KANSAS LEGISLATURE

2021 Summary of Legislation

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KLRD

Providing objective research and fiscal analysis for the Kansas Legislature

INTRODUCTION

This publication includes summaries of the legislation enacted by the 2021 Legislature. Not summarized are bills of a limited, local, technical, clarifying, or repealing nature, and bills that were vetoed (sustained). However, these bills are listed beginning on page 356.

During the 2021 Session, 769 bills were introduced: 315 in the Senate and 454 in the House. Of these 769 bills, 116 (15.1 percent) became law: 46 Senate bills and 70 House bills. Further, of the 116 bills becoming law, 103 (88.8 percent) were introduced by committees, and 13 (11.2 percent) were introduced by individual legislators. [*Note:* Substitute bills or bills with conference committee reports whose original subject matter was substantially modified from the content in the introduced sponsor bill are included in the former category.]

The Governor vetoed 10 bills and 19 line items in appropriations bills. Five of the vetoes and all line items were sustained, and five vetoes were overridden.

A total of 601 bills will be carried over to the 2022 Session of the Legislature.

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ABORTION

"Value Them Both" Constitutional Amendment; HCR 5003

HCR 5003 proposes an amendment to the *Kansas Constitution* for consideration at a special election called on August 2, 2022, to be held in conjunction with the primary election held on that date. That amendment, if approved by a majority of Kansas voters, would create a new section in the *Kansas Bill of Rights* concerning the regulation of abortion. The resolution states the amendment may be cited as the Value Them Both Amendment.

The new section would state the *Kansas Constitution* does not require government funding of abortion and does not create or secure a right to abortion. Further, the language would state, to the extent permitted by the *U.S. Constitution*, the people of Kansas, through their elected state representatives and senators, may pass laws regarding abortion, including, but not limited to, laws that account for circumstances of pregnancy resulting from rape or incest, or circumstances of necessity when necessary to save the life of the mother.

AGRICULTURE AND NATURAL RESOURCES

Aboveground and Underground Storage Tanks; Sunset; Fund Limitations; SB 27

SB 27 extends the sunset dates for certain funds, an advisory board, and operators' ability to apply for funds relating to underground storage tanks (USTs). The bill also increases deductible amounts and liability and replacement limits for certain funds within the Kansas Storage Tank Act that are managed by the Kansas Department of Health and Environment.

Sunset Date Extensions

The bill extends the following sunset dates:

- Underground Petroleum Storage Tank Release Trust Fund (Underground Fund) from July 1, 2024, to July 1, 2034;
- Aboveground Petroleum Storage Tank Release Trust Fund (Aboveground Fund) from July 1, 2024, to July 1, 2034;
- UST Redevelopment Fund Compensation Advisory Board from July 1, 2024, to July 1, 2032;
- UST Redevelopment Fund from July 1, 2024, to July 1, 2032;
- The ability for certain petroleum storage tank owners and operators to apply for reimbursement for corrective action if contamination is discovered and reported during the replacement of single-wall underground storage tanks, from June 30, 2020, to June 30, 2030; and
- The ability for owners and operators to apply for reimbursement for the replacement of underground single-wall storage tank systems with a secondary containment system, from June 30, 2020, to June 30, 2030.

Increase of Fund Limitations

The bill increases from $1.0 million to $2.0 million, less the deductible amount, the limit on the liability of the State from the Underground Fund or the Aboveground Fund for any release from a petroleum storage tank. In continuing law, the owner or operator of a petroleum storage tank must agree to such limitation of state liability.

The bill also increases from $1.0 million to $2.0 million the total limitation on the liability of the Underground Fund and the Aboveground Fund for corrective action, less any applicable deductible amounts of the owner or operator for costs incurred in response to any one release from an underground or aboveground petroleum storage tank.

Finally, the bill increases the reimbursement limit for the replacement of single-wall USTs and single-wall UST systems with a secondary containment system to an amount of no more than $100,000 per facility for replacement work completed on and after July 1, 2020, and before

July 1, 2030. The bill also clarifies the $50,000 reimbursement limit applies to replacement work completed on and after August 8, 2005, and before July 1, 2020.

Pesticide Waste Disposal; Division of Conservation; State Conservation Commission; SB 38

SB 38 establishes a pesticide waste disposal program and adds and amends law regarding the roles of the Division of Conservation (Division) within the Kansas Department of Agriculture (KDA) and the State Conservation Commission (Commission).

Kansas Pesticide Waste Disposal Program

The bill establishes the Kansas Pesticide Waste Disposal Program (Program) that will be administered by the Secretary of Agriculture (Secretary) for the collection and disposal of pesticide waste in the state. The bill also creates in the State Treasury the Kansas Pesticide Waste Disposal Fund (Disposal Fund) to be used for the Program.

The bill requires all moneys credited to the Disposal Fund to be used by the Secretary for the Program and all expenditures from the Disposal Fund will be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued after vouchers are approved by the Secretary.

The bill authorizes the Kansas Agricultural Remediation Board (Board) to approve an annual transfer of moneys from the Kansas Agricultural Remediation Fund (Remediation Fund) to the Disposal Fund in an amount not exceeding $50,000 in any calendar year.

The bill requires the Secretary to submit to the Board on or before January 1 of each year a report regarding the annual expenditures made from the Disposal Fund.

The bill also requires the Director of Accounts and Reports to transfer from the State General Fund to the Disposal Fund interest earnings based on the average daily balance of moneys in the Disposal Fund for the preceding month and the net earnings rate of the pooled money investment portfolio for the preceding month.

The bill adds definitions for “Kansas Pesticide Waste Disposal Fund,” “Kansas Pesticide Waste Disposal Program,” “pesticide,” and “pesticide waste.” The bill also amends law regarding the Remediation Reimbursement Program to allow that program to provide funding to the new Program.

Division of Conservation and State Conservation Commission Statutory Changes

The bill adds and amends law regarding the roles of the Division within the KDA and the Commission.

[*Note:* In 2011, Executive Reorganization Order No. 40 moved the Commission within the KDA.]

Definitions

The bill amends the definitions of "Commission," "Division," and "United States or agencies of the United States" and adds definitions of "Director," "invasive plant species," and "Secretary."

State Conservation Commission Membership and Oversight

The bill requires the Dean of the Kansas State University College of Agriculture to appoint two designees to serve on the Commission as non-voting members, with one representing an agricultural experiment station and the other representing the cooperative extension service. The Secretary is required to request the U.S. Secretary of Agriculture appoint one resident of Kansas to serve as a non-voting member of the Commission.

The bill requires the Commission to work with the Division to make certain conservation program policy decisions to be approved by the Secretary, including on current and new programs and annual budget recommendations.

Rules and Regulations

The bill requires the Division to submit rules and regulations to the Commission for consideration and comment before officially submitting the rules and regulations in accordance with state law. The bill also requires the Commission to review all rules and regulations proposed by the Division that are necessary for the Division to execute its functions under the law.

Conservation Districts

The bill allows for the removal of a conservation district supervisor by the Secretary in consultation with the Commission, after certain actions found in continuing law.

The bill authorizes conservation districts to control invasive species and operate projects for soil and grassland health and water quality. The bill also allows appropriations to be made for grants out of state funds for these added powers. The bill allows the Director of the Division (Director) to update any applicable standards as necessary for continued success of the federal Conservation Reserve Program. In addition, the bill authorizes conservation districts to take over projects *via* gift or donation. The bill clarifies that in these projects, the conservation district's action will be subject to the authority of the authorizing state or federal agency.

Program Oversight

The bill makes the following changes regarding various program oversight responsibilities, replacing certain references to reflect the current structure of the Commission within the KDA:

- "Commission" to "Director";
- "Commission" to "Division";

- "Commission" to "Division, in consultation with the Commission";
- "Commission" to "KDA Division";
- "Commission" to "Secretary";
- "Director" to "Secretary";
- "His or her office," in reference to the Secretary of State, to the "Secretary of State's office";
- "Kansas Department of Agriculture Division of Conservation" to "Division";
- "State Soil Conservation Committee" and "committee" changed to "Division"; and
- "With the approval of the Commission" changed to "Secretary, at the request of the Director."

The bill also requires the Division to consult with the Commission regarding an annual base rate for the Water Right Transition Assistance Program.

Penalties, Violations, and Final Orders

The bill prohibits any civil penalties or orders for repayment to be imposed for violations of the Kansas Water Right Transition Program except under written order of the Secretary or the Secretary's designee. The bill requires the order to state the violation, imposed penalty, and the right to an appeal. Within 15 calendar days of notification, any person could make a written request to the Secretary for a hearing in accordance with the Kansas Administrative Procedure Act. The Secretary will affirm, reverse, or modify the order and specify the reason for the decision. Any person aggrieved by an order of the Secretary under this section of the bill can appeal the order to the district court in a manner provided by the Kansas Judicial Review Act.

The bill requires the Secretary, upon the Director's request, to issue a written order stating the nature of the violation, the imposed penalty, and the right of the person to appeal to the Secretary for violations of surface mining land conservation and reclamation laws.

In addition, the bill requires the Secretary, upon the Director's request, to institute a proceeding for forfeiture of a bond posted by an operator to guarantee reclamation of a site where the operator is in violation of surface mining land conservation reclamation laws once an issued order becomes a final order.

Statutory Repeal

The bill repeals KSA 49-619, which concerns surface mining land conservation and reclamation violation hearings, conduct, bond forfeiture proceedings, and duties of the Attorney General. [*Note:* Provisions for violation hearings and bond forfeiture proceedings are moved within the bill.]

Market License Fee and Calfhood Vaccination Tag Fees; SB 39

SB 39 changes several license, bond, and permit renewal fee deadlines related to livestock and domestic animals from June 30 to September 30 of each year. The bill also allows the Animal Health Commissioner (Commissioner), Kansas Department of Agriculture, to recover the actual cost of official calfhood vaccination tags.

Renewal Fee Deadline Changes

The bill changes the deadline for payment of a renewal fee for the following licenses, bonds, and permits from June 30 to September 30 of each year:

- Licenses and bonds to operate public livestock markets and electronic auctions;
- Licenses and permits pertaining to the disposal of dead animals;
- Licenses to operate a feedlot;
- Licenses to operate as a livestock dealer; and
- Permits issued pertaining to the possession of domesticated deer.

Official Calfhood Vaccination Tags

The bill authorizes the Commissioner to require reimbursement for the actual cost of official calfhood vaccination tags and to charge a processing fee not exceeding $0.20 per tag. The Commissioner must determine the processing fee annually.

Grain Warehouse Inspection and Fees; SB 143

SB 143 updates and rearranges definitions regarding grain and grain warehouses, clarifies when applications for licenses should be made, removes a reference regarding an independent public accountant, clarifies the fee for a functional unit license, increases the caps for storage fees, and increases the allowable examination period for grain warehouses.

Definitions

The bill updates references in continuing law regarding “grain” and “secretary” and removes definitions from three statutes and places them in KSA 2020 Supp. 34-223, the definitions section of Chapter 34, Article 2 of the *Kansas Statutes Annotated* regarding inspecting, sampling, storing, weighing, and grading grain and terminal and local warehouses.

The definitions moved are those for “functional unit,” “open storage,” “owner,” “deferred payment,” “delayed pricing,” “financial institution,” “standby letter of credit,” and “unpaid balance.”

Application for License

The bill clarifies any person desiring to engage in business as a public warehouseman will, before transacting business, apply in writing to the Secretary of Agriculture (Secretary) for a license and apply for a license on an annual basis.

Accountant Reference

Continuing law requires an applicant for a license to provide a financial statement along with the license application. The financial statement must include certain documents, including a report of audit or review conducted by an independent certified public accountant or an independent public accountant. The bill removes the reference to the independent public accountant.

Storage and License Fees

The bill updates the terms "license fee" to "functional unit license fee" and "annual fee" to "storage fee" and increases the caps for storage fees as follows.

Total Grain Warehouse Capacity in Bushels	Former "Annual Fee" Cap	SB 143 "Storage Fee" Cap
1 to 100,000	$ 500	$ 740
100,001 to 150,000	525	800
150,001 to 250,000	550	850
250,001 to 300,000	600	910
300,001 to 350,000	625	960
350,001 to 400,000	650	1,020
400,001 to 450,000	700	1,060
450,001 to 500,000	725	1,120
500,001 to 600,000	775	1,160
600,001 to 700,000	800	1,220
700,001 to 800,000	850	1,570
800,001 to 900,000	875	1,620
900,001 to 1,000,000	900	1,660
1,000,001 to 1,750,000	1,225	2,260
1,750,001 to 2,500,000	1,400	2,590
2,500,001 to 5,000,000	1,750	3,230
5,000,001 to 7,500,000	2,100	3,880
7,500,001 to 10,000,000	2,375	4,390
10,000,001 to 12,500,000	2,600	4,810
12,500,001 to 15,000,000	2,800	5,180
15,000,001 to 17,500,000	3,000	5,550
17,500,001 to 20,000,000	3,225	5,960
For each 2,500,000 bushels or fraction over 20,000,000	350	650

The bill clarifies the functional unit license fee will not exceed $500 for each functional unit and this fee will continue to be set by the Secretary through rules and regulations.

[*Note:* The definition for "functional unit" is a public warehouse that has the capacity to store, weigh in, and weigh out grain. The storage capacity of any outlying storage facility of a public warehouse that is not a functional unit itself shall be included as part of the combined capacity of the warehouseman's nearest functional unit.]

Examination Period

The bill increases, from 12 months to 18 months, the period of time in which the Secretary examines, at least once, each grain warehouse operated by a licensed public warehouseman. The bill states the examinations may be conducted more frequently as the Secretary determines is necessary to protect the public.

Egg Repackaging; Senate Sub. for HB 2102

Senate Sub. for HB 2102 updates the Kansas Egg Law regarding repackaged eggs.

[*Note:* "Repackaging eggs" means removing a broken or dirty egg from a carton and replacing it with an unbroken and clean egg, as long as certain requirements in continuing law are met.]

The bill specifies an inspection fee in continuing law will be paid only once on eggs remaining in the eggs' original container or repackaged in accordance with law that are graded higher than Grade B.

The bill clarifies which requirements must be met for repackaged eggs, repackaged eggs that may be graded higher than Grade B, and repackaged eggs to be graded Grade B.

The bill replaces the word "repacked" with "repackaged."

Pollutant Releases and Cleanup; HB 2155

HB 2155 replaces and updates law regarding soil and water pollutant releases and cleanup.

Definitions

The bill establishes definitions relating to the release of certain water and soil pollutants for these terms: "cleanup," "cleanup costs," "emergency," "person," "pollutant," and "release."

The bill excludes from the definition of "pollutant" any animal or crop waste or manure on an agricultural operation or in an agricultural facility. The bill also excludes from the definition of "release" the releases that occur as part of normal agricultural activities or when done in compliance with the conditions of a federal or state permit or in accordance with the product label.

Soil and Water Pollutant Releases and Cleanup

The bill requires, for the purpose of preventing water and soil pollution detrimental to the public health or environment, the Secretary of Health and Environment (Secretary) to:

- Adopt rules and regulations that, in the Secretary's judgment, are necessary to respond to and report the release of a pollutant (release);
- Designate a 24-hour statewide telephone number for individuals to provide notice of any release;
- Provide minimum reportable quantities;
- Order a person who is responsible for a release to clean up such release; and
- Provide for cleanup of a release if the individual responsible cannot be identified within a reasonable period of time.

The bill also permits the Secretary to:

- Provide technical guidance, oversight, and assistance to other state agencies, political subdivisions of the State, and other persons for the cleanup of and response to a release;
- Take necessary action for the cleanup of a release if the individual responsible for the release fails to take reasonable action required by the Secretary to clean up the release; and
- Perform cleanup of a release if it poses an emergency.

Cleanup Responsibilities

The bill requires an individual responsible for a release to be responsible for the cleanup of the release. The individual is required to provide notice to the Kansas Department of Health and Environment (KDHE) if the release exceeds the minimum reportable quantities set by the Secretary. The individual is required to repay cleanup costs incurred by KDHE upon reasonably detailed notice by the Secretary or the Secretary's designee.

Costs and Penalties

The bill requires the Attorney General, in the district court of the county where the costs were incurred, to bring action for repayment of costs for a cleanup against individuals responsible for a release who fail to submit payments to KDHE promptly after notice is given.

The bill allows the Secretary to impose a penalty, not to exceed $5,000, on an individual who violates any provision of the bill or any regulations adopted by the Secretary. For continuing violations, the maximum penalty cannot exceed $15,000.

The bill permits the Secretary to impose a penalty only after notice of the violation and an opportunity for a hearing has been issued in writing to the individual who committed the

violation. The bill requires any request for a hearing to be in writing and directed to and filed with the Secretary within 15 days after service of the order. Any hearing will be conducted in accordance with the Kansas Administrative Procedure Act.

Funds

The bill requires the Secretary to remit moneys received to the State Treasurer who, upon receipt of the funds, will deposit the entirety of the funds to the credit of the existing Emergency Response Activities Account in the Natural Resources Damages Trust Fund. The bill repeals a statute establishing the Pollutant Discharge Cleanup Fund.

Multi-year Flex Accounts for Groundwater Water Rights; HB 2172

HB 2172 amends the Kansas Water Appropriation Act to expand the opportunity for the establishment of multi-year flex accounts (MYFAs) for groundwater water rights to water right holders who did not have water use between 2000 and 2009.

The bill creates the definition of "alternative base average usage" that may be used in place of the base average usage as:

> An allocation based on net irrigation requirements calculated as 500 percent of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110 percent, but not greater than 5 times the maximum annual quantity authorized by the base water right.

The bill amends the definition of "base water right" to include the following conditions:

- Groundwater is the authorized source of water supply, and
- The water right is not currently the subject of a multi-year allocation due to a change approval that allows an expansion of the authorized place of use.

The bill amends the definition of "base average usage" to mean the average amount of water actually diverted for the authorized beneficial use under the base water right during calendar years 2000 through 2009. In addition, the bill also:

- Excludes from the definition of "base average usage" any amount of water applied to the unauthorized place of use from:
  - Any amount diverted in any year that exceeded the amount authorized by the base water right;
  - Any amount applied to an unauthorized place of use; and
  - Diversions in calendar years when water was diverted under a multi-year allocation with an expansion of the authorized place of use due to a change approval;

- Provides the chief engineer of the Division of Water Resources of the Department of Agriculture (chief engineer) may calculate the base average usage with less than all ten calendar years of 2000 to 2009 if water usage records are inadequate to accurately determine actual water use or upon application of good cause by the applicant; and

- Specifies if the chief engineer is satisfied with the base water right holder's showing that water conservation reduced water usage under the base water right during 2000 to 2009, then the base average usage must be calculated with the five calendar years immediately before when the water conservation began.

The bill amends the definition of "flex account acreage" to exclude any acres irrigated under a multi-year allocation that allowed for an expansion of the authorized place of use due to a change approval toward the maximum number of acres lawfully irrigated during a calendar year if certain conditions are met. The bill adds a condition that if an application to appropriate water was approved after December 31, 2004, then the calendar year used for the calculation can be any year during the perfection period.

The bill authorizes, if the base water right is eligible, the base water right holder to establish an MYFA in which the base water right holder may deposit the authorized quantity of water for five consecutive calendar years in advance, except when the chief engineer determines a shorter period is necessary for compliance with a local enhanced management area or an intensive groundwater use control area and the corrective controls in the area do not prohibit the use of MYFAs. If the MYFA is approved for less than five calendar years, the amount of water deposited in the MYFA will be prorated based on the number of calendar years approved or calculated as required by the bill on the amount of water deposited in the MYFA.

