible expenses for the purchase or construction of a primary residence in the state. The accounts are subject to maximum contribution amounts per tax year and in aggregate.]

Program Marketing

The bill grants non-exclusive authority to the State Treasurer for the purpose of marketing the Program to account holders and financial institutions throughout the state. The State Treasurer will be permitted to include these marketing initiatives in the office's annual report.

Designated Beneficiaries

The bill also updates the Act to:

- Add a provision stating the naming of a designated beneficiary does not create a survivorship interest in the account for the named designated beneficiary. In the event of the account holder's death, the bill provides the account balance must be paid to the payable on death beneficiary or, if there is no named payable on death beneficiary, in accordance with provisions of the Kansas Probate Code;

- Permit a financial institution to rely on its account records for the determination of a payable on death beneficiary for a first-time home buyer savings account;

- If the payable on death beneficiary in the institution's account records conflicts with the designated beneficiary on any form required by the Secretary of Revenue, the bill provides the payable on death beneficiary in such financial institution's account records shall control; and

- Update terminology applicable to beneficiaries within the Act from "transfer on death" to "payable on death."

J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight; HB 2114

HB 2114 renames the Joint Committee on Corrections and Juvenile Justice Oversight (JCCJJO), amends the charge of the Committee, and makes technical changes.

The bill renames the JCCJJO as the J. Russell (Russ) Jennings Joint Committee on Corrections and Juvenile Justice Oversight (Committee).

The bill also amends the Committee's charge to monitor the implementation of juvenile justice reform and the work of the Juvenile Justice Oversight Committee from monitoring the establishment of the Juvenile Justice Authority and review and study of the programs, activities, and plans of the Juvenile Justice Authority. [*Note:* The Juvenile Justice Authority no longer exists.]

The bill updates references to the Committee in statute, removes language related to the initial organization of the Committee, and updates statutory language to ensure consistency in statutory phrasing.

Authorizing County Funds; HB 2082

HB 2082 authorizes counties to create a Code Inspection and Enforcement Fund, a Municipalities Fight Addiction Fund, or both, and to expand the uses for the existing County Equipment Reserve Fund to include purchases of technology and technology services.

Code Inspection and Enforcement Fund

The bill allows the board of county commissioners (board) of any county to establish a Code Inspection and Enforcement Fund for the purposes of financing operations, equipment, and capital needs for the county department charged with code inspection and enforcement. The functions of those departments include, but are not limited to, building, construction, land, water and gas application, inspection, testing, and permitting.

Municipalities Fight Addiction Fund

The bill allows the board to establish a Municipalities Fight Addiction Fund for the purpose of retaining and expending money received from the Attorney General, in accordance with the Kansas Fights Addiction Act. The bill adds these provisions to the Kansas Fights Addiction Act.

County Equipment and Technology Reserve Fund

The bill changes the name of each county's County Equipment Reserve Fund to the County Equipment and Technology Reserve Fund. The purposes for which the County Equipment and Technology Reserve Fund may be used are expanded to include the purchase of supplies and technology expenses, including cloud technology costs.

Washburn Board of Regents District Boundaries; HB 2092

HB 2092 changes the boundaries of member districts for the Washburn University board of regents appointees, from describing them using Topeka's Senate districts to groupings of city council districts:

- District one shall comprise city council districts two, three, and four;
- District two shall comprise city council districts one, five, and six; and
- District three shall comprise city council districts seven, eight, and nine.

OPEN RECORDS

Kansas Open Records Act Exceptions Continued; HB 2395

HB 2395 continues in existence the following exceptions to the Kansas Open Records Act (KORA):

- KSA 2-3902, concerning criminal history information under the Industrial Hemp Act;
- KSA 9-512, concerning informal orders under the Kansas Money Transmitter Act;
- KSA 40-4308, concerning examinations of captive insurance companies;
- KSA 40-4350, concerning records relating to captive insurance companies;
- KSA 65-177, concerning records of maternal death investigations;
- KSA 66-2020, concerning petitioner addresses and phone numbers under certain protective orders;
- KSA 74-5611a, concerning the registry of all Kansas police officers or law enforcement officers;
- KSA 75-7240, concerning internal information technology (IT) security assessments;
- KSA 75-7241, concerning IT security; and
- KSA 65-28b08, concerning certified nurse-midwife impairment records.

[*Note*: The exception contained in KSA 65-28b08 concerning certified nurse-midwife impairment records was not reenacted in 2022. KSA 45-229(e) provides that, for any exception that is set to expire but is not reenacted, the exception does not expire on the date specified in statute and directs the Revisor of Statutes to include that exception in the following year's certification.]

Embalmer Educational Requirements—Apprenticeships; HB 2262

HB 2262 amends educational requirements for embalmers, allowing students to complete 6 months of a required 12-month apprenticeship before enrolling in a mortuary science school.