Asbestos Remediation Fund; HB 2203

HB 2203 establishes the Asbestos Remediation Fund (Fund). The bill also requires the Secretary of Health and Environment (Secretary) to remit all moneys received from the following sources to the State Treasurer, to be credited to the Fund:

- Permit and approval fees related to the Asbestos Control Program;

- Moneys recovered by the State under the provisions of the Asbestos Control Act (Act), including administrative expenses and moneys paid under any agreement stipulation, or settlement; and

- Interest attributable to investment of moneys in the Fund.

The bill requires moneys in the Fund to be expended only for the purpose of administering the Act, including funding of a technical and environmental compliance assistance program.

The bill requires the Director of Accounts and Reports to transfer the average daily balance of moneys in the Fund for the preceding month and the net earnings rate of the pooled money investment portfolio for the preceding month from the State General Fund to the Fund on or before the tenth day of each month.

The bill requires all expenditures from the Fund to be made in accordance with appropriation acts as authorized by the Director of Accounts and Reports pursuant to vouchers approved by the Secretary for purposes of administering the Act.

Commercial Industrial Hemp; HB 2244

HB 2244 amends the Commercial Industrial Hemp Act (Act) to transfer registration and regulation of industrial hemp processors from the Kansas Department of Agriculture (KDA) to the State Fire Marshal (Fire Marshal). The bill also amends law regarding the disposal of industrial hemp; the definition of "hemp products"; marketing, selling, or distributing hemp products unlawfully without registration or licensure; and an exception for transportation of industrial hemp between producers and processors.

Effective Disposal of Industrial Hemp

Effective Disposal Plan

The bill requires the KDA to develop a plan for effective disposal of industrial hemp in coordination with state or local law enforcement. The bill requires, when a licensed hemp processor is required to dispose of the industrial hemp, the KDA to notify state or local law enforcement in the jurisdiction where the industrial hemp is grown.

Effective Disposal

The bill authorizes the KDA to perform any action necessary to ensure effective disposal of industrial hemp occurs including, but not limited to, taking temporary possession of the industrial hemp, destroying the industrial hemp, or supervising and directing the appropriate method of effective disposal of the industrial hemp. The bill requires the state or local law enforcement agency to approve in advance any such action taken by the KDA or any person under the KDA's direction or supervision. The bill states the KDA will have no authority to conduct effective disposal for any industrial hemp or cannabis plant produced by individuals not licensed under the Act.

The bill allows the KDA and the appropriate state or local law enforcement agency to seek reimbursement from any individual licensed under the Act for any costs incurred in conducting effective disposal of industrial hemp.

Fingerprinting and Criminal History Record Checks

The bill authorizes the Secretary of Agriculture (Secretary) to require any KDA employee or agent who participates in the effective disposal of industrial hemp to be fingerprinted and to submit to a state and national criminal history record check. The Secretary may use the information obtained to verify the identity of the employee or agent and determine whether they have been convicted of a felony violation of crimes involving controlled substances or substantially similar offense in another jurisdiction, within the ten years immediately preceding submission of the criminal history record check.

The bill authorizes the KDA to submit fingerprints to the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation (FBI) for a state and national criminal history record check. Local and state law enforcement officers and agencies are required to assist in the taking and processing of fingerprints of KDA employees or agents. Local law enforcement officers and agencies may charge a fee as reimbursement for any expenses incurred in the taking and processing of fingerprints, and the KDA is required to pay the costs of fingerprinting and state and national criminal history record checks.

Law Enforcement

The bill states nothing in the provisions described above limits the jurisdiction or authority of state or local law enforcement to enforce crimes involving controlled substances.

Sale of Hemp Products

The bill allows the Fire Marshal, pursuant to the Kansas Fire Prevention Code, to issue a stop sale, use, or removal order whenever the Fire Marshal reasonably believes hemp products are being produced, sold, or distributed in violation of the Act or rules and regulations.

Such stop sale, use, or removal order will be valid for up to seven calendar days. The bill prohibits a person who has been issued a stop sale, use, or removal order from processing, selling, distributing, using, or removing industrial hemp, hemp products, or hemp waste until the stop sale, use, or removal order is revoked in writing by the Fire Marshal.

Definition of "Hemp Products"

The bill adds "any extract from industrial hemp intended for further processing" to the definition of "hemp products" in continuing law. The bill states final "hemp products" may contain a tetrahydrocannabinol (THC) concentration of not more than 0.3 percent. In addition, the bill clarifies "THC concentrate" would mean the same as defined in KSA 2020 Supp. 65-6235(b)(3) [Claire and Lola's Law].

Hemp Processors

References

The bill removes references to the KDA in continuing law regarding hemp processors and replaces them with references to the Fire Marshal. The bill also removes a reference to the Commercial Industrial Hemp Act License Fee Fund and replaces it with a reference to the Fire Marshal Fee Fund.

Registration Fee

The bill changes the date registrations for industrial hemp processors expire each year from April 30 to June 30. The bill increases the cap on registration fees from $200 to $1,000. The Fire Marshal sets the amounts of the registration fees through rules and regulations.

Fingerprinting and Criminal History Record Checks

The bill revises the fingerprinting and criminal history record check requirements for hemp processors by replacing requirements in prior law with the following:

- All individuals applying for a hemp processor registration who seek to engage in the extraction of cannabinoids from industrial hemp, including the disposal of cannabinoids, are required to be fingerprinted and submit to a state and national criminal history record check;

- The Fire Marshal may require current employees or those applying to be employees of a hemp processor to be fingerprinted and submit to a state and national criminal history record check;

- Fingerprints will be used to identify the individual and determine whether the individual has a record of criminal history in Kansas or any other jurisdiction;

- The Fire Marshal is authorized to submit fingerprints to the KBI and the FBI for a state and national criminal history check and may use the information obtained from the fingerprints and criminal history record check for purposes of verifying the identification of the individual and for making an official determination of the qualification and fitness of the individual to process industrial hemp pursuant to the Act and rules and regulations;

- Disclosure or use of any criminal history information for any purpose other than the purposes provided for in the Act is a class A nonperson misdemeanor (continuing law) and will constitute grounds for removal from office or termination of employment (new law);

- The Fire Marshal may deny registration to any individual who has violated the Act by operating as a hemp processor without valid registration or has violated any other provision of the Act;

- The KBI may charge a reasonable fee for conducting a criminal history record check, and the individual seeking authorization to extract or dispose of cannabinoids from industrial hemp is required to pay this fee; and

- Local and state law enforcement officers and agencies are required to assist in taking and processing an individual's fingerprints, as authorized by the bill.

Rules and Regulations; Coordination

The bill requires the Fire Marshal to promulgate rules and regulations on topics including, but not limited to:

- Denial, conditioning, renewal, or revocation of registration;

- Creation of multiple classes of registrations based upon the scope of hemp processing activities of an applicant;

- Security measures;

- Inventory control;

- Maintenance of records;

- Access to and inspection of records and processing facilities by the Fire Marshal and law enforcement agencies;

- Collection and disposal of any cannabinoids extracted during the processing of industrial hemp that cannot be lawfully sold in Kansas; and

- Transportation of industrial hemp or hemp products.

The bill allows the Fire Marshal to grant an exemption from the application of a specific requirement of rules and regulations, unless the Fire Marshal determines the condition, structure, or activity that is or would be in noncompliance with the requirement constitutes a distinct hazard to life or property. The bill allows an exemption to be granted only upon the written request of a registrant or applicant for registration that clearly demonstrates enforcement would cause unnecessary hardship, as determined by the Fire Marshal.

The bill requires the KDA and the Fire Marshal to coordinate with one another, including providing any requested information from the other regarding industrial hemp licensees, hemp processors, and hemp processor applicants that is necessary for the enforcement of any laws or rules and regulations relating to industrial hemp.

Unlawful Hemp Products; Exceptions

The bill includes any extract from industrial hemp with a delta-9 THC concentration greater than 0.3 percent that is to be further processed in the list of hemp products that are unlawful to be marketed, sold, or distributed to any person in Kansas who is not registered as a hemp processor or who does not possess a commercial plan license.

The bill also states no license or registration is required for the transport of hemp products if the products are transported between hemp producers and hemp processors or between more than one hemp processor. This transportation of hemp products is subject to rules and regulations promulgated by the Fire Marshal.

COVID-19; Extension of Provisions Regarding Telemedicine, Temporary Licensure, and Immunity; SB 283

SB 283 amends law regarding the governmental response to the COVID-19 pandemic in Kansas.

Telemedicine

In the statute authorizing the use of telemedicine, the bill amends a provision allowing an out-of-state physician to practice telemedicine to treat Kansas patients, to replace a requirement that such physician notify the State Board of Healing Arts (Board) and meet certain conditions with a requirement the physician hold a temporary emergency license granted by the Board. The expiration date of this section is extended for one year, from March 31, 2021, until March 31, 2022.

Temporary Licensure

The bill amends a statute allowing the Board to grant temporary emergency licenses to practice the professions overseen by the Board to add a provision allowing an applicant to practice in Kansas pursuant to such license upon submission of a non-resident health care provider certification form to the Kansas Health Care Stabilization Fund and without paying the annual premium surcharge required by the Health Care Provider Insurance Availability Act. The bill also extends the expiration of this statute for one year, from March 31, 2021, until March 31, 2022.

Amendments to COVID-19 Response and Reopening for Business Liability Protection Act

Business Immunity Extension

The bill amends the COVID-19 Response and Reopening for Business Liability Protection Act (Act) to extend the expiration date of the statute governing COVID-19 claim immunity for persons or agents of persons conducting business in the state by one year, until March 31, 2022.

Health Care Provider Immunity

The bill amends a statute in the Act regarding immunity for health care providers related to COVID-19 to specify such immunity applies to claims arising between March 12, 2020, and March 31, 2022, and removes references to a declared state of disaster emergency.

Retroactivity

The bill amends a statute regarding retroactivity of causes of action arising under the Act to specify the provisions related to health care provider immunity apply retroactively to any

cause of action accruing on or after March 12, 2020, and prior to March 31, 2022, rather than applying retroactively on or after March 12, 2020, and prior to termination of the state of disaster emergency related to COVID-19.

Expiration of Other Provisions

The bill amends a statute regarding hospital facility usage for COVID-19 purposes to change its expiration to March 31, 2022, from 120 calendar days after the expiration or termination of the COVID-19 state of disaster emergency proclamation.

The bill amends a provision regarding critical access hospital bed limits to extend its expiration from June 30, 2021, until March 31, 2022.

Resolution Encouraging the End of Participation in Federal Pandemic-related Unemployment Benefits Programs; SCR 1616

SCR 1616 urges the Governor to end participation in federal pandemic-related unemployment benefits programs, including the Federal Pandemic Unemployment Compensation Program (FPUC), which provides an additional $300 per week to individuals collecting unemployment insurance; Pandemic Unemployment Insurance (PUA), which provides up to 79 weeks of unemployment benefits to individuals not typically eligible for regular unemployment compensation; and waiver of the waiting week requirement for regular unemployment compensation.

The concurrent resolution contains whereas clauses regarding improvements in the Kansas economy and indicating the extended federal unemployment benefits disincentivize employees from returning to the workforce. The concurrent resolution also contains whereas clauses related to fraud in the unemployment compensation program.

The concurrent resolution requires the Secretary of State to send an enrolled copy of the resolution to the chairperson of the Legislative Coordinating Council.

Expansion of Military Spouse and Servicemember's Expedited Licensure; Expedited Occupational and Temporary Credentialing during States of Emergency; Sub. for HB 2066

Sub. for HB 2066 amends law to shorten the period of time in which regulatory bodies are required to issue occupational credentials to military servicemembers or military spouses seeking to establish residency in Kansas and provide for expedited credentialing of non-military prospective residents. The bill expands and clarifies conditions on expedited occupational credentialing and permits temporary credentialing during states of emergency and the use of electronic credentials.

Expedited Credentialing

The bill requires licensing bodies to issue the appropriate credential to a military servicemember or spouse within 15 days from the date of the submission of a "complete application," as defined by the bill, or within 45 days for all other applicants, replacing a requirement that credentials were to be issued to military servicemembers and spouses within

60 days. The bill amends law to require, rather than allow, licensing bodies to adopt rules and regulations necessary to implement changes for licensure of an individual who is a military spouse, military servicemember, or an individual who has established or intends to establish residency in this state.

Probationary Credentialing

Former law required expedited out-of-state credentials to be issued for a six-month probationary period for military servicemembers and military spouses who do not qualify under the applicable Kansas law by endorsement, reinstatement, or reciprocity statutes but meet certain other requirements.

The bill modifies this provision by giving discretion to licensing bodies to grant credentials to applicants and also modifies the qualifications for credentialing, such that any applicant is required to:

- Hold a valid out-of-state current credential from another state, district, or territory of the United States that authorizes a similar scope of practice, as defined by the bill. Former law required the credential to be equivalent to that established by the relevant Kansas licensing body;

- Have worked for at least one year in the relevant occupation;

- Not have a disqualifying criminal record; and

- Show proof of solvency, financial standing, bonding, or insurance as required by the licensing body.

The bill defines "scope of practice" as procedures, actions, processes, and work a person may perform under a government-issued credential.

The bill provides for probationary credentialing on the basis of work experience. Licensing bodies are granted discretion to issue a probationary credential to an applicant who:

- Worked in an occupation that was not a regulated profession in the other state for at least three of the four immediately preceding years; and

- Does not hold a valid out-of-state current credential from another state, district, or territory of the United States that authorizes a similar scope of practice, but who otherwise meets the requirements for probationary credentialing.

The bill also provides for probationary credentialing on the basis of "private certification" as defined by the bill to mean a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization.

Licensing bodies are granted discretion to issue a probationary credential to an applicant who:

- Holds a current and valid private certification;
- Worked in an occupation that was not a regulated profession in the other state for at least two years;
- Is in good standing by the organization that issued the private certification; and
- Otherwise meets the requirements for probationary credentialing.

The bill grants the right to deny probationary credentials based on private certification or work experience if the licensing body finds on specific grounds that issuing a credential would jeopardize the public health and safety.

Temporary Permits

The bill provides for licensing body issuance of temporary occupational permits to applicants whose out-of-state credential, private certification, or work experience is determined by the licensing body to not authorize a similar scope of practice, provided that doing so would not jeopardize the public health and safety. Temporary occupational permits allow applicants to lawfully practice their occupation while completing any specific requirements to practice in Kansas that were not required in the other state.

Provided that an applicant meets all other qualifications:

- If the applicant is a military servicemember or spouse, a licensing body is required to issue such permits, or
- If the applicant is not a military servicemember or spouse, a licensing body has discretion to issue such permits.

State of Emergency Credentialing

The bill permits licensing bodies to grant temporary licenses to practice during a state of emergency declared by the Legislature, if the licensing body determines the applicant's qualifications are sufficient to protect the public health and safety.

Electronic Credentialing

The bill grants licensing bodies the ability to issue credentials that are valid for verification purposes when displayed electronically. Licensing bodies are able to determine the format and requirements for the use of such credentials, including the use of third-party systems.

General Provisions

The bill allows licensing bodies to allow an applicant who has not worked in their occupation for the preceding two years to complete additional testing, training, monitoring, or continuing education necessary to establish the applicant's ability to practice in a manner that protects the public health and safety. However, the bill limits additional requirements to matters required by Kansas law that are materially different from the laws of the other state.

The bill is not to be construed to conflict with federal law, multi-state compacts, rule, regulation, reciprocal, or other statutory provision, or to prohibit a licensing body from denying a credential based upon the possible endangerment of the public health and safety. The bill requires all proceedings to be conducted in accordance with the Kansas Administrative Procedure Act and be reviewable under the Kansas Judicial Review Act.

The bill specifies the provisions of the bill shall not be construed to be in conflict with any applicable Kansas scope of practice limitation and Kansas scopes of practice apply to applicants receiving credentials under the provisions of the bill.

The bill applies to all licensing bodies except those relevant to the practice of law or the regulation of attorneys. The bill specifically names the following bodies that are subject to the provisions of the bill:

- Abstracters' Board of Examiners;
- Board of Accountancy;
- Board of Adult Care Home Administrators;
- Secretary for Aging and Disability Services (with respect to KSA 65-5901, *et seq.* [the Dietitians Licensing Act], and KSA 65-6503, *et seq.* [regarding speech-language pathologists or audiologists]);
- Kansas Board of Barbering;
- Behavioral Sciences Regulatory Board;
- Kansas State Board of Cosmetology;
- Kansas Dental Board;
- State Board of Education;
- Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments;
- Board of Examiners in Optometry;

- State Board of Healing Arts, the Secretary of Health and Environment (with respect to KSA 82a-1201, *et seq.*);
- Commissioner of Insurance (with respect to KSA 40-241 and 40-4901, *et seq.*);
- State Board of Mortuary Arts;
- Board of Nursing;
- State Board of Pharmacy;
- Kansas Real Estate Commission;
- Real Estate Appraisal Board;
- State Board of Technical Professions; and
- State Board of Veterinary Examiners.

The State Board of Healing Arts is permitted to deny a credential or temporary license to an applicant if it is determined the individual's qualifications are not substantially equivalent to those established by the Board. This exemption also applies to the State Board of Technical Professions, provided an applicant is seeking a credential to practice engineering.

Starting on July 1, 2021, each licensing body listed in the bill will annually report information to the Director of Legislative Research (Director) by August 31, which will allow for the analysis of applications by applicant type (*i.e.*, military servicemember, military spouse, or non-military) and the number of applications received, granted, and denied; the average length of time between receipt of the application and the completion of the application; the average length of time between receipt of a complete application to the issuance of a credential (temporary or permanent); and identification by category of applicant in which the licensing body failed to meet the time limits specified in the bill and the reasons for the failure.

Licensing bodies are required to provide the information in a manner that maintains applicants' confidentiality.

By January 15 of the succeeding year, the Director is required to report an analysis of the compilation to the Governor; the House Committee on Appropriations; the House Committee on Commerce, Labor and Economic Development; the Senate Committee on Commerce; and the Senate Committee on Ways and Means.

Self-service Storage Agreements; HB 2112

HB 2112 amends the Self-service Storage Act (Act) as it pertains to liability claims and the contents of storage agreements, as follows:

- Limits claims of damage or loss of personal property to the maximum value of personal property as specified in the rental agreement;

- Requires self-service storage rental agreements to ask the occupant if such occupant wishes to designate an alternative contact and permits them to do so. Alternative contacts are not given rights to the rental space or its contents merely by virtue of being designated as such;

- Permits the online sale of stored personal property in the event of default by the occupant, as defined by the Act in continuing law; and

- Grants discretion to the operator to give seven days' notice of the sale by any commercially reasonable manner, rather than by newspaper only:

    - The manner of advertising a sale would be deemed not commercially reasonable and a sale would be canceled and subsequently rescheduled and re-advertised if fewer than three independent bidders were present in person or online.

Sale of Liquor and Cereal Malt Beverage; Transfer of Liquor; Liquor Licensure; HB 2137

HB 2137 amends various provisions in the Kansas Liquor Control Act (KLCA), the Cereal Malt Beverage Act (CMBA) and the Club and Drinking Establishment Act (CDEA) concerning the sale, transfer, and licensure requirements related to alcoholic liquor and cereal malt beverage (CMB).

Days and Times of Sale of Liquor and Cereal Malt Beverage

The bill amends the KLCA and the CMBA to expand the time when retail sales of alcoholic liquor and CMB are allowed.

The bill allows retail sales of alcoholic liquor and CMB in original packaging on Sundays between 9 a.m., rather than noon, and 8 p.m. and on Memorial Day, Independence Day, and Labor Day.

Electronic Submission of Records by Special Order Shipping License Holders

The bill changes the effective date of special order shipping licenses by specifying the license term begins on the date listed on the license, rather than on the date the license is issued.

The bill also changes the payment of gallonage taxes by licensees and requires such taxes to be paid electronically on a quarterly basis to the Division of Alcoholic Beverage Control (ABC), Kansas Department of Revenue, rather than annually.

Refillable and Sealable Containers

The bill authorizes alcoholic liquor retailers, class A and B clubs, and drinking establishments to sell refillable and sealable containers of beer and CMB for consumption off the licensed premises. Formerly, alcoholic liquor retailers were restricted to selling alcoholic liquor only in the original unopened container, and class A and B clubs are not able to sell refillable and sealable containers of beer and CMB; only microbreweries are allowed to make such sales.

The bill allows alcoholic liquor retailers and clubs to sell beer and CMB under the same conditions as microbreweries. The bill requires refillable and sealable containers to hold between 32 and 64 fluid ounces and have a label that clearly indicates the licensee's name and the type of alcoholic beverage in the container. Club and drinking establishment sales of beer and CMB in refillable and sealable containers will be prohibited after 11 p.m., and the bill specifies such sales will be subject to the liquor drink tax.

Sale and Delivery of CMB by Liquor Retail Licensees

Under former law, retail liquor store licensees could sell CMB along with alcoholic liquor, and CMB retailers were allowed to sell beer with an alcohol content of up to 6 percent alcohol by volume.

Liquor retail licensees were also allowed to sell and deliver alcoholic liquor and CMB to a temporary permit holder for resale by such permit holder, to sell and deliver alcoholic liquor to a caterer, and to deliver alcoholic liquor to the licensed premises of a public venue, club, or drinking establishment, if such premises are either in the same county or in a county adjacent to that of the liquor retailer.

The bill allows liquor retail licensees to sell, and deliver for resale, CMB and beer containing not more than 6 percent alcohol by volume to the licensed premises of a CMB retailer who is licensed for on-premises consumption, provided such premises are located either in the same county as the retailer or in an adjacent county.

The bill also allows the retailer to charge a delivery fee for delivery of the CMB and beer containing not more than 6 percent alcohol by volume to a receiving CMB retailer.

Sale of CMB by the Drink

The bill allows liquor-by-the-drink licensees (*e.g.* clubs, restaurants, bars, caterers, and public venues) to also sell CMB for consumption on the licensed premises pursuant to the same restrictions as for sales of liquor-by-the-drink.

Removal of Unconsumed CMB from a Club or Drinking Establishment

The bill allows for the removal of unconsumed CMB, as well as alcoholic liquor as in continuing law, from the premises of a club or drinking establishment, both in the original unopened container and no longer in the original unopened container, under the following conditions:

- If the licensee can legally sell the liquor or CMB;
- Each container of liquor or CMB was purchased by a patron of the licensed premises;
- The licensee provides a dated receipt for the liquor or CMB;
- If any opened containers are resealed and each container is placed in a tamper-proof, transparent bag that makes subsequent opening or tampering obvious before it is removed from the licensed premises; and
- If no original unopened containers of spirits are removed from the licensed premises.

The bill also specifies that no licensee may allow any alcoholic liquor or CMB to be removed from the licensed premises after 11:00 p.m., unless such alcoholic liquor is wine that was purchased and partially consumed on the licensed premises.

The bill also removes the sunset date of March 31, 2021, for the provisions related to removal of alcoholic liquor from licensed premises.

[*Note:* The provisions in law for removal of alcoholic drinks from licensed premises had a sunset date of January 26, 2021, pursuant to 2020 Special Session HB 2016. SB 14 (2021), which was signed by the Governor on January 25, 2021, extended those provisions through March 31, 2021.]

Temporary Permits

The bill allows holders of temporary permits issued by the ABC to sell CMB, in addition to alcoholic liquor as in continuing law, subject to the same permit application requirements, limitations, and restrictions in continuing law.

Common Consumption Areas

The bill allows municipalities to establish common consumption areas in which CMB, as well as alcoholic liquor as in continuing law, may be consumed without being subject to enforcement of open container laws.

Special Events at Class A and Class B Clubs

[*Note:* Continuing law defines a "class A club" (club) as a premises that is owned or leased by a corporation, partnership, business trust, or association and that is operated as a *bona fide* nonprofit social, fraternal, or war veterans' club, as determined by the Director of ABC (Director), for the exclusive use of the corporate stockholders, partners, trust beneficiaries, or associates (members) and their families and guests accompanying them.]

The bill authorizes a club to offer the sale and service of alcoholic liquor on the club's licensed premises to individuals outside of members, families, and accompanying guests during events held at the club.

An "event" is defined by the bill as any function, occasion, celebration, or other event held on the licensed premises for a contractually specified duration of time and during which individuals who are not members of the licensee, their families, or guests are permitted to enter and use the licensed premises.

The bill also requires a club hosting an event to provide electronic notice to the Director no less than 48 hours prior to the event. The Director is then required to provide notification to local law enforcement agencies. The bill requires such notice consist of the date, time, location, and names of the contracting parties of the event. The bill requires all agreements, receipts, and records of alcohol purchased at events to be retained by the licensee for a minimum of three years for inspection by the Director.

Mixed Alcoholic Beverages in Pitchers

The bill authorizes a public venue, club, drinking establishment, caterer, or holder of a temporary permit to sell or serve mixed alcoholic beverages in a pitcher, changed from authorization for the sale or serving of only certain mixed drinks listed in statute or others specifically approved by the Director.

The bill also defines the following terms:

- "Mixed alcoholic beverage" means a beverage that is made by combining alcoholic liquor with a non-alcoholic liquid or other edible substance and that is composed of at least 25 percent non-alcoholic liquid or other edible substance, including, but not limited to, margarita, sangria, daiquiri, or mojito; and

- "Pitcher" means any container capable of containing more than 32 fluid ounces, but not more than 64 fluid ounces, that is used to serve alcoholic liquor or CMB to one or more individuals.

Transfer of Alcohol for Canning and Bottling

The bill allows any manufacturer or supplier of alcoholic liquor or CMB, or holder of a distilled spirits plant permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the U.S. Department of the Treasury to apply for an annual packaging and warehousing facility permit. The bill also allows such permit holders to receive and transfer liquor in a bulk container from any manufacturer, supplier, farm winery, microbrewery, or microdistillery for the purposes of packaging in cans or bottles, in addition to actions allowed in continuing law.

Residency Requirements for Certain Liquor Licenses

The bill amends the KLCA by removing the residency requirement for liquor license applicants and their spouses, including a prohibition on license issuance to residents who have not been a resident of Kansas for a full year, corporations not organized under the laws of Kansas, and persons who are not residents of the county in which the premises sought to be

licensed are located. The bill also amends the requirement to fingerprint all out-of-state applicants by making it optional if the applicant's identity is unclear.

The bill specifically removes residency requirements for the following liquor licenses:

- Retailer;
- Manufacturer;
- Distributor;
- Microbrewery;
- Microdistillery; and
- Farm winery.

Retailer License

The bill removes a prohibition on issuing a retailer license to a person who:

- Is not a resident of the county in which the place of business covered by the license is located; or

- Has not been a resident of such county for at least six months; and

- Has not been a resident of Kansas in good faith, or a resident of Kansas for at least one year immediately preceding application for a retailer's license.

Manufacturer License

The bill requires, for copartnership applicants for a manufacturer license, all of the copartners to be individually eligible to receive a manufacturer's license.

Resident Agent

The bill specifies that if the applicant is not a Kansas resident, no license will be issued until the applicant has appointed a U.S. citizen, who is a resident of Kansas, as the applicant's agent and has filed certain documentation. Such agent is required to meet certain qualifications as required by continuing law.

Nonresident Application Documentation

The bill provides the Director may require applicants who are not residents of Kansas on the date of application to submit certain documentation, submit to a criminal history record check as provided in continuing law, and appoint a process agent who is a U.S. citizen and a resident of Kansas to accept service of process for legal proceedings.

Former law required the Director to require such documentation and background check for such applicants or applicants who have not been a resident of Kansas for at least one year immediately preceding the date of application submission.

Suspending, Canceling, or Revoking Certain Liquor Licenses

The bill allows the Director to suspend, cancel, or revoke a license under the KLCA or the CDEA for violation of a lawful order issued by the Director.

The bill amends the law to expand the lists of unlawful conduct for which the Director is authorized to suspend, cancel, or revoke a license to include violations of lawful orders issued by the Director.

Liquor Licensure of Spouses of Law Enforcement Officers

Former law prohibited liquor licensure for an applicant whose spouse is employed as a law enforcement officer (LEO) and such applicant is ineligible to hold a license. The bill allows a person whose spouse is employed as an LEO to be eligible to receive a liquor license, provided the applicant meets the requirements in continuing law.

[*Note:* KSA 2020 Supp. 41-2623(a)(1), which establishes eligibility for licensure under the CDEA, specifically references the eligibility provisions being amended in this bill.]

Fulfillment House License

The bill establishes a new fulfillment house license under the KLCA to be issued by the Director.

The bill adds to the KLCA a definition of "fulfillment house": any location or facility for any in-state or out-of-state entity that handles logistics, including warehousing, packaging, order fulfillment, or shipping services, on behalf of the holder of a special order shipping license.

The fulfillment house license allows the license holder to warehouse, package, and ship alcoholic liquors produced by and belonging to a Kansas special order shipping licensee and applies for each location that is involved in the shipping process to Kansas residents.

Fulfillment House License Application

The bill clarifies that before making or causing any shipment of alcoholic liquor to Kansas residents, an applicant for a fulfillment house license is required to:

- Pay a $50 license fee for each of the locations involved in the shipping process to Kansas residents; and

- Provide any information required by rules and regulations adopted by the Director and contained in the application. The bill provides that such licenses will remain valid for two years from the date specified on the license.

Fulfillment House Licensee Requirements

The bill requires a licensee to:

- Make reasonable efforts to confirm that any winery for which the licensee ships has a Kansas special order shipping license, and the bill specifies the licensee may rely on the representations of each such winery for such assurance;

- Ensure that all containers of alcoholic liquors shipped directly within the state are labeled with the name, address, and license number of the fulfillment house licensee;

- Ensure containers are labeled with the following conspicuously printed statement: "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";

- Require the signature of a receiver over the age of 21 for all packages shipped; and

- Ship all packages by a common carrier pursuant to continuing law.

Electronic Records

The bill requires fulfillment house licensees to keep records of all shipments for a three-year period and electronically submit them to the Director monthly.

Reports submitted will be available as open records, in accordance with the Kansas Open Records Act. However, the bill specifies the names and addresses of consignees must be redacted from the paragraphs open for public inspection.

The bill provides the confidentiality of the redacted report information will expire on July 1, 2026, unless reenacted pursuant to continuing law by the Legislature prior to such date.

Record and Report Requirements

The bill requires the following information to be maintained by the licensee as a record for a minimum of three years after the shipment date:

- The name, address, and license number of the special order shipping licensee for whom the alcoholic liquor is being shipped;

- The name and license number of the express company or common carrier used;

- The date of each shipment;

- The carrier tracking number;

- The name and address of the consignee of such alcoholic liquors; and

- The weight of the package and the product type of alcoholic liquors shipped.

The bill requires such records to be submitted to the Director monthly in the form and format prescribed.

Penalty for Failure to Report

The bill states a fulfillment house that willfully fails, neglects, or refuses to report any shipments is subject to civil penalty of no more than $100. The bill specifies that after notice and an opportunity for a hearing in accordance with the Kansas Administrative Procedure Act, the Director may refuse to issue or renew, or may revoke, a fulfillment house license upon a finding the licensee has failed to comply with the provisions of the bill.

The bill also specifies that an out-of-state license holder is deemed to have appointed the Secretary of State as the resident agent and representative of the licensee to accept service of process from the Secretary of Revenue, the Director, and the courts concerning enforcement of the provisions of the bill, the KLCA, and any rules and regulations adopted pursuant to those sections, and to accept service of any notice or order provided for in the KLCA.

Farm Winery Licenses

The bill allows farm wineries, in accordance with federal law, to:

- Transfer or receive wine in a bulk container or packaged wine in bond to any bonded premises;
- Transfer or receive wine in a bulk container in bond to a distilled spirits plant;
- Receive distilled spirits in a bulk container; and
- Produce fortified wine with the addition of wine spirits to domestic wine if the added spirits are produced from the same kind of fruit used to produce the wine.

Under the bill, a farm winery licensee may import wine from outside Kansas for use in the production of its domestic table wine and domestic fortified wine. The bill requires such imports of wine to be reported on forms prescribed by the Director.

The bill specifies farm wineries may not transfer wine in a bulk container to the premises of a brewery.

Additionally, the bill allows a farm winery, microdistillery, microbrewery, or the holder of a federal distilled spirits plant permit to receive and transfer alcoholic liquor in a bulk container from any manufacturer or supplier of liquor or cereal malt beverage, licensed in any state, for packaging in cans or bottles.

The bill specifies any terms not defined in state law will have the same meaning as in the definitions found in federal law.

The bill also amends provisions generally requiring farm wineries and microbreweries to use at least 30 percent Kansas-grown products in the manufacture of domestic wine and hard

cider, respectively. Under the bill, farm wineries and microbreweries are required to use at least 15 percent Kansas-grown products beginning on July 1, 2021. The Kansas-grown products requirement will sunset on January 1, 2023.

Licenses Held by Alcoholic Liquor Manufacturers

The bill amends the CDEA to allow any person who has a beneficial interest in a manufacturer licensed pursuant to the KLCA to be issued one drinking establishment license.

The law prohibits manufacturers and others from influencing, coercing, or attempting to influence or coerce drinking establishment licensees from purchasing particular brands or kinds of alcoholic liquor or purchasing alcoholic liquor from a specific distributor. The bill creates an exemption from those provisions for manufacturers holding drinking establishment licenses with respect to purchases made by such a drinking establishment.

The bill specifies that if a drinking establishment licensee also holds a manufacturer's license:

- The licensed premises specified in the drinking establishment license are required to be separate from, and may be not more than two miles by the road usually traveled from, the licensed premises specified in the manufacturer's license;

- The drinking establishment may not sell alcoholic liquor manufactured by such manufacturer's licensee to the exclusion of other alcoholic liquor;

- All beer and CMB sold by the drinking establishment must be acquired from a licensed distributor or retailer; and

- All wine and spirits sold by the drinking establishment must be acquired from a licensed retailer or farm winery that possesses a federal wholesaler's basic permit.

Producer's Licenses

The bill requires approval of an application for a retailer's license if the applicant has already been issued a producer's license for a vineyard pursuant to KSA 41-355, provided the applicant is not otherwise disqualified from holding the retailer's license under continuing law.

Unemployment Compensation Modernization; Senate Sub. for Sub. for HB 2196

Senate Sub. for Sub. for HB 2196 creates the Unemployment Compensation Modernization and Improvement Council; requires the Kansas Department of Labor (KDOL) to modernize its information technology (IT) infrastructure; makes temporary changes to the membership of the Employment Security Review Board; makes changes to Employment Security Rates tables; requires the Secretary of Labor to provide tax notifications and certain Employment Security Fund Data Reporting; provides for certain employer account protections; provides for transfers of federal coronavirus relief aid to the Employment Security Fund and the

Legislature Employment Security Fund; prohibits the continuation of federal unemployment compensation programs using state funds; adjusts thresholds for maximum benefits; modifies the shared work program; and makes other employment security compensation changes.

Unemployment Compensation Modernization and Improvement Council

The bill creates the Unemployment Compensation Modernization and Improvement Council (Council), which consists of 13 members.

Non-legislative members are:

- Three representatives of employers, one each selected by the Governor, the President of the Senate, and the Speaker of the House;
- Three representatives of employees, one each selected by the Governor, the President of the Senate, and the Speaker of the House; and
- The Secretary of Labor or their designee with a role in the administration of the Unemployment Insurance (UI) system.

Non-legislative members serve a term of the shorter of three years or until the dissolution of the Council.

Legislative members are as follows:

- As appointed by the President of the Senate:
  - One Senate member from the majority party; and
  - The chairperson of the Senate committee to which UI legislation is typically referred;
- As appointed by the Speaker of the House:
  - One House member from the majority party; and
  - The chairperson of the House committee to which UI legislation is typically referred;
- One minority party Senate member, appointed by the Senate Minority Leader; and
- One minority party House member, appointed by the House Minority Leader.

Legislative members of the Council serve during the session in which they are appointed and may retain membership while remaining members of the Legislature.

Council vacancies are to be filled in the same way as original appointments, to last for the remainder of the term of the member being replaced. A member can also be removed, reappointed, or substituted at any time by their respective appointing authority. Members of the

Council are entitled to compensation for service and for any necessary expenses incurred, to be paid from the Employment Security Administration Fund.

Operation of the Council

The bill requires the following to be part of the operation of the Council:

- Members are appointed within 30 days of the effective date of the bill;
- The first meeting is held within 30 days of the effective date of the bill;
- The chairpersonship of the Council alternates at two-year intervals between the chairpersons of the House and Senate standing committees to which employment security legislation is typically referred, beginning with the chairperson of the House;
- The Council is staffed by personnel from Legislative Administrative Services, the Kansas Legislative Research Department, and the Office of Revisor of Statutes, as requested by the chairperson of the Council; and
- The Council may suggest to the Secretary of Labor rules and regulations necessary to carry out its function.

Role of the Council

The bill requires the Council to:

- Examine and recommend changes to the UI system;
- Examine the claim-filing and benefit disbursement process and any future changes thereto;
- Examine and recommend changes on topics including but not limited to:
    - Technological infrastructure;
    - Improvements to system responsiveness, integrity, security, and data verification; and
    - Methods of information sharing;
- Conduct an audit of the UI system, with a preliminary report by May 1, 2022, and a final report by September 1, 2022:
    - Examining the effects of fraudulent claims and improper payments from March 15, 2020, through March 31, 2022, and the response by KDOL to such claims;

  - Examining the amounts and nature of such claims, fraud processes, and methods, and the potential for recovery of fraudulent payments;
  - Evaluating the likelihood of a data breach contributing to fraud and improper network architecture allowing a potential breach to have occurred; and
  - Including information on the implementation of all program integrity elements and guidance issued by the U.S. Department of Labor and the National Association of State Workforce Agencies [*Note:* This requirement would be ongoing for all subsequent reports.];

- Issue an initial report within 14 days of the Council's first meeting describing the state of the process by which individuals file UI claims and receive UI benefits; and

- In coordination with the Secretary of Labor:
  - Develop a strategic staffing plan to address substantial changes in numbers of claims, including the prospective use and sources of additional employees;
  - Publish all points of contact for UI inquiries or claims to KDOL's website;
  - Recommend for adoption rules and regulations for creating a uniform UI complaint submission process; and
  - Adopt and periodically review a definition of "substantial disruption" in the benefit application and determination process.

The Secretary of Labor has additional responsibilities related to the Council:

- Post all materials from Council meetings on a public website maintained by the Secretary;

- Develop the initial written strategic staffing plan, review it annually, and revise it as necessary. After each review, the most recent version is provided to the Council and published on a public website maintained by the Secretary;

- Notify the Council Chairperson of any unauthorized third-party access or acquisition of records within five days of becoming aware of such an event; and

- Notify the Council members of any substantial disruption in the benefit application and determination process.

The bill also requires the Secretary of Labor, or their designee, to provide status reports on or before the 15th day of each month and the last day of each month to the Council. The report is required to include, but not be limited to, information regarding the timeline, progress, budget, and overall status of the unemployment information technology system upgrade. Once the upgrade is complete, the report is required to include information on system performance and process updates.

The Council is not permitted to examine the solvency of the Unemployment Compensation Fund (cf. KSA 2020 Supp. 44-710a).

The Council dissolves and all provisions related to the Council will be of no effect three years after the date of its first meeting.

KDOL Information Technology Modernization

As a supplement to the Employment Security Law, the bill establishes as the intent of the Legislature that KDOL's IT system be continually developed, customized, enhanced, and upgraded, in order to collect state employment security taxes, process UI claims, and pay UI benefits. To this end, the bill requires the Legislative Coordinating Council (LCC) to establish a deadline for completion of the new UI system.