Previously, an applicant for a license to practice embalming would complete a 12-month apprenticeship after graduation from a school of mortuary science. The bill authorizes an applicant for a license to practice embalming to complete the 12-month apprenticeship as either a:

- Full apprenticeship, with all 12 months being served after graduation from a school of mortuary science; or

- Split apprenticeship, with the 12-month period being split into 2 continuous 6-month periods. The bill requires the first 6-month period to be completed within 12 months prior to the individual's enrollment in the school of mortuary science, and the remaining 6 months after graduation.

An applicant completing a split apprenticeship must submit an examination approved by the Board of Mortuary Arts to be eligible for the second six-month period of the apprenticeship. Apprentice embalmers pursuing a split apprenticeship are required to practice under the direct personal supervision of a licensed embalmer for the first six months of their apprenticeship.

Counseling Compact; HB 2288

HB 2288 establishes the Counseling Compact (Compact) to facilitate interstate practice of licensed professional counselors. The bill also amends law to add a licensure fee relating to the privilege to practice under the Compact.

The Compact's uniform provisions are detailed below.

Purpose

The Compact facilitates the interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services. The practice of professional counseling under the Compact occurs in the state where the client is located at the time of the counseling services, and the Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The Compact's objectives include:

- Increasing public access to professional counseling services by providing for the mutual recognition of other member state licenses;

- Enhancing the states' ability to protect the public's health and safety;

- Encouraging the cooperation of member states in regulating multi-state practice for licensed professional counselors;

- Supporting spouses of relocating active duty military personnel;

- Enhancing the exchange of licensure, investigative, and disciplinary information among member states;

- Allowing for the use of telehealth technology to facilitate increased access to professional counseling services;

- Supporting the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;

- Investing all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;

- Eliminating the necessity for licenses in multiple states; and

- Providing opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

Definitions

The Compact defines various terms, including "professional counseling," which means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.

State Participation in the Compact

In order to participate in the Compact, a state must:

- License and regulate licensed professional counselors;

- Require licensees to pass a nationally recognized exam approved by the Counseling Compact Commission (Commission);

- Require licensees to have a 60 semester-hour or 90 quarter-hour master's degree in counseling or 60 semester hours or 90 quarter hours of graduate coursework including subject areas as outlined in the bill;

- Require licensees to complete a supervised postgraduate professional experience as defined by the Commission; and

- Have a mechanism in place for receiving and investigating complaints about licensees.

Member states participating in the Compact are required to:

- Participate fully in the Commission's data system, including using the Commission's unique identifier,

- Notify the Commission of any adverse action or the availability of investigative information regarding a licensee;

- Implement or utilize procedures for considering the criminal history records of applicants for an initial privilege to practice, including the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation (FBI) and the agency responsible for retaining that state's criminal records. Member states are required to fully implement a criminal background check requirement, including the confidential use of FBI record search results to make licensure decisions;

- Comply with the rules of the Commission;

- Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;

- Grant the privilege to practice to licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules; and

- Provide for the attendance of the state's commissioner at the Commission meetings.

The Compact authorizes states to charge a fee for granting the privilege to practice. Individuals not residing in a member state are still able to apply for a member state's single-state license as provided under the member state's laws, but the single-state license is not recognized as granting a privilege to practice professional counseling in any other member state.

The Compact does not affect the requirements established by a member state for the issuance of a single-state license.

Under the Compact, a license must be issued to a licensed professional counselor by a home state to a resident in that state to be recognized in each member state as authorizing the licensee the privilege to practice in each member state.

Privilege to Practice

A licensee must, in order to exercise the privilege to practice under the Compact's terms:

- Hold a license in the home state;
- Have a valid U.S. Social Security number or national practitioner identifier;
- Be eligible for a privilege to practice in any member state in accordance with the Compact;
- Have not had any encumbrance or restriction against any license or privilege to practice within the previous two years;
- Notify the Commission that the licensee is seeking the privilege to practice within a remote state;
- Pay any applicable fees, including any state fee, for the privilege to practice;
- Meet any continuing competence or education requirements established by the home state;
- Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice; and
- Report to the Commission any adverse action, encumbrance, or restriction on license taken by any non-member state within 30 days from the date of action.

The licensee must comply with the above requirements to maintain privilege to practice. The privilege to practice is valid until the expiration date of the home state license.

Under the Compact, a licensee providing professional counseling in a remote state under the privilege to practice is required to adhere to laws and regulations of the remote state and be subject to that state's regulatory authority. In accordance with due process and the state's laws, the remote state is able to remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, or take other necessary actions to protect the health and safety of its citizens. The licensee is potentially ineligible for privilege to practice in any member state until the specific time of removal has passed and all fines are paid.

If a licensee's home state license is encumbered, the Compact requires the licensee to lose their privilege to practice in any remote state until the home state license is no longer encumbered and the licensee has not had any encumbrance or restriction within the previous two years.