The LCC also is authorized the extend the deadline for completion of the modernization project at any time with input from the Council.

The IT system, technology, and platform include, but are not limited to, components specified and defined by the Council in consultation with the Secretary of Labor.

The new system also includes, but is not limited to, features and benefits as specified and defined by the Council in consultation with the Secretary of Labor.

The Secretary of Labor is required to implement all program integrity elements as specified and defined by the Council in consultation with the Secretary of Labor. The bill specifically directs the Secretary to implement elements including, but not limited to, the following:

- Cross-matching of social security numbers with the Social Security Administration;
- Checking new hire records against the National Directory of New Hires;
- Verification of citizenship or immigration status through the Systematic Alien Verification for Entitlements program;
- Comparison of applicant information with local, state, and federal prison databases;
- Use of the following to detect duplicate claims:
    - Interstate Connection Network;
    - Interstate Benefits Cross-Match;
    - State Identification Inquiry State Claims and Overpayment File; and
    - Interstate Benefits 8606 application for overpayment recoveries for claims filed in other states;

- Identification of IP addresses linked with multiple claims or claims filed outside the United States; and

- Use of data mining and analytics for fraud detection and prevention.

The bill requires, should the Council become inactive or dissolved and the new information technology system modernization project is completed, the Secretary of Labor to implement and utilize all program integrity elements and guidance issued by both the U.S. Department of Labor and the National Association of State Workforce Agencies within 60 days of issuance of such guidance.

The bill requires the cross-checks described above to be carried out for new and active UI claims on a scheduled basis. Individual cases are to be reviewed for any claimants approved for benefits for whom changes of circumstances affecting eligibility are identified.

The bill authorizes KDOL to execute a memorandum of understanding with any state department, agency, or agency division for information the bill requires to be shared.

The Secretary of Labor is required to adopt rules and regulations to carry out the provisions of the bill within 12 months of the effective date of the bill and to provide an annual status update and progress report to the Council.

The bill prohibits any state agency entering into any contract for UI IT modernization until the Council has reviewed and made recommendations concerning the system and technology and platform specifications and the LCC has reviewed such recommendations. The bill requires such review to take place within 60 days of the close of the request for proposal for the modernization.

Additionally, the bill requires the procurement negotiating committee for the procurement modernization proposed by this bill to include the chairperson of the Joint Committee on Information Technology in the position otherwise occupied by the Chief Administrative Officer of KDOL.

Employment Security Board of Review—Temporary Changes

The bill provides from the effective date of the bill to June 30, 2024, the Employment Security Board of Review (Board), which has been composed of three members, will consist of six members, with no more than four of the members belonging to the same political party rather than two.

The bill provides the Board may sit in panels of three members with no more than two members belonging to the same political party, for the purpose of hearing and deciding cases before the Board.

The bill provides a member's appointment specifically for the term of the effective date of the bill through June 30, 2024, will not count as a term for purposes of the prohibition preventing a Board member from serving more than two consecutive terms.

Employment Security Rate Tables Changes

The bill provides for new tables for solvency and credit adjustments for the purpose of making solvency or credit adjustments to maintain the Employment Security Fund balance beginning in rate year 2022.

The bill replaces the uniform solvency rate adjustments to the standard rate schedule with six new solvency rate schedules and six new credit rate schedules providing for solvency and credit rating adjustments to be made according the experience rating of employers.

Tax Notification

The bill requires the Secretary of Labor to inform a claimant of the federal and state tax consequences related to UI benefits on the initial determination of benefits notice. Explanations of the following are required:

- KDOL income tax withholding agreement form K-BEN 233, or a successor form;
- Tax withholding elections; and
- The tax withholding process and estimated weekly and maximum withholding amounts.

Unemployment Trust Fund Data Reporting

The bill requires the Secretary of Labor to publish certain certified data related to the UI Trust Fund on a publicly accessible website maintained by the Secretary.

The bill requires the following information to be maintained for the most recent 20 fiscal years, first published within 120 days of the effective date of the bill, and, for each fiscal year beginning in FY 2022, published on or before December 1 following the end of such fiscal year:

- Distributions of taxable wages by experience factor for each fiscal year, to include:
    - The rate group;
    - The reserve ratio lower limit;
    - The number of accounts;
    - Taxable wages; and
    - Summaries including the number of accounts and FY taxable wages for active positive eligible, active ineligible, and active negative accounts;
- The average high-cost benefit rate summary, to include:
    - The average high-cost benefit rate in effect at that time, and
    - The benefit cost rate for fiscal years used to compute the average.

The Secretary of Labor is required, for the three years following the effective date of the bill, to annually provide projections of the number and amount of UI claims, the UI Trust Fund balance, and the amount of employer premiums to be paid, to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce.

Reemployment and Work Skills Training Services Provisions

The bill requires the Secretary of Labor and the Secretary of Commerce to jointly establish and implement programs providing reemployment and work skills training services to UI benefit recipients, to be known as the "my reemployment plan" program by June 1, 2021. The program is to be available to all claimants except for those in the shared work program, in trade readjustment assistance programs, or on temporary layoff with a return-to-work date.

The bill requires the Secretary of Labor to provide the names and contact information of claimants who have received benefits for three continuous weeks to the Secretary of Commerce. The Secretary of Commerce is then required to request the following documents and information from such claimants:

- Resume;
- Work history;
- Skills list; and
- Job search plan.

The Secretary of Labor also is required to share labor market information and current available job positions with the Secretary of Commerce.

The bill requires the Secretary of Commerce to:

- Collaborate with the KANSASWORKS workforce system to provide assistance, when requested, to claimants;

- Match open job positions with claimants based upon skills, work history, and job location;

- Facilitate and oversee the claimant and employer interview process;

- Monitor the results of job matches, including information regarding claimants who did not attend an interview or did not accept a position, and report such claimants to the Secretary of Labor; and

- Develop and implement a work skills training or retraining program for claimants in collaboration with the KANSASWORKS workforce system, the Secretary of Labor, and other organizations.

The bill authorizes the Secretary of Labor to allow claimants to participate in work training or retraining programs offered by the Secretary of Commerce in lieu of the job search requirements. Claimants attending such training are required to participate for no less than 25 hours per week, and their attendance and progress is to be monitored by the Secretary of

Commerce. Claimants who fail to meet attendance and progress requirements are to be disqualified by the Secretary of Labor within five business days of receiving the report of their noncompliance. Benefits would be restored upon reestablishment of compliance and reported by the Secretary of Commerce or the Secretary of Labor finding a show of good cause by the claimant. The Secretaries of Commerce and Labor are required to enter into appropriate agreements for sharing of relevant information and to provide an annual status update and progress report for the "my reemployment plan" program to specified legislative standing committees.

Work Refusal Provisions

The bill requires the Secretary of Labor to develop procedures enabling employers to notify KDOL when a UI claimant refuses to return to work or refuses an offer of employment. Upon receipt of such a notification, the Secretary is required to determine if the offered employment is suitable, considering if the wages offered are comparable to the claimant's recent employment, work duties correspond to the claimant's education level and work experience, and the wages offered are at least the amount of the claimant's maximum weekly UI benefits.

The Secretary is required, within ten business days of receiving work refusal notification from an employer, to notify the claimant who refused work information including:

- A summary of the claimant's duties to accept suitable work;
- A statement that the claimant has been or may be disqualified from receiving benefits;
- An explanation of what constitutes suitable work; and
- Instructions for contesting a denial of claim based upon a report by an employer that the claimant has refused an offer of suitable work.

Unemployment Rate Thresholds for Maximum Benefits

The bill raises the minimum threshold for receiving a maximum of 20 weeks of UI benefits from a 3-month seasonally adjusted average unemployment rate of 4.5 percent to a rate of 5.0 percent for weeks beginning September 5, 2021.

Benefits Disqualification for Fraudulent or Misleading Statements

The bill shortens the time an individual is to be disqualified from receiving benefits for fraudulent or misleading statements from five years to one year upon the repayment of all overpayments, interest, penalties, and fees for the first offense and five years upon the repayment of all overpayments, interest, penalties, and fees for each subsequent offense.

The bill also establishes a crime classified as a severity level 5 nonperson felony for any individual who makes fraudulent or misleading statements to obtain UI benefits if they meet the following criteria:

- Failed to engage in employment as defined in statute;

- Failed to perform any services for wages within the state not within the meaning of employment;

- Made such fraudulent or misleading statements while purporting to be another individual without their consent; and

- Communicated or caused to be communicated false statements or representations on 3 or more occasions during a 30-day period while purporting to be another individual without that individual's consent.

Employer Account Protections and Payment Certification

The bill requires employers to be held harmless and not owe any amount to the State for:

- Any paid claim reported as fraudulent to the Secretary of Labor, unless the Secretary determines the claim to be legitimate; and

- Any claim that has been improperly paid, as defined by the bill, and described below.

The bill requires the Secretary of Labor to make immediate restitution to employers, without requiring a hearing or a request from the employer, as follows:

- Credit the account of any contributing, governmental rated, or reimbursing employer for paid benefits determined to be due to fraud or improper payment;

- Refund "reimbursing employers," who repay the State for claims paid on their behalf, for any claim paid after March 15, 2020, that is or is reported to be fraudulent or improper by the employer, unless it is determined to be otherwise by the Secretary; and

- After reviewing all reimbursing employer accounts, apply credits for any unrecovered charges for fraudulent or improperly paid claims.

For purposes of both restitution and indemnification:

- Any determination with respect to the legitimacy of a claim would be subject to appeal; and

- There is no time limit for disputing a fraudulent claim or related appeals for benefits paid between March 15, 2020, and December 31, 2022.

For the purposes of the bill, "improper payments" is defined as any payment that, according to legally applicable requirements, should not have been made or was in the incorrect amount.

The bill requires the Secretary of Labor to review all information reported by the U.S. Department of Labor regarding improper payments between March 15, 2020, and December 31, 2022, and to:

- Determine the amount of any improper payments within 60 days of such information becoming available;
- Immediately certify such amounts to the Director of Accounts and Reports; and
- Upon certification, send copies of each certification to the Director of the Budget and the Director of Legislative Research.

Federal Coronavirus Relief Aid Transfers; Legislature Employment Security Fund

The bill provides for at least the lesser of an aggregate of $500.0 million or the maximum amount available, as determined by the Director of the Budget, to be transferred from special revenue funds to the Employment Security Fund and the Legislature Employment Security Fund (LESF) of the LCC, which is created by the bill, during FY 2021 and FY 2022. A transfer of $250.0 million is to be made to the Employment Security Fund and a transfer of $250.0 million is to be made to the LESF. The transfers are to be made up of moneys identified by the Director of the Budget to be unencumbered coronavirus relief funds that may be spent at the discretion of the State, in compliance with federal requirements, and provided by federal legislation enacted in response to the COVID-19 pandemic.

The bill provides if the amount of fraudulent and improper payment identified by the audit conducted by the Council and any identified improper payments made between April 1, 2022, and December 31, 2022, exceeds the amount of federal coronavirus relief funds transferred to the Employment Security Fund and the LESF, the Secretary of Labor is required to certify the amount of such excess to the Director of the Budget. Upon such certification, the Director of the Budget is required to identify the amount of unencumbered, discretionary federal coronavirus relief funds available and is required to transfer an amount of such funds up to the amount of the excess to the LESF.

Upon receipt of certifications concerning the amount of fraudulent or improper payments, the LCC is required to notify the Legislative Budget Committee (LBC). The LBC is required to make recommendations to the LCC concerning transferring funds from the LESF to the Employment Security Fund. Upon receiving recommendations from the LBC, the LCC is authorized to transfer funds from the LESF to the Employment Security Fund.

The amount of funds transferred from the LESF to the Employment Security Fund is limited to the amount of fraud and improper payments identified by the audit conducted by the Council and any fraud or improper payments made between April 1, 2022, and December 31, 2022, less the $250.0 million initially transferred to the Employment Security Fund.

In the event the transfer of federal coronavirus relief funds to the Employment Security Fund up to $250.0 million is not available to be made prior to July 15, 2021, the bill stipulates

contributing employers pay contributions as set forth in the standard rate schedule for rate year 2022, and no solvency credit or adjustment applies. Should the second transfer of up to $250.0 million not occur prior to July 15, 2022, the bill requires employers to pay contributions as set forth in the standard rate schedule for rate year 2023, and no solvency credit or adjustment applies.

Federal UI Program Restrictions

The bill specifies that any federal UI program established in response to a pandemic is not to be continued using state contributions after the federal program ends.

Shared Work Program Modifications

The bill requires the Secretary of Labor to create and manage a promotional campaign for the Shared Work Unemployment Compensation Program (Program), which includes educational communications with other state agencies and stakeholders, including the Governor's office, legislators, workforce investment boards, labor unions, and local, regional, or state chambers of commerce.

The eligibility of employees to participate in the program is expanded from those whose hours of work are reduced by 20 to 40 percent of normal weekly hours to those whose hours of work are reduced by 10 to 50 percent of normal weekly hours.

The bill permits negative account employers to be approved for the Program if their most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio.

The bill clarifies that eligibility for UI benefits pursuant to a Program agreement would not be conditioned upon work search or work availability limitations otherwise generally required of UI benefit recipients.

Other Provisions

The bill clarifies that individuals of identity theft are not liable for fraudulent UI claims made using their stolen identity.

The bill amends a provision of the Employment Security Law pertaining to the quarterly reporting of tax and wage data. Professional employer organizations, or independent businesses that provide leased employees to a client, had been prohibited from including a client company's owners and officers in the same UI quarterly report as that company's employees. The bill removes the prohibition.

The bill revises the Employment Security Law by excluding from the definition of "employment" contractual services performed by a petroleum landman. Such services are defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work. For purposes of the bill, "minerals" includes oil, natural gas, or petroleum. Such services are not to include services performed for 501(c)(3) organizations exempt from federal income taxation.

The bill requires KDOL and the Department for Children and Families (DCF) to enter into a memorandum of understanding to provide for the transfer of information between agencies providing that, upon notification that a UI claimant has become employed, the Secretary of Labor shall notify DCF to determine the UI claimant's eligibility for state or federal benefits provided or facilitated by DCF.

The bill provides if the contributions collected from negative account balance employers and paid into the Employment Security Interest Assessment Fund for the purpose of paying interest on unemployment advances provided by the federal government exceed the amount of interest owed, any excess amount shall be transferred to the Employment Security Trust Fund. The bill prohibits any expenditures from the Employment Security Interest Assessment Fund other than the payment of principal and interest on such advances from the federal government.

The bill requires the Department of Labor to develop a form for claimants to establish their identity before a Kansas law enforcement officer. The form is limited to one page in length and the Secretary of Labor shall use those forms of identification identified by the I-9 list. The completion of the form and submission by the law enforcement agency require the Secretary to presume the claimant's identity has been confirmed for purposes of UI law. Law enforcement officers, agencies, and the state or any political subdivision of the state receive immunity from civil or criminal liability related to the use of the form if the officer acts in good faith and exercises due care.

Kansas Senior Care Task Force; Elder and Dependent Abuse; Multidisciplinary Teams; Adult Protective Services; HB 2114

HB 2114 creates the Kansas Senior Care Task Force, creates and amends law regarding elder and dependent adult abuse multidisciplinary teams, and amends law regarding abuse, neglect, or financial exploitation of adults.

Kansas Senior Care Task Force

The bill establishes the Kansas Senior Care Task Force (Task Force). The bill outlines the topics to be studied by the Task Force, provides for the appointment and compensation of Task Force members, establishes the frequency and location of meetings, requires a preliminary and a final report to the Legislature, and requires the Kansas Department for Aging and Disability Services (KDADS) to provide the Task Force with data and information that is not prohibited or restricted from disclosure by state and federal law.

The Task Force sunsets on June 30, 2023.

Task Force Study Topics

The Task Force is required to study the following topics:

- Provision of care for Kansas seniors who suffer from Alzheimer's disease, dementia, or other age-related mental health conditions;
- Administration of antipsychotic medication to adult care home residents;
- Safeguards to prevent abuse, neglect, and exploitation of seniors in the state;
- Adult care home surveys and fines;
- Funding and implementation of the Senior Care Act;
- Senior daycare resources in the state; and
- Rebalancing of home and community-based services.

Organization of Task Force

Membership. The Task Force will consist of the following 22 members:

- The chairperson of the Senate Committee on Public Health and Welfare;

- A member of the Senate Committee on Public Health and Welfare, appointed by the President of the Senate;

- A member of the Senate Committee on Public Health and Welfare, appointed by the Minority Leader of the Senate;

- The chairperson and ranking minority member of the House Committee on Children and Seniors;

- A member of the House Committee on Children and Seniors, appointed by the Speaker of the House;

- One representative of KDADS appointed by the Secretary for Aging and Disability Services;

- One representative of the Department of Health and Environment appointed by the Secretary of Health and Environment;

- The State Long-term Care Ombudsman or the State Long-term Care Ombudsman's designee;

- An elder law attorney, appointed by the Governor;

- One representative of the Area Agencies on Aging, appointed by the Secretary for Aging and Disability Services;

- One representative of the Kansas Adult Care Executives Association, appointed by the Governor;

- One representative of LeadingAge Kansas, appointed by LeadingAge Kansas;

- One representative of the Kansas Health Care Association, appointed by the Kansas Health Care Association;

- One representative of Kansas Advocates for Better Care, appointed by Kansas Advocates for Better Care;

- One representative of the Kansas Hospital Association, appointed by the Kansas Hospital Association;

- One representative of community mental health centers, appointed by the Association of Community Mental Health Centers of Kansas;

- One representative of an adult care home, appointed by the Secretary for Aging and Disability Services;

- One representative of the American Association of Retired Persons (AARP), appointed by AARP;

- One representative from the home and community-based services community, appointed by InterHab;

- One representative of the Alzheimer's Association, appointed by the Alzheimer's Association; and

- A consumer of Kansas senior services, appointed by the Speaker of the Silver Haired Legislature.

The bill requires the first members of the Task Force to be appointed on or before August 1, 2021. The appointing authorities are required to provide notice of the appointments to the Secretary for Aging and Disability Services on the date of such appointment.

Vacancies on the Task Force shall be filled by appointment and accompanied by notice to the Secretary for Aging and Disability Services in the manner provided for the original appointment.

Task force leadership and public records custodian. The chairperson of the House Committee on Children and Seniors will serve as the first Task Force chairperson, and the chairperson of the Senate Committee on Public Health and Welfare will serve as the first vice-chairperson. The chairperson and vice-chairperson positions will alternate annually at the first meeting of the Task Force in each calendar year.

The chairperson of the Task Force will serve as the official custodian of the public records of the Task Force.

Compensation. If approved by the Legislative Coordinating Council, Task Force members attending meetings authorized by the Task Force will receive compensation as provided under KSA 75-3223(e), except Task Force members employed by a state agency will be reimbursed by such state agency.

Meetings. The Task Force is authorized to meet in an open meeting at any time and at any place in the state upon the call of the chairperson. A majority of the voting members shall constitute a quorum. Any action by the Task Force shall require a motion adopted by a majority of voting members present when there is a quorum.

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

Data and Information Provided

KDADS, upon the request of the Task Force, is required to provide data and information on senior services in the state that are not prohibited or restricted from disclosure by state or

federal law, including conditions imposed by federal law or rules and regulations for participation in federal programs administered by the Secretary for Aging and Disability Services.

Annual Report

On or before the beginning of the 2022 Legislative Session, the Task Force is required to submit a preliminary progress report to the Legislature detailing the Task Force's study. A final report of the Task Force's study is due to the Legislature on or before the beginning of the 2023 Legislative Session. The bill requires the report to include recommended improvements regarding the well-being of Kansas seniors, including recommended changes to state statutes, rules and regulations, policies, and programs.

Elder and Dependent Adult Abuse Multidisciplinary Teams

The bill creates and amends law regarding elder and dependent adult abuse multidisciplinary teams.

The bill requires the Attorney General to appoint a Kansas elder and dependent abuse multidisciplinary team coordinator (coordinator) and, within limits of available appropriations, appoint such additional staff as necessary to support the coordinator. The coordinator must facilitate the convening of an elder and dependent adult abuse multidisciplinary team (team) in each judicial district.

Each team shall be composed of the following individuals, or their designees:

- The sheriff of each county within the judicial district;
- The county or district attorney of each county within the judicial district;
- The Secretary for Children and Families;
- The Secretary for Aging and Disability Services; and
- The State Long-term Care Ombudsman.

The bill allows each team to also include the following individuals:

- A representative from any law enforcement agency not already included;
- A medical provider;
- A legal services provider;
- A housing provider or representative of elder or dependent adult housing facilities;

- The district coroner or a medical examiner;
- A representative of the financial services or banking industry;
- A representative of the Area Agencies on Aging; or
- Any other individual deemed necessary by the team.

Each team must coordinate investigations of elder and dependent adult abuse, as defined by the relevant statutes, and is authorized to identify opportunities within local jurisdictions to improve policies and procedures in the notification of and response to abuse, neglect, and exploitation of elder or dependent adults, within the limits of local resources.

Each team shall determine the manner and frequency of meetings and must meet at least quarterly. Meetings are not subject to the provisions of the Kansas Open Meetings Act.

Each team may create and enter into memorandums of understanding with any governmental agency or private entity deemed necessary by the team.

All documents, materials, and other information obtained by or discussed by a team are confidential and privileged and not subject to the Kansas Open Records Act. This records provision expires on July 1, 2026, unless the Legislature reviews and reenacts the provision prior to that date.

Beginning in 2022, the Attorney General must submit a report to the Legislature on or before the first day of each regular legislative session regarding the implementation and use of the teams.

The statute creating the Abuse, Neglect, and Exploitation of Persons Unit (Unit) in the Office of the Attorney General is amended to allow the Unit to assist in any investigation or discussion of any elder and dependent adult abuse multidisciplinary team, pursuant to the bill.

Abuse, Neglect, or Financial Exploitation of Adults

The bill amends law related to the abuse, neglect, or financial exploitation of adults, as follows.

Definitions

The bill amends definitions related to the abuse, neglect, or exploitation of certain adults to remove the definition of "fiduciary abuse," remove references to fiduciary abuse and omission or deprivation of goods or services in the definition of "abuse," rename "exploitation" to "financial exploitation," and redefine "financial exploitation" as the unlawful or improper use, control, or withholding of an adult's property, income, resources, or trust funds by any other person or entity in a manner that is not for the profit of or to the advantage of the adult, which includes, but is not limited to:

- The use of deception, intimidation, coercion, extortion, or undue influence by a person or entity to obtain or use an adult's property, income, resources, or trust funds in a manner for the profit of or to the advantage of such person or entity;

- The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, as it relates to the property, income, resources, or trust funds of the adult; or

- The obtainment or use of an adult's property, income, resources, or trust funds, without lawful authority, by a person or entity who knows or clearly should know the adult lacks the capacity to consent to the release or use of such adult's property, income, resources, or trust funds.

The bill defines "act" to refer to this statute and following statutes.

Mandatory Reporters

The bill amends the statute governing mandatory reporters of adult abuse, neglect, or exploitation to reorganize the list of mandatory reporters, update the titles of some mandatory reporters, and add the following to the list of mandatory reporters:

- Persons engaged in postgraduate training programs approved by the State Board of Healing Arts;

- Persons licensed by the Board of Examiners in Optometry to engage in the practice of optometry;

- School administrators or other employees of any Kansas educational institution that the adult is attending;

- Firefighters; and

- Court services officers, community corrections officers, and mediators.

The circumstances under which a mandatory reporter is required to report, and under which other persons may report, are amended to reflect changes in terminology made elsewhere in the bill.

Department for Children and Families Duties Upon Report; Authority of Secretary

The bill amends the statute governing the duties of the Department for Children and Families (DCF) upon receiving a report of adult abuse, neglect, or exploitation to increase from 30 to 60 working days the time DCF has to complete a thorough investigation and evaluation upon receiving a report of financial exploitation. [*Note:* The deadline for investigation and evaluation of reports of abuse or neglect remains at 30 working days.]

DCF's duty to make a personal visit with the involved adult upon receiving a report is changed to require a face-to-face visit.

The bill adds a provision requiring the Secretary for Children and Families to forward any substantiated finding of abuse, neglect, or financial exploitation alleged to have been committed by a provider of services licensed, registered, or otherwise authorized to provide services in Kansas to the appropriate state regulatory authority. Language allowing such authority to consider this finding in any disciplinary action taken with respect to such provider is moved from a continuing provision regarding forwarding of findings to this provision regarding forwarding of substantiated findings.

A provision requiring DCF to inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations were substantiated, that corrective measures will be taken, is amended to instead require DCF to inform the complainant, upon request of the complainant, that an investigation has been initiated.

A provision allowing DCF to inform the chief administrative officer of community facilities of confirmed findings of resident abuse, neglect, or exploitation is amended to require DCF to inform such officer, as well as chief administrative officers of nursing facilities, nursing facilities for mental health, intermediate care facilities for people with intellectual disability, assisted living facilities, residential health care facilities, and home plus, of substantiated findings of resident abuse, neglect, or financial exploitation.

This section, and a section addressing the authority of the Secretary for Children and Families under the act, are amended to reflect changes in terminology made by the bill.

Protective Services

The bill amends the statute governing when protective services are not provided to clarify language regarding consent and withdrawal of consent to such services.

Investigation of Adult Abuse; Agency Coordination and Cooperation

The bill amends a statute regarding investigation of adult abuse and agency coordination and cooperation regarding the same to reflect changes in terminology made by the bill.

State Child Death Review Board; Advisory Committee on Trauma; Child Abuse and Neglect; Family Foster Care Home Licensing; Joint Committee on Child Welfare System Oversight; HB 2158

HB 2158 amends law regarding the State Child Death Review Board (Board), the Advisory Committee on Trauma, the Kansas Code for Care of Children concerning investigations for child abuse or neglect, family foster home licensing, and eligibility for child care assistance and establishes the Joint Committee on Child Welfare System Oversight (Joint Committee).

State Child Death Review Board

The bill clarifies the language of an exception to the confidentiality of information acquired by and records of the Board for certain legislators and legislative committees and adds exceptions to confidentiality to allow the Board, or the Board's designee, to disclose information and records to:

- Any person or entity contracting with the Board, if the Board determines disclosure is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

- Any person or entity, if the information and records being disclosed are statistics or conclusions of the Board of the same type included in the Board's annual report;

- Any Kansas state or local law enforcement agency, if the Board determines the information and records being disclosed were not previously available to the law enforcement agency for the investigation of the cause of the child's death; and
    - The Board determines the cause of the child's death was from abuse or neglect; or
    - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation based on an official offense report as required in statute of abuse or neglect involving the death of a child;

- Any county or district attorney, if the Board determines the information and records being disclosed were not previously available to the county or district attorney for the prosecution of any crimes related to the cause of the child's death; and
    - The Board determines the cause of the child's death was from abuse or neglect; or
    - The Board does not determine the child's death was from abuse or neglect and has knowledge of a law enforcement investigation based on an official offense report as required in statute of abuse or neglect involving the death of a child;

- Any entity established by a city or county for the express purpose of providing a local review of child deaths if the information and records being disclosed are related to a child's death where either such death occurred in such city or county or such child was a resident of such city or county. The bill provides this exception expires on July 1, 2026, unless reviewed and reenacted by the Legislature prior to that date, and requires the Joint Committee created by the bill to review this exception;

- Any licensing body, as defined elsewhere in statute, if:

- The information and records being disclosed are related to a disciplinary complaint against a person licensed by such licensing body;
- Any member of the Board is under a professional obligation to make a disciplinary complaint against a person licensed by such licensing body; or
- A person licensed by such licensing body may have caused or contributed to the child's death; and

- A governmental agency or an organization that has a federal-wide assurance (FWA) for the protection of human subjects that is in good standing with the U.S. Department of Health and Human Services Office for Human Research Protections, if:
  - The agency or organization provides documentation that an institutional review board designated in the FWA has reviewed the organization's research proposal;
  - Personally identifiable information is redacted from the disclosure;
  - The disclosure is only for the purpose of health or education; and
  - The agency or organization requires all persons granted access to the disclosed information and records to sign a confidentiality agreement prior to receipt of the information and records.

Advisory Committee on Trauma

The bill removes the July 1, 2021, sunset date for authorization for the Advisory Committee on Trauma (ACT) and regional trauma councils to conduct closed sessions at meetings when reviewing trauma cases and any records or findings that are privileged.

Visual Observation During Investigations for Child Abuse or Neglect (Adrian's Law)

[*Note:* The bill contains a whereas clause designating these provisions as Adrian's Law.]

Concerning investigations related to reports of child abuse or neglect, the bill requires that a child who is an alleged victim of abuse or neglect be visually observed by either the employee of the Kansas Department for Children and Families (DCF) or the law enforcement agency investigating the report. The bill allows either the Secretary for Children and Families (Secretary) or the law enforcement agency to appoint a designee for observation.

In the event of a joint investigation by DCF and law enforcement, the bill requires the Secretary and the law enforcement agency to visually observe such child. All investigation reports required by the bill must include the date, time, and location of any such visual observation of a child. The bill allows both the Secretary and the law enforcement agency to appoint a designee for such observation.

Joint Committee on Child Welfare System Oversight

The bill establishes the Joint Committee and outlines the topics for Joint Committee review, provides for the appointment and compensation of Joint Committee members, establishes the frequency of meetings, requires an annual report to designated House and Senate leadership positions and certain standing committees, allows for professional services, and authorizes the Joint Committee to make recommendations and introduce legislation.

Topics for Review by Joint Committee

The Joint Committee is required to review the following:

- Data on child maltreatment and demographic trends impacting the child welfare system;

- Duties, responsibilities, and contributions of DCF, Kansas Department for Aging and Disability Services (KDADS), Kansas Department of Health and Environment (KDHE), Department of Corrections, law enforcement, and the Judicial Branch that comprise and impact the child welfare system;

- Programs, services, and benefits offered directly or through grants or contracts by DCF, KDADS, KDHE, and the Judicial Branch that impact children and families at risk of becoming involved or who are involved in the child welfare system, including:
    - Child maltreatment prevention;
    - Investigation of child maltreatment;
    - In-home family services, including services offered through federal prevention and family preservation funding; and
    - Foster care, reintegration, and adoption services;

- Trends, performance outcomes, activities, and improvement plans related to the federal child and family services reviews;

- Reports from child welfare-related groups, including citizen review panels, the Kansas Supreme Court Permanency Planning Task Force, the Kansas Children's Cabinet, and any interim study committees or work groups authorized by the Kansas Legislature;

- Implementation of the 2019 Child Welfare System Task Force Report recommendations, including top-tier recommendations related to the child welfare workforce, data technology, access to behavioral health care for high-risk youth, and implementation of the federal Family First Prevention Services Act;

- Reports on concerns received from the DCF child welfare ombudsman, customer service department, or similar office;

- Opportunities for Kansas to strengthen the child welfare system through evidence-based interventions and services for children and families;

- Data and trends on family foster home licenses issued pursuant to the exception created elsewhere in the bill;

- The exception added by the bill to confidentiality of Board records for city or county entities reviewing child deaths; and

- Any other topic the Joint Committee deems necessary or appropriate.

Membership

The bill provides for the appointment of 13 members to the Joint Committee, as follows:

- Two members of the House Committee on Children and Seniors by the Speaker of the House of Representatives;

- One member of the House Committee on Children and Seniors by the Minority Leader of the House of Representatives;

- Two members of the Senate Committee on Public Health and Welfare by the President of the Senate;

- One member of the Senate Committee on Public Health and Welfare by the Minority Leader of the Senate;

- Two members of the House of Representatives by the Speaker of the House of Representatives;

- One member of the House of Representatives by the Minority Leader of the House of Representatives;

- Two members of the Senate by the President of the Senate;

- One member of the Senate by the Minority Leader of the Senate; and

- One member of the House of Representatives appointed by the Majority Leader of the House of Representatives.

Terms of Membership

The bill requires members to be appointed for terms coinciding with the legislative terms for which such members were elected or appointed. Appointments to fill vacancies or to

succeed members appointed to the Joint Committee will occur in the same manner as the original appointment of the member succeeded.

Appointment of Chairperson, Vice-chairperson, and Ranking Minority Member

The President of the Senate is required to appoint the first chairperson from among the members of the Joint Committee appointed by the President of the Senate, within 30 days of the effective date of the bill. The bill requires the chairperson and vice-chairperson positions to alternate annually between the members appointed by the President of the Senate and the Speaker of the House of Representatives. When appointing a chairperson or vice-chairperson as provided in the bill, the President of the Senate and the Speaker of the House of Representatives are required to appoint a member from their respective chambers.

The bill requires the ranking minority member of the Joint Committee be from the same chamber as the chairperson. When appointing a ranking minority member as provided in the bill, the Minority Leader of the Senate and the Minority Leader of the House of Representatives are required to appoint members from their respective chambers.

Member Compensation

Joint Committee members will be paid compensation, amounts for travel expenses, and subsistence expenses or allowances for attendance at any meeting of the Joint Committee or any subcommittee meeting authorized by the Joint Committee.

Professional Services

The bill allows the Legislative Coordinating Council to provide for professional services as requested by the Joint Committee.

Recommendations and Introduction of Legislation

The bill authorizes the Joint Committee to make recommendations and introduce legislation it deems necessary in performing its functions.

Meetings

After the initial meeting, the Joint Committee is required to meet at least once during each of the first and second calendar quarters when the Legislature is in regular session and at least once during each of the third and fourth calendar quarters, on the call of the chairperson. The Joint Committee is limited to six meetings in a calendar year.

Seven members of the Joint Committee constitutes a quorum.

Annual Report

At the beginning of each regular session of the Legislature, the bill requires the Joint Committee to submit a written report to the President of the Senate, the Speaker of the House of Representatives, the House Committee on Children and Seniors, and the Senate Committee on Public Health and Welfare.

The report must include any recommended changes to current laws, rules and regulations, and policies regarding the safety and well-being of children in the child welfare system in the state.

Eligibility for Child Care Assistance

The bill amends law governing eligibility for non-temporary assistance for needy families (non-TANF) child care by adding an exemption to the 20-hour-per-week work participation requirement for adult caretakers of a child in custody of the Secretary in out-of-home placement who need child care assistance.

Family Foster Home Licensing

[*Note:* Although the statute makes other references to the Secretary of Health and Environment, who generally oversees child care licensing, 2015 Executive Reorganization Order No. 43 transferred responsibility for foster care licensing to the Secretary for Children and Families.]

The bill amends statutes governing restrictions on persons maintaining or residing, working, or volunteering at a child care facility. Specifically, the bill allows the Secretary to license a family foster home when a person who has been adjudicated as a juvenile offender for certain otherwise disqualifying acts under continuing law:

- Was a child in the custody of the Secretary and placed with such family foster home by the Secretary;
- Is 18 years of age or older; and
- Maintains residence at such family foster home or has been legally adopted by any person who resides at such family foster home.

To grant a license under this provision, the Secretary must determine there is no safety concern and that six months have passed since the date of adjudication.

The otherwise disqualifying acts covered by this provision include:

- Acts that if done by an adult constitute the commission of a felony that is a crime against persons;

- Any act described in the articles of the Kansas Criminal Code covering crimes against persons, sex offenses, or crimes affecting family relationships and children; and

- Certain acts described in the articles of the Kansas Criminal Code covering crimes involving violations of personal rights, crimes against the public safety, and crimes against the public morals.

CONCEALED CARRY

Concealed Carry Licenses, Kansas Protection of Firearms Rights Act; HB 2058

HB 2058 amends law related to the recognition and issuance of a concealed carry license (license), creates two concealed carry license classes, and creates the Kansas Protection of Firearms Rights Act.

License Reciprocity

The bill specifies a valid license or permit to carry a concealed firearm issued by another jurisdiction is recognized in Kansas while such permit or license holder is not a Kansas resident.

The bill provides valid licenses or permits issued by another jurisdiction entitle the lawful holder only to carry concealed handguns as defined in Kansas law, and it requires such persons to act in accordance with Kansas laws while carrying a concealed handgun in the state.

The bill also states criminal provisions in continuing law prohibiting the carrying of a concealed firearm by persons under age 21 do not apply to residents of another state who are less than 21 years of age and lawfully carrying a concealed firearm pursuant to a recognized out-of-state license.

The bill provides that recognition of a license or permit from another jurisdiction is not construed to impose a general prohibition on the open or concealed carrying of handguns, either loaded or unloaded, without a license.

Issuance of an Alternative License During Certain Circumstances

The bill requires the Attorney General to issue documents to concealed carry licensees (licensees) as an alternative to the physical card issued pursuant to continuing law, if the Attorney General determines it is impractical for the Division of Vehicles (Division), Department of Revenue, to issue such physical cards, and if the Attorney General determines such impractical conditions have lasted for at least 30 days.

The bill provides that, if such a determination is made, the alternative authorization document authorizes the licensee to exercise the rights and privileges to carry a concealed handgun, pursuant to the Personal and Family Protection Act (PFPA).

The bill states the alternative document must state it is proof that the licensee holds a valid license to carry concealed handguns and must include the same information included on a regular license card under continuing law, as follows:

- Licensee’s name;
- Licensee’s signature;
- Licensee’s address;

- Licensee's date of birth; and

- Licensee's driver's license number, nondriver's identification card number, or unique number for military applicants or their dependents as required by continuing law.

The bill further specifies that all such documents issued during the period of determined impracticality expire 90 days after such conditions have ceased and it is practical for the Division to resume issuing physical cards.

The bill also makes a conforming amendment to provisions regarding the issuance of a license, requiring issuance of such authorization documents within 90 days after receipt of a completed application, if the Attorney General has made a determination of impracticality with regard to card issuance.

Concealed Carry License Classes

The bill creates two license classes:

- A provisional license that can be issued to persons who are at least 18 years of age and meet the requirements in continuing law for issuance of a license; and

- A standard license for persons who are over 21 years of age and meet the requirements in continuing law for issuance.

[*Note:* Persons over 21 years of age can also carry a concealed firearm without a license pursuant to continuing law.]

The bill specifies that if a licensee holds a valid provisional license at the time a renewal application is submitted, then the Attorney General shall issue a standard license to the licensee if such person is not otherwise disqualified from holding a license. [*Note:* Continuing law provides that a license is valid for a period of four years.]

The bill requires a license to indicate whether it is a provisional or standard license.

The bill also makes conforming changes in statutes related to crimes and hunting to allow a person who holds a valid provisional license, but is under 21 years of age, to carry a concealed handgun in the same manner as an individual licensed under continuing law. Specifically, the bill amends statutes related to the following:

- Traffic in contraband in a correctional institution or care and treatment facility, specifying that provisional licensees may possess a firearm or ammunition while in a vehicle, or store such items in a vehicle;

- Criminal use of weapons, specifying that provisional licensees may possess a concealed handgun in or on certain school property or grounds and buildings used by a unified school district or accredited nonpublic school. [*Note:* The PFPA exempts public school district buildings from the adequate security requirements that must be met by other public buildings seeking to prohibit concealed carry of

weapons in such buildings, allowing school districts to restrict concealed carry of handguns in school buildings by posting signage.];

- Criminal carrying of weapons;

- Possession of a concealed handgun in certain government buildings; and

- Carrying a concealed handgun while hunting, fishing, or furharvesting.

The bill also makes conforming changes to the PFPA to carry out the provisions of the bill.

Kansas Protection of Firearms Rights Act

The bill enacts the Kansas Protection of Firearms Rights Act by amending law regarding criminal possession of a weapon by a convicted felon.