Once an encumbered license is returned to good standing, the Compact requires licensees to meet the requirements of privilege to practice in order to practice in any remote state.

If a licensee's privilege to practice is removed, the individual loses the privilege to practice under the Compact in all other remote states until the following occur:

- The specific period of time for which the privilege of practice was removed has ended;
- All fines have been paid; and
- The individual has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.

Once these requirements have been met, the licensee must also meet the requirements of privilege to practice to practice in any remote state.

Obtaining a New Home State License Based on a Privilege to Practice

The Compact authorizes a licensed professional counselor to hold a home state license in only one member state at a time. If the licensee changes primary state of residence by moving between two member states, the licensee must file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the Commission.

Upon receiving an application for a new home state license, the new home state is required to verify that the licensed professional counselor meets the criteria of privilege to practice via the data system, without need for primary source verification except for an FBI fingerprint-based criminal background check if not previously performed or updated, other criminal background check as required by the new home state, and completion of any requisite jurisprudence requirements of the new home state.

The Compact requires the former home state to convert the former license into a privilege to practice once the new home state has activated the new license. If the licensee cannot meet the criteria of privilege to practice, the new home state may apply its requirements for issuing a new single-state license. The Compact requires the licensed professional counselor to pay all applicable fees to the new home state for a new home state license.

The Compact also provides that for a licensed professional counselor who changes primary state of residence by moving from a member state to a non-member state or from a non-member state to a member state, the state criteria apply for issuance of a single-state license in the new state.

The Compact does not interfere with a licensee's ability to hold a single-state license in multiple states. For the purposes of the Compact, a licensee may hold only one home state license. The Compact does not affect the requirements established by a member state for the issuance of a single-state license.

Active Duty Military Personnel or Their Spouses

The Compact requires active duty military personnel or their spouse to designate a home state where the individual has a current license in good standing. The individual may

retain the home state designation during the period the service member is on active duty. Once a home state is designated, the Compact requires the individual to change their home state through application for licensure in the new state or through the process outlined in the Compact for obtaining a new home state license.

Compact Privilege to Practice Telehealth

The Compact requires member states to recognize the right of a licensed professional counselor, licensed by a home state in accordance with the Compact, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission.

Under the Compact, a licensee providing professional counseling services in a remote state under the privilege to practice is required to adhere to the laws and regulations of the remote state.

Adverse Actions

The Compact provides a remote state the authority to take adverse action against a licensed professional counselor's privilege to practice within that member state and to issue subpoenas for hearings and investigations as enforced by any court of competent jurisdiction and payment of witness-related expenses as set forth in the Compact.

The Compact allows only the home state to take adverse action against a licensed professional counselor's license issued by the home state.

For purposes of taking adverse action, the Compact requires the home state to give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. The home state applies its own state laws to determine appropriate action.

The Compact requires the home state to complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state has the authority to take appropriate action and promptly report the conclusions of the investigation to the administrator of the data system. The administrator of the coordinated licensure information system is required to notify the home state of any adverse actions.

The Compact allows a member state, if permitted by state law, to recover the costs of investigations and dispositions of cases resulting from any adverse action taken from the affected licensed professional counselor. A member state may take adverse action based on the factual findings of the remote state following its own procedures for taking adverse action.

Under the Compact, member states may participate with other member states in joint investigations of licensees. Member states are required to share any investigative, litigation, or compliance materials related to any joint or individual investigation initiated under the Compact.

If adverse action is taken by the home state against the license of a licensee, the licensee's privilege to practice in all other member states is deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose

adverse action against the license of a licensee must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states while awaiting settlement of the order.

If a member state takes adverse action, it must promptly notify the administrator of the data system, who must promptly notify the home state of any adverse actions by remote states.

Nothing in the Compact overrides a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Establishment of Counseling Compact Commission

The Compact provides for the creation of a joint public agency to be formally identified as the Counseling Compact Commission (Commission). The Commission is composed of delegates from all states that have adopted the Compact. [*Note*: As of March 29, 2023, not including Kansas, at least 20 states have enacted the Counseling Compact.]

Any judicial proceedings by or against the Commission will brought in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. The Compact does not provide for a waiver of sovereign immunity.

Membership, Voting, and Meetings

The Compact requires each member state to have a limit of one delegate selected by the member state's licensing board. The delegate may be either a current member of the licensing board at the time of appointment or an administrator of the licensing board.

Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. The member state licensing board is required to fill any vacancy occurring on the Commission within 60 days.

Each delegate is entitled to one vote with regard to promulgation of rules and creation of bylaws and otherwise may participate in the business and affairs of the Commission. Delegates are required to vote in person or other means as provided in the bylaws, which may include telephone or other means of communication.

The Compact requires the Commission to meet at least once during each calendar year; additional meetings will be held as set forth in the bylaws.

The Compact requires the Commission to establish by rule a term of office and term limits for delegates.