Lifetime Prohibition

The bill specifies, for convictions of a person felony or violation of certain controlled substances crimes prior to July 1, 2009, the convicting court would have had to find the person used a firearm in the commission of the crime, rather than having been in possession of a firearm at the time of the commission of the crime.

Three-year Prohibition

The bill prohibits possession of weapons, including firearms, by an individual as follows:

- Such individual has been convicted of a person felony or a crime under the law of another jurisdiction that is substantially the same as such person felony; or

- Such individual was adjudicated as a juvenile offender for a crime that if committed by an adult would constitute a person felony; and

- Such individual was not found by the convicting court to have used a firearm in the commission of the crime; and

- Less than three years have elapsed since such individual satisfied the sentence imposed or the terms of any diversion agreement or was discharged from supervision.

Eight-year Prohibition

Prior law prohibited possession of a weapon by persons:

- Convicted of certain controlled substances felony crimes; certain crimes against persons and property; sex offenses; or an attempt, conspiracy, or criminal solicitation of any such felony;

- Convicted of a crime under the law of another jurisdiction that is substantially the same as such felony; or

- Who have been released from imprisonment for such felony, or adjudicated as a juvenile offender because if committed by an adult, the crime would constitute the commission of such felony.

The bill clarifies law to provide that such provisions would apply if less than eight years have elapsed since the person satisfied the sentence imposed or the terms of any diversion agreement or was discharged from supervision.

The bill clarifies that persons convicted of certain controlled substance felony offenses prior to their 2010 recodification transfer are prohibited from possessing a weapon.

Three-month Prohibition

The bill would also prohibit possession of a weapon by an individual if:

- Such individual has been convicted of any other nonperson felony, other than those specified in the bill and continuing law, or a crime of another jurisdiction that is substantially the same as such nonperson felony; or

- Such individual was adjudicated as a juvenile offender because if committed by an adult, the crime would constitute the commission of such nonperson felony; and

- Less than three months have elapsed since such individual satisfied the sentence imposed or terms of any diversion agreement, or was discharged from supervision.

Expungement or Pardon of Felony Convictions

The bill removes the restriction on firearm possession for an individual who has had a felony conviction expunged or pardoned if a lifetime, three-year, or three-month weapons possession prohibition applies under the bill.

Expungement Proceedings

Prior law required a court to order a petitioner's arrest record, conviction, or diversion be expunged if the court makes certain findings. The bill requires, for petitions seeking expungement of a felony conviction, the court find that possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.

Concealed Carry License Application

The bill removes a provision that required the person disclose that the arrest, conviction, or diversion occurred, even if the associated records are expunged, when such person applies for a license.

Firearm Possession

The bill provides, when a person whose arrest record, conviction, or diversion of a crime that resulted in such person being prohibited by state or federal law from possessing a firearm has been expunged, it shall be deemed that such person's right to keep and bear arms is fully restored. The restoration of rights includes, but is not limited to, the right to use, transport, receive, purchase, transfer, and possess firearms. The bill specifies that the provisions concerning restoration of rights would include any orders issued prior to July 1, 2021.

Disclosure of Expunged Records

Continuing law provides expunged records may not be disclosed except when requested by certain persons. The bill amends provisions related to disclosure to the Attorney General by specifying such records can be disclosed to the Attorney General for any purpose authorized by law, except that such records cannot be the basis for the denial of a concealed carry permit.

The bill also amends provisions allowing disclosure to the Kansas Bureau of Investigation (KBI) to remove provisions allowing such records to be used in connection with a National Instant Criminal Background Check System (NICS) record check through the Federal Bureau of Investigation (FBI), to determine a person's qualifications to possess a firearm.

The bill further specifies, upon issuance of an expungement order, the KBI is required to report to the FBI that such expunged record should be withdrawn from NICS. The KBI is required to include such expungement order in the person's criminal history record for purposes of documenting the restoration of such person's right to keep and bear arms.

Rules of Evidence; Authentication and Exceptions; SB 122

SB 122 amends various sections within the Kansas Rules of Evidence (Rules).

Hearsay Evidence Exception—Business Records

The bill amends an exception to the general prohibition on hearsay evidence for business records to replace a requirement that a judge find certain conditions regarding the records with a requirement that the conditions be shown by the testimony of the custodian or other qualified witness or by a certification that complies with self-authenticating certification provisions added elsewhere by the bill for certified domestic records of a regularly conducted activity or certified foreign records of a regularly conducted activity.

Authentication of a Writing

The Rules have required authentication of a writing by certain means before it may be received in evidence and provide conditions under which certain documents that are at least 30 years old are sufficiently authenticated.

The bill replaces this provision with language requiring a proponent to produce evidence sufficient to support a finding that an item of evidence is what the proponent claims it is in order to satisfy the requirement of authenticating or identifying the item of evidence. The bill adds a non-exclusive list of examples, with explanations for each, of evidence that would satisfy the requirement.

These examples include:

- Testimony of a witness with knowledge;
- Nonexpert opinion about handwriting;
- Comparison by an expert witness or the trier of fact;
- Distinctive characteristics and the like;
- Opinion about a voice;
- Evidence about a telephone conversation;
- Evidence about public records;
- Evidence about ancient documents or data compilations;
- Evidence about a process or system; and
- Methods provided by a statute or rule.

Authentication of Copies of Records

The bill amends the section of the Rules governing authentication of copies of records to add a list of items of evidence that are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted.

The list includes:

- Official publications;
- Newspapers and periodicals;
- Trade inscriptions and the like;
- Acknowledged documents;
- Commercial paper and related documents;
- Presumptions under law;
- Certified domestic records of a regularly conducted activity;
- Certified foreign records of a regularly conducted activity;
- Certified records generated by an electronic process or system; and
- Certified data copies from an electronic device, storage medium, or file.

The list also includes additional explanations of and requirements for certifying the above items of evidence.

Original Document Required as Evidence; Exceptions

The bill amends the section of the Rules setting forth the general rule that an original writing is the only evidence that may be offered to prove its contents, subject to certain exceptions. The bill rewords the general rule to provide clarity. Additionally, the bill adds language to include recordings and photographs in the general rule and in the remainder of the section. The bill adds a provision stating a duplicate is admissible to the same extent as the original, unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

The bill adds a provision allowing the proponent to prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent is not required to account for the original. The bill rewords a provision regarding determinations made by the judge and determinations made by the trier of fact or jury to clarify its organization and wording.

The bill adds definitions for "photograph," "original," and "duplicate" to these provisions.

Statutory Speedy Trial; Deadline Suspension; Reports; Prioritization of Cases for Trial; HB 2078

HB 2078 suspends the provisions of the speedy trial statute in the Kansas Code of Criminal Procedure until May 1, 2023, in all criminal cases and removes a provision in the statute authorizing the Chief Justice to issue an order to extend or suspend any deadlines or time limitations and requiring trials to be scheduled within 150 days of termination of such order.

Additionally, the bill adds a provision requiring trial courts to consider relevant factors when prioritizing cases for trial, including, but not limited to:

- The trial court's calendar;

- Relative prejudice to the defendant;

- The defendant's assertion of the right to speedy trial;
- The calendar of trial counsel;
- Availability of witnesses; and
- The relative safety of the proceedings to participants as a result of the response to the COVID-19 public health emergency in the judicial district.

The bill requires the Office of Judicial Administration to prepare and submit a report to the Senate Committee on Judiciary and the House Committee on Judiciary on or before January 17, 2022, and January 16, 2023, containing the following information disaggregated by judicial district:

- Number of pending criminal cases on January 1, 2022, and January 1, 2023, respectively;
- Number of criminal cases resolved during FY 2021 and FY 2022, respectively, and the method of disposition in each case;
- Number of jury trials conducted in criminal cases during FY 2021 and FY 2022, respectively; and
- Number of new criminal cases filed in FY 2021 and FY 2022, respectively.

The bill states the amendments made by the bill are procedural in nature and shall be construed and applied retroactively.

Court-ordered Infectious Disease Testing; HB 2224

HB 2224 modifies the law governing court-ordered testing for infectious diseases.

Continuing law requires that at the time of an appearance before a magistrate judge, the magistrate shall inform any person arrested and charged with a crime in which it appears, from the nature of the charge, the transmission of body fluids from one person to another may have been involved, of the availability of infectious disease tests, and shall notify alleged victims that infectious disease tests and counseling are available.

The bill requires a court to order a person who has been arrested and charged to submit to infectious disease tests if:

- The victim of the crime or the county or district attorney requests the court to order such tests; or
- Such person stated they have an infectious disease or were infected with an infectious disease, or used words of like effect to the arresting law enforcement officer.

The bill also specifies convicted, rather than adjudicated, persons must pay restitution to the Department of Health and Environment (KDHE) for such costs.

The bill amends the definition of "infectious disease" for this purpose to include any diseases designated by KDHE as "infectious or contagious in their nature" through rules and regulations adopted pursuant to continuing law.

State of Disaster Emergency; Orders by Chief Justice; HB 2227

HB 2227 amends law governing orders issued by the Chief Justice to secure the health and safety of court users, staff, and judicial officers during a state of disaster emergency.

State of Disaster Emergency Suspension Orders

The bill amends a statute that allows the Chief Justice, during a state of disaster emergency, to issue an order to extend or suspend statutory deadlines or time limitations when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers, to also allow the Chief Justice to issue such orders during a state of local disaster emergency.

Orders issued may remain in effect up to 150 days after the termination of the applicable state of disaster emergency or state of local disaster emergency.

The bill also allows the Chief Justice to suspend appeals verification requirements contained in the Revised Kansas Code for the Care of Children if the above conditions are met.

Operation of Deadlines or Time Limitations Upon Termination of Order

The bill provides that on the date an order issued under this statute terminates, for a deadline or a time limitation that did not begin to run due to the order, a person shall have the full period provided by law to comply with such deadline or time limitation. For a deadline or time limitation that was extended or suspended due to the order, a person shall have the same number of days to comply with the deadline or time limitation as the person had when the deadline or time limitation was extended or suspended.

Audio-visual Communication

The bill amends the provision allowing the Chief Justice to issue an order to authorize the use of two-way electronic audio-visual communication in any court proceeding after a determination that such action is necessary to secure the health and safety of court users, staff, and judicial officers, to also authorize such action when necessary to expeditiously resolve pending cases.

Sunset Provision

The bill extends the sunset for the provisions relating to the Chief Justice's authority to issue orders to extend or suspend statutory deadlines, time limitations, or appeals verifications from March 31, 2021, to June 30, 2022.

Certified Drug Abuse Treatment Program—Divertees; Jurisdiction and Supervision for 2003 SB 123 Program; Community Corrections Services Program; Amendments to Corrections-related Crimes; HB 2026

HB 2026 establishes a certified drug abuse treatment program for certain persons who have entered into a diversion agreement pursuant to a memorandum of understanding and amends law related to supervision of offenders and the administration of certified drug abuse treatment programs. It also amends law to change penalties for crimes involving riot in a correctional facility and unlawfully tampering with an electronic monitoring device.

Certified Drug Abuse Treatment Program—Divertees

The bill establishes a certified drug abuse treatment program (program) for certain persons who enter into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill allows eligibility for participation in a program for offenders who enter into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021, for persons who have been charged with felony possession of a controlled substance and whose criminal history score is C or lower with no prior felony drug convictions.

[*Note:* Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. Felony drug possession is currently classified as a drug severity level 5 felony. An offender is classified as criminal history C if the offender has one person felony and at least one nonperson felony.]

The bill also provides that, as part of the consideration of whether to allow a person to enter into such a diversion agreement, a person who meets the criminal charge and history requirements shall be subject to:

- A drug abuse assessment that is required to include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the divertee; and

- A standardized criminal risk-need assessment specified by the Kansas Sentencing Commission (Commission).

The bill further requires the diversion agreement to include provisions that require the divertee to comply with and participate in a program if the divertee meets the assessment criteria set by the Commission, with a term of treatment not to exceed 18 months.

Supervision

The bill provides that divertees who are committed to a program could be supervised by community correctional services or court services pursuant to an MOU. A divertee will be discharged from the program if the divertee:

- Is convicted of a new felony; or
- Has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the program, in the opinion of the county or district attorney.

If a divertee is discharged, such person will be subject to the revocation provisions of the respective diversion agreement.

Definitions

The bill defines "mental health professional" for this purpose to include:

- Licensed social workers;
- Persons licensed to practice medicine and surgery;
- Licensed psychologists;
- Licensed professional counselors; or
- Registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the Secretary of Corrections to treat persons pursuant to continuing law.

The bill defines "divertee" to mean a person who has entered into a diversion agreement pursuant to continuing law and amendments made by the bill.

Memorandum of Understanding

The bill amends law related to diversion agreements by adding provisions related to an MOU.

The bill allows a county or district attorney to enter into an MOU with the chief judge of a judicial district or community correctional services to assist with the supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney will retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement will be revoked.

The bill requires an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal-risk needs assessment;
- Payment of costs for supervision; and
- Waiver of the supervision fee established by the bill.

The bill authorizes the Office of Judicial Administration to adopt guidelines regarding the content of an MOU between a county or district attorney and the chief judge of a judicial district and the administration of a supervision program operating pursuant to such MOU.

The bill amends law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

Supervision Fees

The bill provides that divertees who are supervised pursuant to an MOU will be required to pay a supervision fee in the amount established in continuing law for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged. The bill allows a county or district attorney, in accordance with an MOU, to reduce or waive the supervision fee.

The bill requires the county or district attorney to collect supervision fees, with the moneys collected to be paid into the county general fund and used to fund the costs of diversion supervision performed pursuant to the MOU.

The bill also requires divertees who are supervised pursuant to an MOU to pay the actual costs of urinalysis testing required as a term of supervision. Payments for such testing must be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing can be reduced or waived by the county or district attorney.

The bill further requires county or district attorneys to determine the extent, if any, that a divertee is able to pay for assessment and treatment, and the bill requires such payments to be used by the supervising agency to offset costs to the State or county. If such financial obligations are not met or cannot be met, the county or district attorney must be notified for the purpose of collection or review and further action on the diversion agreement.

Jurisdiction and Supervision for 2003 SB 123 Program

The bill amends law related to jurisdiction of, supervision of participants in, and eligibility for the nonprison sanction of placement in a certified drug abuse treatment program (2003 SB 123 Program).

Jurisdiction and Supervision

The bill provides that, when a defendant is sentenced to the nonprison sanction of placement in a certified drug abuse treatment program, the district court from which the defendant is on parole, on probation, assigned to a community correctional services program, or under a suspended sentence, may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

The bill specifies that, if an offender is permitted to leave the judicial district of the sentencing court, the court may:

- Transfer supervision over the offender from that judicial district to another; and
- Either transfer or retain jurisdiction of the offender.

Eligibility

The bill amends a provision related to the assignment of a risk status by a criminal risk-need assessment to remove a requirement that the assessment assign either a high- or low-risk status.

The bill also removes a requirement that an offender be assigned a high-risk status on the drug abuse assessment and a moderate- or high-risk status on the criminal risk-need assessment in order to participate in the 2003 SB 123 Program. The bill requires the Commission to determine the criteria for participation in the 2003 SB 123 Program.

Community Corrections Services Program

Continuing law allows for assessment of certain felony offenders by a standardized risk assessment tool specified by the Commission, and for placement of certain felony offenders in a community corrections services program that provides supervision, treatment, and other services to offenders.

The bill allows the Commission to determine an appropriate risk level for placement in the program, and it removes the requirement that offenders be assigned certain risk levels in order to participate.

Riot and Incitement to Riot in a Correctional Facility

The bill increases the criminal penalties for riot and incitement to riot when the crime occurs in a correctional facility. The bill defines “correctional facility” for this purpose as a jail or a correctional institution as defined by continuing law.

Riot

Continuing law defines “riot” to mean five or more persons acting together and without lawful authority engaging in any:

- Use of force or violence that produces a breach of the public peace; or

- Threat to use such force or violence against any person or property if accompanied by power, or apparent power, of immediate execution.

The bill increases the penalty for riot, when it occurs in a correctional facility, from a class A misdemeanor to a severity level 8 person felony.

Incitement to Riot

Continuing law defines "incitement to riot" to mean, by words or conduct, knowingly urging others to engage in a riot, under circumstances that produce a clear and present danger of injury to persons or property or a breach of the public peace.

The bill increases the penalty for incitement to riot, when it occurs in a correctional facility, from a severity level 8 person felony to a severity level 6 person felony.

Unlawfully Tampering with Electronic Monitoring Equipment

The bill lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a severity level 8 nonperson felony when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a felony.

The bill also lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a misdemeanor or for court-ordered supervision in a civil case.

Stalking a Minor; Penalties; HB 2071

HB 2071 amends the definition of the crime of stalking to include intentionally engaging in a course of conduct targeted at a specific child under the age of 14 that would cause a reasonable person in the circumstances of the targeted child, or a reasonable person in the circumstances of an immediate family member of such child, to fear for the child's safety.

The penalty for the new provision is a severity level 7 person felony for a first conviction and a severity level 4 person felony for a second or subsequent conviction.

Mistreatment of a Dependent Adult or Elder Person; Absconding from Supervision; Sureties; Delivery of a Person Arrested; Certificate of Identification; Parole and Postrelease Supervision Guidance; HB 2121

HB 2121 amends the penalties for the crime of mistreatment of a dependent adult or elder person, defines the term "absconds from supervision," amends law regarding sureties and delivery of a person arrested, amends law concerning proof of identity documents accepted for the issuance of a replacement driver's license, and requires the Secretary of Corrections to develop guidance for parole officers to use while supervising offenders on parole and postrelease supervision.

Mistreatment of a Dependent Adult or Elder Person

The bill amends the crime of mistreatment of a dependent adult or elder person to raise the penalty:

- From a severity level 5 person felony to a severity level 2 person felony when the crime involves infliction of physical injury, unreasonable confinement, or unreasonable punishment and the victim is a dependent adult who is a resident of an adult care home during the commission of the offense; and

- From a severity level 8 person felony to a severity level 5 person felony, when the crime involves omission or deprivation of treatment, goods, or services that are necessary to maintain physical or mental health of the victim and the victim is a dependent adult who is a resident of an adult care home during the commission of the offense.

Absconding from Supervision

The bill adds a definition of "absconds from supervision" to the Kansas Code of Criminal Procedure (Code). The bill defines the term to mean knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising court services officer or community correctional services officer.

The bill also adds a definition of "absconded from supervision" in a statute relating to parole. The bill defines the term to mean knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising parole officer, court services officer, or community correctional services officer.

Sureties; Delivery of a Person Arrested

The bill amends law related to sureties in the Code to state any person who is released on an appearance bond may be arrested and delivered to a custodial officer of the court by a surety or surety's designee in the county where the complaint subject to the bond was filed.

Under former law, sureties seeking discharge of an appearance bond may do so in any county in the state in which the person is charged.

The bill defines "custodial officer of the court" as the sheriff or keeper of the jail in the county.

Certification of Identification

The bill expands the list of proof of identity documents accepted by the Division of Vehicles, Kansas Department of Revenue, for the issuance of a replacement driver's license to include a certification of identification issued by a court services officer.

The bill specifies such certification could be issued by a supervising agency to offenders under probation supervision of such agency.

Parole and Postrelease Supervision Guidance

The bill requires the Secretary of Corrections to develop guidance for parole officers to use while supervising offenders on parole and postrelease supervision. The bill requires the guidance to include intervention responses to behavior that constitutes a violation of parole or postrelease supervision and incentive responses to compliant behavior and pro-social achievements.

High Performance Incentive Program; Decoupling Kansas Industrial Training and Kansas Industrial Retraining; SB 65

SB 65 decouples participation in the Kansas Industrial Training program or the Kansas Industrial Retraining program as a method to qualify for the High Performance Incentive Program (HPIP) tax credit. The bill also eliminates the HPIP certification and recertification by a business to dedicate 2.0 percent of payroll for training purposes.

The bill also allows a company to transfer up to 50 percent of HPIP tax credits to another company or individual per year. Transferability is allowed only for projects placed into service on or after January 1, 2021. In the event a transferee's tax liability is less than the amount transferred, the transferee may carry forward the credits for up to 16 years. The bill states in the event the Secretary of Revenue determines a tax credit is not allowable, the taxpayer who originally earned the credit is liable for the amount that is disallowed.

Angel Investor Tax Credit; SB 66

SB 66 revises certain tax credits pertaining to angel investors and home renovations for disabled family members.

Angel Investor Tax Credit

The bill revises the Kansas Angel Investor Tax Credit Act (Act) by extending the sunset on the program from tax year 2021 to tax year 2026, amending applicable definitions, removing certain program restrictions, and increasing program tax credit amounts and annual program limits.

Program Sunset

The bill extends the sunset on the angel investor tax credit from tax year 2021 to tax year 2026.

Definitions

The bill amends the definition of "qualified securities" with respect to the use of debt instruments as qualifying forms of investment. Debt instruments permitted to be used as a form of investment include any debt that:

- Is subordinate to the creditors of the business receiving the investment;
- Requires no payment by such business; and
- Will convert to some form of equity before the business receives any additional funds.

Tax Credit Limits

The bill makes the following changes to limits on tax credit dollar amounts:

- Increases single-year tax credit amounts:
  - From $50,000 to $100,000 for a single Kansas business; and
  - From $250,000 to $350,000 for a single qualified investor;
- Changes the maximum value of the tax credit from equal to 50 percent, to up to 50 percent of the qualifying investment; and
- Sets annual tax credit limits at $6.0 million in tax years 2021 and 2022, with a $500,000 increase each tax year after that through tax year 2026:
  - Any unused tax credits for a given year will be carried over for use in future tax years until tax year 2026.

Restrictions on Investments and Investors

The bill removes or modifies certain restrictions on investments and investors:

- Venture capital companies are permitted to receive tax credits;
- Investments in Kansas Venture Capital, Inc., are permitted;
- The bill requires an investor, in order to receive a transferable credit, to have no current tax liability at the time of investment, rather than no tax liability for the preceding three years;
- The recipient of a transferable credit will not need to be an accredited investor as defined by federal regulation (17 CFR 230.501(a)); and
- Provided that an investment was made lawfully, investors will not lose any tax credits if the business in which the investment was made were to lose its designation as a qualified business.

Clawback Provision

The bill modifies the clawback provision in the Act. Formerly, any business receiving financial assistance under the Act was required to make repayment to the Kansas Department of Commerce if the business ceases to be a qualified business or moves its operations outside of Kansas within ten years. The bill requires bioscience businesses to meet these qualifications for a minimum of ten years and any other business to meet these qualifications for five years.

Home Renovation Tax Credit for Disabled Family Members

The bill increases the maximum tax credit, from $9,000 to $15,000, for home renovations made for a disabled family member's access. Under former law, the tax credit that may be claimed was equal to the lesser of either $9,000 or the applicable percentage of construction expenditures, which decreases as the taxpayer's federal adjusted gross income (FAGI) increases; a taxpayer with an FAGI no greater than $25,000 can claim the full credit. The bill allows taxpayers with an FAGI of $60,000 or less to be eligible for a tax credit of $15,000. The bill phases out the credit by increments of 10.0 percent for each $10,000 increase in FAGI. The bill also distinguishes tax credits eligible for married individuals filing jointly and all other individual taxpayers, who are eligible for the maximum credit if their FAGI is no greater than $40,000.

Under former law, if a taxpayer's liability was less than $2,250, then portions of the credit may be refundable in the first, second, and third years equal to one-fourth, one-third, and one-half of the credit, respectively. The bill increases the taxpayer's liability threshold from $2,250 to $3,750.

Starting in tax year 2022 and for all subsequent tax years, the bill adjusts the maximum tax credit and the tax liability threshold by a cost-of-living amount determined under Internal Revenue Code section 1(f)(3).

Rural Housing Incentive Districts; SB 90

SB 90 allows vertical renovations of certain buildings for residential purposes to be a permitted use of bond proceeds and amends definitions under the Kansas Rural Housing Incentive District Act.

The bill provides that, within a rural housing incentive district, proceeds from the special obligation bonds may be used for the renovation of buildings that are located in central business districts and exceed 25 years of age as certified by the Secretary of Commerce.

The bill also limits the eligible improvements to those on the second or higher floor of a building that are residential in nature. Improvements for commercial purposes are not eligible improvements under the program.

The bill amends the definition of an eligible city to remove the population limit of less than 80,000 for the county in which the city is located. The population limit of less than 60,000 for the city remains.

The bill also amends the definition of an eligible county to increase the county population limit from 60,000 to 80,000.

STAR Bonds Renewal and Modification; House Sub. for SB 124

House Sub. for SB 124 supplements, amends, and reauthorizes the Sales Tax and Revenue (STAR) Bonds program (program).

Restriction on Financial Benefits

The bill states no state or local government official shall be employed by a STAR Bond project developer or manager through direct employment or through work as an independent contractor.

The bill defines a "state or local government official" as:

- A member of the Legislature;
- An appointed or elected official or officer of a state agency, office, board, commission, authority, or institution; and
- An appointed or elected official, officer, or member of the governmental authority of a city, county, township, school district, special district, board, or commission.

Definitions

The bill adds "major business facility" to the list of types of areas or facilities defined as "eligible areas" for the program. A "major business facility" is defined as a significant business headquarters or office building that is designed to draw a substantial number of new visitors to Kansas. The term "substantial" is not defined. The bill requires major business facilities to meet sales tax increment revenue requirements established by the Secretary of Commerce (Secretary) independent of associated retail businesses located in the STAR Bond project district and agree to provide visitor tracking data, including aggregate visitor residence zip code data, to the Secretary.

The bill also adds a "rural redevelopment project" to the list of eligible costs for which a STAR Bond project could expend funds. A "rural redevelopment project" is defined as a project that is not in a city with a population of more than 50,000; has regional importance; has a minimum of $3.0 million in capital investment; allows for vertical building and rehabilitation; and would enhance the quality of life in the community and region. The bill does not specify what is considered an enhancement of quality of life for the community and region.

The definition of "STAR Bond project district" is amended to state if a project is in a metropolitan statistical area, as defined by the federal Office of Management and Budget, then the district must be a contiguous parcel of real estate.

The bill amends the definition of "commence work" to require the work be done pursuant to an approved plan of construction. The bill amends the definition of "developer" to include, for reporting purposes, the names of the owners, partners, officers, or principals of the developer.

Eligibility

The bill adjusts the eligibility requirements for a project under the program by increasing the minimum required capital investment and projected gross annual sales amounts from $50.0 million each to $75.0 million each, or $40.0 million each if the project is in a metropolitan area with a population between 50,000 and 75,000 and the project is deemed of high value by the Secretary.

The bill also includes rural redevelopment projects, as defined in the bill, as being eligible for the program.

Project Proposal

The bill clarifies and expands requirements that must be fulfilled prior to consideration or approval of a project under the program.

A city or county wishing to propose a project must first have a feasibility study conducted by one or more consultants. The bill requires these consultants to be selected and approved by the Secretary, and the costs paid by the developer, city, or county in question. The bill also gives the Secretary control and oversight over the scope of the project. The Secretary is also allowed to establish a list of preapproved consultants and preapproved study parameters and methods.

The "visitation expectations" element of the proposal is required to contain a plan detailing how the project's number of visitors would be tracked and reported to the Secretary on a yearly basis. The plan must include the reporting of visitor zip code data to the Secretary in an aggregate manner without personal identifying information.

The bill requires the economic impact portion of a feasibility study for a STAR Bond project to include the anticipated effects of the project on the regional and statewide economies.

The bill also requires a net return on investment analysis; a summary of community involvement, participation, and support for the project; and a full disclosure of all federal, state, and local tax incentives applicable to the STAR Bond district to be included in the proposal. The information concerning tax incentives must be provided at the public hearing considering the adoption of the STAR Bond project plan.

The bill requires the resolution and ordinance required upon a city or county establishing a STAR Bond project district to include a description of all federal, state, and local tax incentives applicable to the STAR Bond district and any business located in the district.

The bill clarifies that if a developer has not commenced work on the project within two years of approval of the STAR Bond project plan, funding will cease, and the developer can resubmit the project to the Secretary for reapproval within one year.

Financing

Rural redevelopment projects can finance projects from sales tax revenues annually up to $10.0 million and are not required to issue special obligation bonds unless the amount to be financed exceeds $10.0 million for each project.

The bill states for all projects established after July 1, 2021, with existing sales tax revenue, such pledge cannot exceed 90.0 percent of new state sales tax collections in excess of the existing base sales tax revenue.

Reporting and Website Links

The bill requires the annual STAR Bond report provided by the Department of Commerce to the Legislature to include information on gross annual sales, gross annual sales projected pursuant to the STAR Bond project plan and feasibility study, and gross annual sales required to meet bond debt service requirements and other expenses. The report must also include visitor tracking plan data, including zip code residence data and a description of all federal, state, and local tax incentives applicable within the STAR Bond district or to any business located in the district.

The bill requires cities, counties, and developers to provide all information requested by the Secretary for the Department of Commerce Economic Development Incentive Program Database.

The bill requires cities and counties that have websites to include on the first page of their websites notice for the public hearing to consider the establishment of a STAR Bond district; the ordinance or resolution, including the STAR Bond project district plan and legal description of the district; and any information concerning public hearing records and feasibility studies for STAR Bond projects. Additionally, the bill requires direct links to information for each STAR Bond project within the Department of Commerce Economic Development Incentive Program Database.

Sale of Land

Any transfer of ownership in real property acquired with the proceeds of STAR Bonds under the program requires authorization from the Secretary and, while STAR Bonds remain outstanding, the disclosure of the sale price and the name of the purchaser and any individual owner, partner, officer, or principal of the purchaser.

Sunset

The program is authorized until July 1, 2026.

In-person K-12 Instruction; House Sub. for SB 63

House Sub. for SB 63 requires all unified school districts in the state to provide a full-time, in-person attendance option for all students enrolled in kindergarten through grade 12 beginning no later than March 31, 2021, for school year 2020-2021.

Promise Scholarship; HB 2064

HB 2064 establishes the Kansas Promise Scholarship Act (Act), which provides scholarships for students to attend an "eligible postsecondary educational institution." The Act makes the State Board of Regents (Board) the administering agent.

Definitions

The bill defines "eligible postsecondary institution" (institution) to mean one of the following:

- Any community college or technical college established by state statute;
- The Washburn Institute of Technology; or
- Any independent, not-for-profit, postsecondary institution whose main campus or principal place of operation is in Kansas that offers a program eligible under the Act, maintains an open enrollment, and is accredited by a nationally recognized accrediting agency for higher education.

The bill defines a "promise eligible program" (eligible program) to mean any two-year associate degree program, career and technical education certificate, or stand-alone program identified by the Board, or an eligible program as designated by the institution pursuant to Section 3 of this bill.

The bill also defines "military servicemember" as it is defined in law regarding expedited occupational or professional licensing for servicemembers and "part-time student" as a student enrolled for at least six credit hours in a semester who is not enrolled as a full-time student.

Administration

Rules and Regulations

The bill requires the Board to adopt rules and regulations on or before March 1, 2022, pertaining to:

- Application deadlines for the scholarship;
- The appeals process for denial or revocation of a scholarship;

- Guidelines for the transferability of a graduated student's credits from an institution to a state educational institution or a municipal university;

- The terms, conditions, and requirements of the scholarship agreement between the Board and the student;

- Procedures for requesting and approving certain absences from an institution;

- Criteria for determining whether a student has fulfilled the employment and repayment requirements specified in the bill, including methods of repayment; and

- Criteria for determining whether special circumstances or good cause are present that prevent a student from completing the scholarship requirements.

Eligible Programs

The bill requires the Board to identify the eligible programs that are in the following fields of study:

- Information technology and security;
- Physical and mental health care;
- Early childhood education and development;
- Advanced manufacturing and building trades; or
- Those designated by the institution as promise eligible.

Other Responsibilities

The bill also requires the Board to:

- Work with community partners to publicize the Promise Scholarship Program (Program);

- Disburse funds to each institution;

- Request information from each institution;

- Ensure students fulfill the scholarship agreement; and

- Starting in January 2022, annually evaluate the Program and report to the standing education committees of the House of Representatives and the Senate.

Designation of an Additional Eligible Program by the Institution

The bill allows an institution to designate one additional eligible program outside of the specified fields if it is a two-year associate degree program, career and technical education certificate program, or stand-alone program that corresponds to a high-wage, high-demand, or critical-need field.

The bill further requires such institution have no less than one existing eligible program before the institution designates an additional eligible program. Once adopted, the institution must maintain the newly designated eligible program for no less than three years.

Appropriations

The bill requires the Program be subject to appropriations that will not exceed $10.0 million annually for FY 2022 and FY 2023. Beginning in FY 2024, all subsequent appropriations will not exceed 150.0 percent of the expenditures in the preceding year.

The amount of a student's scholarship for each semester is the aggregate of the amount of tuition and related fees or costs of the institution minus the aggregate amount of all other aid awarded to the student. The bill specifies aid includes any financial assistance that would not require repayment.

If a student is enrolled in an eligible program offered by a four-year postsecondary educational institution, the bill requires that the aggregate amount of tuition, fees, books, and materials for such program be considered the average cost of such program when offered by an institution that is not a four-year institution.

The bill prioritizes scholarships for eligible students whose family household incomes are less than or equal to the following amounts:

- $100,000 for a family of two;
- $150,000 for a family of three; and
- $150,000, plus $4,800 per additional family member beyond three.

Eligible students whose family household income exceeds these limits are eligible for scholarships under the Act only if scholarship money remains after awarding all other prioritized scholarships.

Eligibility for a Scholarship

The bill requires a student to meet the following criteria to be considered eligible for a scholarship:

- Be a resident of Kansas; and
    - In the past 12 months, have:
        - Graduated from an accredited Kansas public or private secondary school;

  - Completed the requirements for graduation from a non-accredited private secondary school, per KSA 72-4345; or
  - Attended an accredited Kansas public or private secondary school or non-accredited private school, per KSA 72-4345, and obtained a high school equivalency certificate;
- Be 21 years of age or older while having been a resident of Kansas for a minimum of three consecutive years; or
- Be a dependent child of a military servicemember permanently stationed in another state and have graduated from any out-of-state secondary school or obtained a high school equivalency certificate within the preceding 12 months;

- Complete a scholarship application as established by the Board;
- Enter into a scholarship agreement with the Board;
- Complete the Free Application for Federal Student Aid; and
- Enroll in an eligible program at an institution.

The bill further requires the student maintain satisfactory academic progress and satisfy the requirements of the scholarship agreement.

The bill does not prohibit a student enrolled in high school who received a postsecondary course credit from qualifying for the scholarship.

Scholarship Agreement, Repayment for Failure to Complete, and Completion of the Program

Scholarship Agreement

The bill requires the student to enter into a scholarship agreement with the institution to receive a scholarship. The scholarship agreement must contain the following criteria for eligible students:

- Enroll as a full- or part-time student in an eligible program at an institution and complete the Program within 30 months of the date upon which the first scholarship was awarded;
- Within six months of completing the eligible program:
  - Reside and work in Kansas for a minimum of two consecutive years; or
  - Enroll as a full- or part-time student at any public or not-for-profit postsecondary educational institution whose main campus or principal place of operation is in Kansas;

- Maintain records and make reports as required by the Board to document satisfaction of the requirements in this bill; and

- Repay the amount of scholarship received, upon failure to satisfy the requirements of the scholarship agreement.

Repayment

Failure to satisfy the requirements of a scholarship agreement will result in the scholarship recipient being liable for repayment to the Board in the amount of the awarded scholarship plus accrued interest. The interest is to be set at the rate of the Federal PLUS Program at the time the scholarship was awarded. Moneys collected in this manner are to be remitted to the State Treasurer to be put into the Kansas Promise Scholarship Program Fund. The bill allows installment payments to be made in accordance with Board rules and regulations, with payments to begin six months after the cause for the failure to satisfy the requirements as determined by the Board.

The Board is authorized to transfer any repayment account to a loan servicer or collection agency. The Board may postpone the requirements for good cause.

Completion of the Program

A scholarship recipient satisfies the requirements of the Program when the recipient:

- Completes the requirements of the scholarship agreement;

- Commences service as a military servicemember after receiving the scholarship;

- Fails to satisfy the requirements after making the best possible effort to do so as determined by the Board; or

- Is unable to satisfy the requirements due to disability or death of the recipient.

Kansas Promise Scholarship Program Fund

The bill establishes the Kansas Promise Scholarship Program Fund to be administered by the Board.

Kansas State Department of Education Degree Information; HB 2085

HB 2085 creates the Students' Right to Know Act, which requires the Kansas State Department of Education (KSDE) to ensure the distribution, electronic or otherwise, of certain information to all students in grades 7 through 12. Information to be distributed will include:

- The State Board of Regents degree prospectus information;

- The placement and salary report of the Kansas Training Information Program; and

- Any other information relevant to students' understanding of potential earnings as determined by the Department of Labor and each branch of the armed services of the U.S. military.

The bill also authorizes KSDE to enter into memorandums of understanding and other agreements with state agencies or other entities as needed to accomplish this task.

Education Appropriations and Program Changes; HB 2134

HB 2134 makes appropriations for the Kansas State Department of Education (KSDE) for FY 2021, FY 2022, and FY 2023; limits remote learning hours based on emergency circumstances of the individual student and school district; provides a different calculation for school finance related to remote learning; directs school districts to use needs assessment to ensure improvement in student academic achievement; amends the Kansas Challenge to Secondary School Students Act as it relates to dual and concurrent enrollment; amends law regarding the providing of the ACT, pre-ACT, and WorkKeys assessment to Kansas students; expands the Tax Credit for Low Income Students Scholarship Program; and directs KSDE to collaborate with the Department for Children and Families (DCF) to create a Kansas foster care children annual academic report card.

Appropriations for FY 2021, FY 2022, and FY 2023—KSDE

FY 2021

The bill modifies the State General Fund (SGF) appropriation, in FY 2021, for KSDE. The bill authorizes the following moneys appropriated from the SGF to be lapsed in FY 2021:

- $2.0 million for the Kansas Public Employees Retirement System (KPERS) non-unified school districts (USDs);

- $6.9 million for the KPERS-USDs;

- $1.2 million for the Mental Health Intervention Team (MHIT) Pilot Program;

- Any unencumbered balance in the Education Super Highway Account;

- $782,064 for the School District Juvenile Detention Facilities and Flint Hills Job Corps Center Grants;

- $140,755 for the Governor's Teaching Excellence Scholarships and Awards; and

- $18.9 million for State Foundation Aid.

FY 2022

The bill appropriates $2.8 billion, including $1.2 billion SGF, for FY 2022 for KSDE. Major SGF appropriations include:

- $14.1 million for operating expenditures;
- $41.9 million for KPERS-non-USDs;
- $538.0 million for KPERS-USDs;
- $25.8 million for KPERS layering payments;
- $78.5 million for Capital Outlay State Aid;
- $2.8 million for the ACT and WorkKeys Assessments Program;
- $7.5 million for the MHIT Pilot Program;
- $5.1 million for the School District Juvenile Detention Facilities and Flint Hills Job Corps Center Grants;
- $512.9 million for Special Education Services Aid; and
- $2.4 million for Supplemental State Aid.

The bill also appropriates funding from several no limit special revenue funds, including federal funds and fee funds, including $32.7 million from the Children's Initiatives Fund and $41.1 million from the Expanded Lottery Act Revenues Fund for KPERS-non-USDs.