The Compact provides the following powers for the Commission:

- Establishing the fiscal year of the Commission;
- Establishing bylaws;

- Maintaining its financial records in accordance with the bylaws;

- Meeting and taking actions consistent with the provisions of the Compact and bylaws;

- Promulgating rules, which are binding to the extent and in the manner provided in the Compact;

- Bringing and prosecuting legal proceedings or actions in the name of the Commission, provided that the standing of any state licensing board to sue or be sued under applicable law is not affected;

- Purchasing and maintaining insurance and bonds;

- Borrowing, accepting, or contracting for services of personnel, including, but not limited to, employees of a member state;

- Hiring employees, electing or appointing officers, fixing compensation, defining duties, granting individuals appropriate authority to carry out the purposes of the Compact, and establishing the Commission's personnel policies and programs relating to conflict of interest, qualifications of personnel, and other related personnel matters;

- Accepting, receiving, utilizing, and disposing of any and all appropriate donations and grants of money, equipment, supplies, materials, and services;

- Leasing, purchasing, and accepting appropriate gifts or donations of, or otherwise owning, holding, improving, or using any real, personal, or mixed property while avoiding any appearance of impropriety;

- Selling, conveying, mortgaging, pledging, leasing, exchanging, abandoning, or otherwise disposing of any real, personal, or mixed property;

- Establishing a budget and making expenditures;

- Borrowing money;

- Appointing committees, including standing committees composed of members, state regulators, state legislators or their representatives, consumer representatives, and such other interested persons as may be designated in the Compact and its bylaws;

- Providing and receiving information from and cooperating with law enforcement agencies;

- Establishing and electing an Executive Committee; and

- Performing other functions as may be necessary or appropriate to achieve the purposes of the Compact.

The Executive Committee

The Compact provides for the Executive Committee to have the power to act on behalf of the Commission within the terms of the Compact.

The Executive Committee is composed of 11 members, including:

- Seven voting members elected by the Commission from the current membership of the Commission; and

- Up to four ex officio, nonvoting members from four recognized national professional counselor organizations, selected by their respective organizations.

The Compact allows the Commission to remove any member of the Executive Committee as provided in bylaws.

The Executive Committee must meet at least annually.

The Compact specifies the Executive Committee has the following duties and responsibilities:

- Recommending to the entire Commission changes to the rules or bylaws, changes to the Compact legislation, fees paid by Compact member states such as annual dues, and any Commission Compact fee charged to licensees for the privilege to practice;

- Ensuring Compact administration services are appropriately provided, contractual or otherwise;

- Preparing and recommending the budget;

- Maintaining financial records on behalf of the Commission;

- Monitoring Compact compliance of member states and providing compliance reports to the Commission;

- Establishing additional committees as necessary; and

- Other duties as provided in rules or bylaws.

Meetings of the Commission

The Compact requires all meetings to be open to the public, and public notice of meetings is required 30 days in advance of the meeting date with notification provided on the websites of the Commission and member state professional counseling boards.

The Commission or the Executive Committee or other committees of the Commission may meet in a closed, non-public meeting if the discussion includes:

- Non-compliance of a member state with its obligations under the Compact;
- The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
- Current, threatened, or recently anticipated litigation;
- Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
- Accusing any person of a crime or formally censuring any person;
- Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
- Disclosure of information of a personal nature where disclosure constitutes a clearly unwarranted invasion of personal privacy;
- Disclosure of investigative records compiled for law enforcement purposes;
- Disclosure of information related to investigative reports prepared by, on behalf of, or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or
- Matters specifically exempted from disclosure by federal or member state statute.

If a meeting or portion of a meeting is closed, the Compact requires the Commission's legal counsel or designee to certify that the meeting may be closed and reference each relevant exempting provision.

The Compact requires the Commission to keep minutes on all matters discussed in a meeting, providing a full and accurate summary of actions taken, reasons for those actions, and views expressed. All documents considered in connection with an action must be identified in the minutes. Minutes and documents of a closed meeting remain sealed, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

Financing of the Commission

The Compact requires the Commission to pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities. The Commission may accept any and all appropriate revenue sources, donations, or grants of money, equipment, supplies, materials, and services.

The Commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be a total amount sufficient to cover its approved annual budget. The aggregate annual assessment amount is allocated based upon a formula determined by the Commission.

The Compact does not allow the Commission to incur obligations of any kind prior to securing adequate funds to cover the cost. The Commission may not pledge the credit of any member state without the authority of the member state.

The Commission is required to keep accurate accounts of all receipts and disbursements. The Compact requires the receipts and disbursements of the Commission to be audited yearly by a certified or licensed public accountant, and the report of the audit is included in the annual report of the Commission.

Qualified Immunity, Defense, and Indemnification

The Compact specifies that members, officers, the executive director, employees, and representatives of the Commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of action within the scope of Commission employment, duties, or responsibilities; such immunity does not apply in instances of intentional, willful, or wanton misconduct.

The Compact directs the Commission to defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability occurring within the scope of Commission employment, as long as such action was not a result of intentional, willful, or wanton misconduct. The Compact does not prohibit a person from retaining their own counsel.

The Compact requires the Commission to indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against the person within the scope of Commission employment, duties, or responsibilities, provided that the act did not result from the intentional, willful, or wanton misconduct of the person.

Data System

The Compact requires the Commission to provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

As permitted by member state laws, member states are required to submit a uniform data set to the data system on all individuals to whom the Compact is applicable as required by the rules of the Commission, including:

- Identifying information;
- Licensure data;
- Adverse actions against a license or privilege to practice;
- Non-confidential information related to alternative program participation;
- Any denial of application for licensure, and the reasons for such denial;
- Current significant investigative information; and
- Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

The Compact provides for investigative information pertaining to a licensee in any member state to only be available to other member states. The Commission is required to promptly notify all member states of any adverse action taken against a licensee or an individual applying for license. Adverse action information pertaining to a licensee in any member state must be available to any other member state.

Member states contributing information to the data system may designate information that could not be shared with the public without the express permission of the contributing state.

Under the Compact, information submitted to the data system that is subsequently expunged by the laws of the member state must be removed from the data system.

Rulemaking

The Compact requires the Commission to promulgate reasonable rules to achieve the purpose of the Compact. In the event the Commission exceeds its rulemaking authority beyond the scope of the purposes of the Compact, those actions by the Commission are invalid.

Rules and amendments set by the Commission become binding as of the date specified in each rule or amendment.

The Compact states if a majority of member state legislatures reject a rule by enactment of a statute or resolution within four years of the date of adoption of the rule, the rejected rule has no further force or effect in any member state.

Rules or amendments to rules must be adopted at a regular or special meeting of the Commission.

The Compact requires the Commission to file a notice of proposed rulemaking at least 30 days in advance of the meeting in which the rule will be considered and voted upon. Notice must be posted on the website of the Commission or other publicly accessible platform and on the website of each member state professional counseling licensing board or other publicly accessible platform or the publication in which each state publishes proposed rules.

The notice of proposed rulemaking must include:

- The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
- The text of the proposed rule or amendment and the reason for the proposed rule;
- A request for comments on the proposed rule from any interested person; and
- The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

Prior to the adoption of a proposed rule, the Commission must allow persons to submit written data, facts, opinions, and arguments; any submissions would be made available to the public.

The Compact requires the Commission to grant opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by at least 25 persons, a state or federal governmental subdivision or agency, or an association having at least 25 members. If a hearing is held on a proposed rule or amendment, the Commission must publish the place, time, and date of the scheduled public hearing, or information about accessing the meeting if held electronically.

Individuals wishing to be heard at the hearing must notify the executive director of the Commission or other designated member in writing not less than five business days before the scheduled date of the hearing. Each person who wishes to comment at a hearing must be provided with the opportunity to do so orally or in writing. All hearings are recorded, and a copy of the recording must be made available upon request. Rules may be grouped for the convenience for the Commission, and separate hearings for each rule are not required.

Following the scheduled hearing date or by the close of business on the hearing date if the hearing was not held, the Commission must consider all written and oral comments received. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of a proposed rule without a public hearing.

The Compact requires the Commission, with a majority vote of all members, to take final action on a proposed rule and determine the effective date based on the rulemaking record and the full text of the rule.

Emergency Rulemaking

Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice or opportunity for comment or hearing, provided the usual rulemaking procedures provided in the Compact are retroactively applied to the rule as soon as possible, or no later than 90 days after the effective date of the rule. Emergency rules are defined as those adopted immediately in order to:

- Meet an imminent threat to public health, safety, or welfare;
- Prevent a loss of Commission or member state funds;
- Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
- Protect the public health and safety.

Revisions

The Compact authorizes the Commission or an authorized committee of the Commission to direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of revisions must be posted on the website of the Commission.

The Compact states revisions must be subject to challenge by any person for a period of 30 days after posting. Revisions may be challenged only on grounds that the revision results in a direct material change to the rule. Challenges must be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, it may not take effect without approval of the Commission.

Oversight, Dispute Resolution, and Enforcement

Oversight

The Compact provides that the executive, legislative, and judicial branches in each member state enforce the Compact, and its provisions and rules have the force of statutory law. The courts are directed to recognize the Compact and its rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

Under the Compact, the Commission is entitled to receive service of process and have standing to intervene in any such proceeding for all purposes. Failure to provide service of process to the Commission renders a judgment or order void as to the Commission, the Compact, and promulgated rules.

Default, Technical Assistance, and Termination

Under the Compact, if the Commission determines that a member state has defaulted in performance of its obligations or responsibilities under the Compact or its rules, the Commission will:

- Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission; and

- Provide remedial training and specific technical assistance regarding the default.

A state that fails to cure a default is subject to termination from the Compact upon affirmative vote of a majority of the member states. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

Termination of membership in the Compact is imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be provided by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states. A terminated state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

The Commission does not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

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

Dispute Resolution

Upon request of a member state, the Commission must attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.

The Compact requires the Commission to promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Enforcement

Under the Compact, the Commission enforces the provisions and rules of the Compact. By majority vote, the Commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state to enforce compliance with the provisions, rules, and bylaws of the Compact. The relief sought may include both injunctive relief and damages. In the event judicial

enforcement is necessary, the prevailing member is awarded all costs of such litigation, including reasonable attorney fees.

The remedies included in the Compact are the exclusive remedies of the Commission; other remedies available under federal or state law could be pursued.

Date of Implementation of the Counseling Compact Commission and Associated Rules, Withdrawal, and Amendment

The Compact is effective on the date on which the Compact statute is enacted into law in the tenth member state. [*Note*: The Compact was enacted by the tenth member state, Nebraska, on April 19, 2022.] The provisions are limited to the powers granted to the Commission relating to assembly and the promulgation of rules, after which the Commission is required to meet and exercise rulemaking powers necessary for the implementation and administration of the Compact.

Any state joining the Compact subsequent to the Commission's initial adoption of the rules is subject to the rules as they exist on the date in which the Compact becomes law in that state.

Any member state may withdraw from the Compact by repealing the Compact statute. A member state's withdrawal would take effect six months after enactment of the repealing statute.

Withdrawal from the Compact does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

Nothing in the Compact may be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of the Compact.

The Compact is amendable by member states; no amendment to the Compact becomes effective and binding upon any member state until enacted into the laws of all member states.

Construction and Severability

The provisions of the Compact are severable if found to be contrary to the constitution of any member state or of the United States. If provisions of the Compact are found to be invalid, the validity of the remainder of the Compact and its applicability are not affected. If the Compact is found to be contrary to the constitution of any member state, the Compact will remain in full force and effect in the remaining member states; portions of the Compact not in conflict with the state's constitution remain in effect in the affected member state.

Binding Effect of Compact and Other Laws

A licensee providing professional counseling services in a remote state under the privilege to practice must adhere to the laws, regulations, and scope of practice in the remote state.

Nothing in the Compact prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

Any laws in a member state in conflict with the Compact are superseded to the extent of the conflict. Any lawful actions of the Commission, including all rules and bylaws properly promulgated by the Commission, are binding upon the member states. All permissible agreements between the Commission and the members states are binding in accordance with their terms.

Home-State License Fee

The bill authorizes the Behavioral Sciences Regulatory Board to set a fee of not more than $25 for a home-state license with privilege to practice under the Compact and specifies the home-state license fee is in addition to other applicable fees.

Ad Astra Plaza; SB 11

SB 11 authorizes the Capitol Preservation Committee to develop and approve the Ad Astra Plaza (Plaza) on capitol area grounds. The Plaza will include a life-size sculpture of the Ad Astra statute that tops the State Capitol Building, bronze plaques, and donor bricks.

The Ad Astra Sculpture Fund (Fund) was initially established in 1995. The bill designates the Fund as a no-limit special revenue fund until June 30, 2023, under the Department of Administration. The bill also amends funding provisions to indicate the Fund may be expended on the Plaza rather than the pedestal and sculpture alone.

The bill authorizes the Secretary of Administration to receive and expend moneys from grants, gifts, contributions, or bequests made for the purpose of creating, constructing, or maintaining the Ad Astra sculpture and Plaza. The bill also specifies no public moneys can be expended for the purpose of creating, constructing, or maintaining the plaza.

1st Kansas (Colored) Voluntary Infantry Regiment Mural; SB 39

SB 39 provides for the development of a mural in the Statehouse honoring the 1st Kansas (Colored) Voluntary Infantry Regiment and establishes a fund for such purpose.

The bill directs the Capitol Preservation Committee to develop and approve a mural in the Statehouse honoring the regiment. The bill establishes a fund in the State Treasury for moneys received for creating and installing the mural. The bill authorizes the Secretary of Administration to receive and expend moneys from any grants, gifts, contributions, or bequests made for the purpose of financing the creation and installation of the mural. No public funds are to be expended for the purposes of creating or installing the mural.

Division of Tourism Statutory References; HB 2332

HB 2332 would update Kansas Department of Wildlife and Parks (KDWP) statutes to reflect Executive Reorganization Order (ERO) No. 48 that became effective on July 1, 2021. ERO No. 48 transferred the Division of Tourism and the Office of the Director of Tourism from KDWP to the Department of Commerce.

Light-mitigating Technology Systems on Wind Turbines; SB 49

SB 49 requires the installation of a light-mitigating technology system (lighting system) in new and existing wind energy conversion systems (wind turbines) upon approval from the Federal Aviation Administration (FAA). The bill establishes requirements for the vendors of lighting systems and authorizes any county to enter into certain agreements with a developer, owner, or operator (developer) of wind turbines.

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

Lighting System Requirement for New Wind Turbines

The bill requires, on and after July 1, 2023, any developer of new wind turbines to apply to the FAA for the installation of a lighting system that complies with FAA regulations. If approved by the FAA, the developer will be required to install the lighting system on the approved wind turbines within 24 months after approval.

Lighting System Requirement for Existing Wind Turbines

The bill requires, on and after January 1, 2026, any developer of wind turbines that began commercial operations in Kansas without a lighting system to apply to the FAA for installation and operation of such system that complies with FAA regulations within six months after the execution of a new power offtake agreement related to the wind turbines.

The bill requires the developer of the wind turbines, if approved by the FAA, to install the lighting system on approved wind turbines within 24 months of the approval.

Requirements for Vendors of Lighting Systems

The bill requires any vendor selected for installation of a lighting system on wind turbines and approved by the FAA for installation to provide the Kansas Department of Transportation, Aviation Division, notice of the progress of the installation of the lighting system, in a form and manner prescribed by the Aviation Division.

If the installation of the lighting system is delayed beyond the 24-month installation requirement, the vendor will be required to provide notice and an update to the Aviation Division no less than once every three months on the reasons for the delay and the current status of the installation.

The bill authorizes the Aviation Division to establish policies and procedures to establish a uniform schedule for submitting notice.

Costs

The bill places the responsibility for any costs associated with the installation, implementation, operation, and maintenance of a lighting system on the developer of the wind turbine.

Authority for a County to Issue Revenue Bonds

The bill authorizes any county to issue revenue bonds, pursuant to law regarding issuance of revenue bonds by counties for the purpose of paying all or part of the costs of the purchase, acquisition, and equipping of a lighting system, subject to approval by the FAA, for wind turbines that have commenced commercial operations in the state without a lighting system.

Definitions

The bill defines the following terms:

- "Light-mitigating technology system" means aircraft detection lighting or any other comparable system capable of reducing the impact of facility obstruction lighting while maintaining conspicuity sufficient to assist aircraft in identifying and avoiding collision with a wind energy conversion system;

- "Power offtake agreement" means a long-term contract that provides for:

    - The provision of the whole or any part of the available capacity or the sale or other disposal of the whole or any part of the output of a wind energy conversion system; or

    - A contract for differences or financial hedge tied to the output from the wind energy conversion system; and

- "Wind energy conversion system" means an electric generation facility consisting of 5 or more wind turbines that are 50 feet or taller in height and any accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures.

Video Competition Act; SB 144

SB 144 amends the definition of "video service" in the Video Competition Act.

The bill clarifies within the definition of "video service," that for video programming services provided through wireline facilities located at least in part in the public rights of way, the services will be provided by a video services provider through wireline facilities owned, controlled, constructed, or operated by the provider of the video service.

The bill adds two exceptions to the definition, stating "video service" does not include any video programming provided by:

- A provider of direct-to-home satellite services that are transmitted from a satellite directly to a customer's premises without using or accessing any portion of the public right-of-way; or

- A provider of video programming accessed through a service that enables users to access content, information, email, or other services offered over the internet, including streaming content.

Electric Utility Cost Recovery through Transmission Delivery Charges; HB 2225

HB 2225 amends law authorizing a Kansas Corporation Commission (KCC)-regulated utility to recover costs associated with the transmission of electric power through a transmission delivery charge (TDC) and requires public utilities to evaluate the regional rate competitiveness and impact to economic development in rate proceedings.

[*Note:* The bill only applies to electric utility companies that are under KCC jurisdiction.]

Applications for Rate Changes

The bill amends law relating to applications for rate changes to include a new section that requires any general rate proceeding of electric public utilities serving more than 20,000 customers to evaluate and include assessments of the following for any application for a rate change:

- The regional rate competitiveness of the electric public utility's current and proposed rates; and

- The impact of the electric public utility's current and proposed rates upon economic development within the state.

Transmission Delivery Charges

The bill allows a for-profit, investor-owned electric utility serving more than 20,000 customers in the state that elects to recover transmission-related costs through a TDC to include as a component of the TDC the following:

- All transmission-related costs associated with transmission facilities that are constructed as a result of a notification or directive to construct from a regional transmission organization (RTO) or independent system operator (ISO) that is regulated by the Federal Energy Regulatory Commission (FERC) or its successor agency; and

- All fees and costs imposed on the electric utility in connection with the operation of wholesale power markets by a RTO, ISO, or other entity that is regulated by FERC, other federal agency, or any successor federal agency.

[*Note:* Kansas is a member of the Southwest Power Pool (SPP), which is a RTO.]

The bill also allows a for-profit, investor-owned electric utility serving more than 20,000 customers in the state to recover through a TDC the transmission-related costs associated with transmission facilities constructed as a result of such utility's internal or local planning processes absent a notification to construct or similar directive from an RTO or ISO that is regulated by FERC or any successor agency subject to such utility's compliance with the section.

Cost Recovery

The bill requires a utility, in order to recover costs as a component of a TDC and to facilitate KCC and KCC-authorized intervenor review, to make a compliance filing with the KCC prior to the time period provided for the KCC to adjust the return on equity relating to such costs. The annual compliance filing is required to include the following:

- For non-blanket work order transmission projects over $15 million or other amount deemed necessary by the KCC staff in consultation with the filing utility, an itemized projection of transmission spending for the succeeding and second succeeding calendar years;

- For each transmission project:
  - A project identifier or name;
  - Anticipated in-service date;
  - The projected cost;
  - Specified location within the utility's system;
  - Whether the project is classified as a new build, rebuild, upgrade, or any other appropriate classification;
  - Narrative describing the reason for the project and anticipated reliability benefits;
  - Description of the original vintage of the replaced facilities if the project is classified as a rebuild or upgrade; and
  - Load additions or economic development accommodated by the project, if any;

- Proposed date and time, no later than 90 days after the utility filed the compliance filing, for representatives of the public utility to conduct a technical conference for discussing details of the compliance filing with KCC staff, Citizen's Utility Ratepayer Board (CURB), and other KCC-authorized intervenors; and

- Proposed date and time, no later than 120 days after the utility filed the compliance filing, for KCC to hold a public workshop in which representatives of the public utility must present the details associated with the transmission projects that are anticipated in the succeeding calendar year, which allows for questions and comments from the KCC, KCC staff, and other KCC-authorized intervenors.

Return on Equity

The bill requires, beginning January 1, 2024, and before April 1, 2024, for any utility electing to recover the costs described regarding a TDC, the KCC to adjust the return on equity (ROE) used to determine the revenue requirement of such costs from FERC's jurisdictional ROE to the KCC's authorized ROE last used to set the utility's base rates in effect at the time of filing the TDC update.

If a ROE was not explicitly established during the utility's last general rate case, the KCC is required to determine an appropriate ROE from the record of the last general rate case to establish the revenue requirement for such costs.

The bill states the KCC's authorized ROE does not impact any project that was constructed as a result of a notification to construct or similar directive from a RTO or ISO that is regulated by FERC or any successor agency.

In any TDC update filing, a utility electing to recover the costs through a TDC is required to utilize the KCC's authorized ROE that was used to set the utility's base rates in effect at the time of the update filing or that was stipulated and approved by the KCC for use in the TDC if a ROE was not explicitly set during the last general rate case, to determine the utility's TDC update.

Kansas Underground Utility Damage Prevention Act; Notice of Excavation; Virtual Whitelining; HB 2226

HB 2226 amends the Kansas Underground Utility Damage Prevention Act regarding excavation notification and whitelining (*i.e.*, the marking of a site for excavation).

The bill changes several definitions, including updating the definition of whitelining to allow for virtual whitelining with the use of technology and makes several changes to notification and location requirements including, but not limited to, extending the maximum allowable number of days for notice of intent to excavate from 15 to 20 days, and requiring immediate notification of contact or damage to underground facilities.

Definition Changes

The bill changes the definition of "permitted project" by requiring a permit applicant to serve notice to all underground facility operators of an intent to excavate instead of locating such facilities in the area of work.

Further, the bill changes the definition of "tolerance zone" to mean not more than 24 inches outside the dimensions of an underground facility for facilities in which a larger tolerance zone has not been established in rules and regulations by the Kansas Corporation Commission (KCC) or not more than 60 inches outside the dimensions of an underground water or waste water facility.

The bill amends the definition of "whitelining" to include the use of technology developed for the purpose of the identification of routes or boundaries, allowing an excavator to provide a virtual excavation path when applying for a ticket.

Notification and Location Requirements

The bill increases the maximum number of calendar days for a notice to excavate to be served from 15 to 20. The bill also increases the number of calendar days an intent to excavate notification is valid from 15 to 20 days and allows the KCC to adjust, not withstanding the statutory maximum, the extent of time that a notice is valid through the rules and regulations process.

The bill also changes the two-working-day notification requirement for providing tolerance zone locations to a determination made by the KCC in rules and regulations and no longer requires an operator, after notification from an excavator, to re-identify tolerance zones whose physical identifiers have been improperly removed or altered within one day of notification from the notification center.

The bill requires individuals filing a notice of intent to excavate to whiteline the site at the request of the operator in all instances and removes the requirement that a whiteline must be completed prior to facility locations being identified.

Notification of Damage

The bill requires an excavator to immediately notify an underground facility operator and the notification center when contact or damage has been made to an underground facility. The bill also requires the notification center to contact the underground facility operator when such contact or damage occurs.

The bill changes the notification threshold for civil action when there is a failure of an operator to inform the excavator of the tolerance zone of the underground facility from two working days to prior to the excavation start date.

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