The bill directs KSDE to expend $80,000 for the Center for READing project manager grant for FY 2022, all from federal funds received under COVID-19-related legislation. If federal funds cannot be used for the grant, then SGF moneys must be used.

The bill requires such project manager or managers to assist in the development and support of a Science of Reading curricula for State Board of Regents institutions based on the Knowledge and Practice Standards set by KSDE. The Center for READing will also develop and support resources—including a textbook, professional development, and a list of qualified trainers—for school districts.

The bill provides for several transfers and allows the Commissioner of Education to transfer any part of an appropriation from the SGF to another SGF item of appropriation in KSDE.

The bill lapses $3.3 million of the $2.4 billion appropriated in SB 66, the 2020 appropriations bill, from the SGF for State Foundation Aid for FY 2022. SB 66 (2020) also appropriated $521.2 million, all SGF, for Supplemental State Aid. The lapse of SGF for State

Foundation Aid and added funding for Supplemental State Aid are due to the adoption of the full 2020 Education Consensus Estimates.

The bill directs KSDE to expend $5.0 million for School Safety and Security Grants, $3.9 million for expanding the MHIT Pilot Program, and $100,000 for the Communities in Schools program, all from federal funds received under federal COVID-19-related legislation, unless the program would not qualify for the federal funds.

The bill further states the Legislature's recommendation that school districts provide additional compensation, of up to $500, to classroom teachers, paraprofessionals, and other school district hourly employees from federal moneys received under federal COVID-19-related legislation for extra duties performed during the pandemic. The bill defines "classroom teacher."

FY 2023

The bill appropriates from the SGF for FY 2023 $2.5 billion for State Foundation Aid and $534.1 million for Supplemental State Aid. The bill also authorizes expenditures from the State School District Finance Fund and the Mineral Production Education Fund.

Foster Care Report Card

The bill requires KSDE and DCF collaborate to create an annual foster care report card, which will be submitted to the House and Senate standing committees on education by January 15 each year. The report must include the following information regarding children in foster care:

- Graduation rate;
- State standardized assessment scores;
- Total and disaggregated number enrolled in a school district or accredited nonpublic school;
- De-identified disaggregated race and ethnic data for specific data sets;
- Additional data elements deemed appropriate by the KSDE and DCF; and
- Numbers and percentages of students in foster care who:
    - Were promoted to the next grade level;
    - Were suspended (including duration);
    - Were expelled;
    - Are meeting academic standards;
    - Are enrolled in a preschool-aged at-risk program, preschool pilot program, or early childhood special education program; and
    - Participated in the MHIT Pilot Program or similar mental health program.

The bill defines "school" as any school within a school district or a nonpublic school accredited by the State and "student in foster care" as an individual in the custody of DCF while attending school at any point during a school year in which the report card is required to be completed.

At-risk Services

The bill defines students as at-risk and eligible for programs and services, as permitted under Sections 20-22 of the bill, if the student meets one or more of the following criteria:

- Is not working at academic grade level;
- Is not meeting requirements for promotion to the next grade level or is failing subjects or courses of study;
- Is not meeting requirements for graduation from high school or has the potential to drop out of school;
- Has insufficient mastery of skills or is not meeting state standards;
- Has been retained;
- Has a high rate of absenteeism;
- Has repeated suspensions or expulsions from school;
- Is homeless or migrant;
- Is identified as an English language learner;
- Has social-emotional needs causing the student to be unsuccessful in school; or
- Is identified as a student with dyslexia or having characteristics of dyslexia.

Remote Learning and Waivers

Remote Learning and Enrollment

The bill provides that no school district, beginning in school year 2022, shall provide or offer more than 40 hours of remote learning to any student enrolled in the school district. The bill allows boards of education to authorize individual students to temporarily attend school through remote learning in excess of the 40-hour limitation when the student cannot reasonably attend in person due to illness, injury, or other extraordinary circumstance. The bill also allows the Kansas State Board of Education (State Board) to authorize a school district to provide remote learning in excess of 40 hours in the following circumstances:

- Upon the school district's application certifying that due to disaster, conditions resulting from widespread or severe property damage caused by the disaster, or other condition restricting the operation of the school for an inordinate period of time and a determination by the State Board that the school district cannot comply with such restriction without conducting up to 240 school term hours *via* remote learning; or

- Upon the school district's application for a waiver that certifies widespread or severe property damage restricting the operation of the school and a determination by the State Board that the school district cannot comply with this restriction without conducting remote learning beyond 240 school term hours.

The bill amends law to define any student who attends school through remote learning in excess of the 240 school-term hour limitation as a "remote learning student." The bill requires each school district that offers remote learning, on or before June 30 of each school year, to determine the remote enrollment of the district based on the number of remotely enrolled students, and the clerk or superintendent of that school district to certify to the State Board a report showing remote enrollment by the grades of the schools in that school district.

The bill requires the State Board to determine the number of remotely enrolled students by school district, provide remote enrollment state aid of $5,000 per remotely enrolled student, and notify each school district of the amount of remote enrollment state aid. The bill provides that remote enrollment state aid for students does not include students enrolled part-time in remote learning during the school day. The bill also requires the State Board to require each such school district return any payment over $5,000 (an overpayment) in the current school year for such students, or to deduct the excess amounts over $5,000 to be paid to the school district from future payments to be made to the school district.

The bill specifies that a remotely enrolled student is not included in the adjusted enrollment of the school district for the current school year. The bill requires each school district that determines remote enrollment for the purposes of this section to submit any requested documentation or information to the State Board.

The bill provides, if a school district is granted a waiver due to disaster by the State Board, the remote learning hour limitations would not apply and the school district shall not be required to determine remote enrollment and the State Board shall not be required to adjust the school district's funding.

Waiver

Continuing law allows the State Board to waive requirements for the duration of a school term in any school year upon the following criteria being met:

- Certification by a board of education that conditions restricting the operation of public schools for an inordinate period of time exist due to a disaster; and

- Determination by the State Board that the school district cannot reasonably adjust its schedule to comply with the law.

The bill removes "or other conditions restricting the operation of public schools" from the certification criterion and amends the definition of "disaster" as the occurrence of any widespread or severe damage, injury, or loss of life or property resulting from natural or man-made causes, removing references to declarations and orders and adding an epidemic to the definition.

Kansas Challenge to Secondary School Students Act (Kansas Challenge Act)

Kansas Challenge Act Reporting Requirements

The bill requires each postsecondary institution that accepts students for concurrent or dual enrollment to submit a report to the State Board of Regents. The report shall include, but not be limited to, the following:

- The number of students from each school district enrolled in the postsecondary institution, including the number of students in foster care;
- The number of students who successfully complete the courses in which they are enrolled;
- The tuition rate charged for concurrently or dually enrolled students compared to the tuition rate charged regularly enrolled students; and
- The portion of costs for concurrent and dual enrollment being paid by school districts.

The State Board of Regents is required to compile and present a summary report to the House and Senate standing committees on education on or before February 15 of each year.

Citation and Purpose

The bill states the purpose of the Kansas Challenge Act is to provide the means to school districts to encourage secondary students take advantage of all educational opportunities in Kansas.

Student Eligibility and Other Definitions

The bill amends the definition of "student" in the Kansas Challenge Act to require a student to have an individualized plan of study or an individualized education program. The new definition of student is a person:

- Enrolled in grades 10, 11, or 12 in a school district, or a gifted student enrolled in grades 9, 10, 11, or 12;
- With an individualized plan of study or an individualized education program;

- Who has demonstrated the ability to benefit from participation in the regular curricula of a postsecondary institution;

- Who has been authorized by their principal to apply for enrollment at a postsecondary institution; and

- Who is acceptable or has been accepted for enrollment at a postsecondary educational institution.

The bill amends the definition of "accredited independent institution" in the Kansas Challenge Act to include only not-for-profit postsecondary institutions and to specify the institution must be accredited by a nationally recognized accrediting agency.

Authority of School Districts and Notification Requirements

The bill allows school districts, at the discretion of the local boards of education, to pay for tuition, fees, books, materials, and equipment for any high school student who is concurrently or dually enrolled at a postsecondary educational institution (postsecondary institution). The bill authorizes a local board of education to pay all or a portion of those costs directly to the postsecondary institution by the school district. Students or their families are required to pay any portion of the costs not covered by the school district. School districts are also authorized to provide transportation for concurrently or dually enrolled students.

The bill requires postsecondary institutions to notify a student or a student's parent or guardian if the course in which a student is enrolled is not eligible for a systemwide transfer of college credit to another in-state postsecondary educational institution, as determined by the State Board of Regents.

The bill requires school districts to grant high school credit to concurrently or dually enrolled students who satisfactorily complete course work at a postsecondary institution.

The bill prohibits school districts from paying for technical education courses that are part of the Excel in Career Technical Education program (also known as 2012 SB 155 courses) administered by the State Board of Regents.

In order to remain eligible for participation, the bill requires students to remain in good standing at the postsecondary institution in which they are enrolled or show satisfactory progress as determined by their school district.

Using Needs Assessment in the District Budget Process

The bill amends law requiring the board of education of each school district to conduct an assessment of the educational needs of each school in the district and utilize the results when preparing the school district's budget. The bill requires the information obtained from the needs assessments to be used to ensure improvement in student academic performance. The bill also requires school district budgets to allocate sufficient moneys in a manner reasonably calculated to ensure all students achieve the "Rose capacities," which are codified in KSA 72-3218(c).

Tax Credit for Low Income Students Scholarship Program

The bill expands the Tax Credit for Low Income Students Scholarship Program by amending provisions relating to student eligibility requirements, school eligibility requirements, and reporting requirements.

Student Eligibility for the Tax Credit for Low Income Students Scholarship Program

The bill amends the Tax Credit for Low Income Students Scholarship Program to expand student eligibility in two ways:

- The bill amends the definition of "eligible student" to include students who are eligible for reduced-priced, added to free, meals under the National School Lunch Program. Continuing law requires the student also reside in Kansas and be enrolled in a public school or eligible to enroll in a public school.

- The bill amends the definition of "public school" to be any school operated by a USD in Kansas. Former law limited eligibility to those students enrolled or eligible to be enrolled in the lowest 100 performing elementary schools, as identified by the State Board.

The bill limits student eligibility for first-time applicants to students enrolled in kindergarten through grade eight.

The bill clarifies that the definition of "eligible student" includes any student who has previously received a scholarship under the Tax Credit for Low Income Students Scholarship Program and has not graduated from high school or is not 21 years old.

Publication of Accountability Reports

The bill requires the websites of accredited nonpublic schools participating in the Tax Credit for Low Income Students Scholarship Program to include a prominent link to KSDE's website where the one-page accountability reports are published.

Accountability Reports

The bill requires KSDE to prepare one-page accountability reports for all accredited nonpublic schools in the state, in addition to public schools as in continuing law. The bill also requires KSDE to include accredited nonpublic schools in the longitudinal achievement report submitted to the Governor and Legislature each year.

Kansas School Finance

Update to Citation of Act

The bill redefines the Kansas School Equity and Enhancement Act (KSEEA) to include provisions relating to the calculation of remote enrollment state aid.

Definitions—KSEEA

The bill amends the definitions of "adjusted enrollment" and "enrollment" to exclude remote enrollment as determined under the bill.

The bill defines "remote enrollment" and "remote learning" as follows:

- "Remote enrollment" means the number of students regularly enrolled in a school district who attended school *via* remote learning as outlined in the bill; and

- "Remote learning" means a method of providing education in which a student regularly enrolled in a school district does not physically attend the attendance center where the student would otherwise attend in person on a full-time basis, and the instruction is prepared, provided, and supervised by teachers and staff of such school district to replace the instruction that would have occurred in the attendance center classroom. This definition does not include virtual school as defined in the Virtual School Aid Act.

These definitions do not apply to any school year prior to the 2021-2022 school year.

The bill amends the calculation of one student to include a student enrolled in the school district attending school part time *via* remote learning and part time in person to the nearest tenth of the student's proportion of in-person attendance to full-time attendance. The bill does not count as a student any remotely enrolled student.

At-risk and High-density At-risk Weighting and Expenditures

The bill amends law regarding the at-risk and high-density weighting by removing the improvement requirements and providing that if a district does not spend the funds on best practices, then the district must repay such moneys to the district's At-risk Education Fund. The State Board must notify the House and Senate standing committees on education on or before January 15 each year of any school districts repaying the funds in this manner and the amounts each district repaid the preceding school year.

The bill extends the high-density at-risk weighting through June 30, 2024.

The bill states the purpose of the at-risk and high-density at-risk student weightings is to provide eligible students with evidence-based, at-risk programs and services (programs and services) in addition to regular instructional services.

The bill also requires the portion of State Foundation Aid attributable to the at-risk and high-density at-risk student weightings to be transferred by each district to the district's At-risk Education Fund.

At-risk Educational Programs and Services

The bill requires the State Board to require school districts to implement programs and services using the at-risk best practices identified in law to assist eligible students in achieving educational outcome goals. The State Board must provide a list of approved programs and

services to each district, and KSDE is required to publish the list on its website with a link prominently displayed on its homepage.

The bill amends eligible expenditures from a district's At-risk Education Fund to include only the following:

- At-risk and provisional at-risk programs (amended by the bill to include provisional at-risk programs);

- Personnel providing educational services in conjunction with such programs (continuing law);

- Support for instructional classroom personnel designed to provide training for evidence-based best practices for at-risk educational programs (added by the bill); or

- Services contracted for by the school district to provide at-risk and provisional at-risk educational programs (amended to include at-risk and provisional programs and removing a reference to best practices).

The bill defines an "at-risk educational program" as an at-risk program or service identified and approved by the State Board as an evidence-based best practice. A "provisional at-risk educational program" (provisional program) is defined as an evidence-based at-risk educational program or service identified or developed by a district as producing or likely to produce measurable success that has been submitted to the State Board for review.

The bill limits expenditures from a district's At-risk Education Fund to those programs or services included on the list approved by the State Board unless the program is a provisional program.

A provisional program can only be funded for a maximum of three years unless approved by the State Board and included on the list of approved programs.

The bill also states the delivery of programs and services by a district may include, but is not limited to, the following:

- Extended school year;
- Before-school programs and services;
- After-school programs and services;
- Summer school;
- Extra support within a class;
- Tutorial assistance; and
- Class within a class.

Expenditure of High Density At-risk Funding on Ineligible Activities

If a district does not spend money on such best practices for three consecutive years, the bill makes the district ineligible to continue receiving the high-density at-risk weighting funding. Former law stated if a district does not expend its high density at-risk weighting funds

on best practices, it must show improvement within five years, or it will be disqualified from receiving the high-density at-risk student weighting in the succeeding school year.

Reporting Requirements

The bill clarifies the continuation of the reports each district must file with the State Board on the at-risk and provisional programs and services offered by the district. The bill updates the required information to be included in the reports to the following:

- Number of students identified as eligible to receive at-risk or provisional programs and services who were served or provided assistance;
- Type of at-risk and provisional at-risk programs and services provided, including the number of students assisted under approved programs;
- Data and research utilized by the district to determine what programs and services were needed;
- Longitudinal performance of students continuously receiving programs and services and applicable data regarding:
    - State assessment scores;
    - Kansas English language proficiency assessment results;
    - Four-year graduation rates;
    - Progress monitoring;
    - Norm-referenced test results;
    - Criterion-based test results;
    - Individualized education program goals;
    - Attendance; and
    - Average ACT composite scores; and
- Other information required by the State Board.

Audit Requirements

The bill requires the Legislative Post Audit Committee to direct the Legislative Division of Post Audit to conduct a performance audit of at-risk education expenditures. The audit is to evaluate the following:

- How districts are expending at-risk education funds;
- Whether expenditures comply with statutory provisions;

- Whether the State Board and KSDE are acting in accordance with statutory provisions regarding at-risk expenditures and programs; and

- Trends in academic outcomes of students receiving programs and services.

The audit will be conducted during calendar year 2023, and the final report will be provided to the Legislature on or before January 15, 2024.

ACT, Pre-ACT, and WorkKeys Assessments

Notification

The bill requires KSDE and each school district to annually publish on their websites the times, dates, and locations of all pre-ACT, ACT, and WorkKeys exams being offered in the state and information on how to register for them.

Participation

The bill clarifies that all participation in the pre-ACT, ACT, and WorkKeys examinations is optional and that nothing in the bill should be construed to require participation.

The bill also defines a "student" for this purpose as any person who is regularly enrolled in any public school or accredited private school.

Reporting Requirement

The bill requires the State Board to prepare and submit a report to the House and Senate standing committees on education on or before the first day of each regular legislative session regarding aggregate exam and assessment data for all students who took the exams pursuant to this section.

Kansas Challenge Act Tuition Waiver for Foster Care Students

The bill expands the Kansas Foster Child Educational Assistance program to provide a tuition waiver for foster care students who are concurrently or dually enrolled in a postsecondary institution. In addition, school districts are authorized to pay for any costs that are not waived, including for fees, books, materials, and equipment.

The definition of "eligible foster child" is amended to add a student, as defined by provisions of this bill, who has been in the custody of the Secretary for Children and Families and in foster care placement at any time the child was enrolled in grades 9 through 12.

Census Population Data; Repeal Outdated Statutes; HB 2162

HB 2162 adds and amends law related to data used in adopting representative and senatorial district boundaries. It also repeals law related to data used in adopting senatorial and representative district boundaries, election-related contributions by certain corporations and stockholders, and a presidential preference primary.

Population Data

The bill adds law to specify the population data used in adopting Kansas legislative districts must be identical to the data collected by the U.S. Bureau of the Census (Census) and used for the apportionment of the U.S. House of Representatives. The bill prohibits use of any other Census counts, including the use of statistical sampling, to add or subtract population.

Repealed Statutes

The bill repeals provisions in the *Kansas Statutes Annotated*, Chapter 11, Census, and in Chapter 25, Elections.

State census. The bill repeals provisions related to an enumeration of Kansas residents as of January 1, 1988. The bill also repeals a requirement for the Secretary of State to adjust the Census numbers for military personnel and postsecondary students for purposes of reapportioning senatorial and representative districts and provisions related to obtaining and using data for that adjustment.

Elections. The bill repeals a prohibition on political contributions from certain types of government-regulated corporations, such as banks and railroads, and the penalties for violating that prohibition. The bill also repeals statutes related to the presidential preference primary, on the topics of the state canvass of the votes, certification of results, payment of election expenses, eligibility to vote, the form of the ballot, county canvasses of votes, and transmitting results to the Secretary of State.

Other Provisions

The bill amends law to remove references to the 1988 state census; in law regarding data used for grant applications and for certain credit union field-of-membership determinations, refers to the law added by the bill rather than to a section to be repealed; and removes a reference to a section that is repealed by the bill from exceptions to the Kansas Open Records Act.

Elections and Voting; Senate Sub. for HB 2183

Senate Sub. for HB 2183 amends and creates law pertaining to elections and voting, including on advance mail ballots, registered voter information reporting, assistance with the return of advance ballots, advance ballot return deadlines, the authority of the Secretary of

State, duties of election officials, electioneering, and election funding. The bill also creates the crime of false representation of an election official.

Alteration of Advance Mail Ballot Postmark

The bill amends election law to make it unlawful for any person to knowingly backdate or otherwise alter a postmark or other official indication of the date of mailing of an advance mail ballot if the intent is to make the mailing date appear different from the actual date of mailing by the voter or voter's designee. A violation will carry the same criminal penalty as other violations concerning advance voting, a level 9 nonperson felony.

Signature Matching on Advance Voting Ballots

The bill prohibits a county election officer from accepting an advance voting ballot transmitted by mail unless they first verify the signature on an advance voting ballot envelope matches the signature on file in the county voter registration records. If the signature of a person on the advance voting ballot envelope does not match the signature on file, the ballot will not be counted. Verification could occur by electronic device or human inspection.

The bill specifies that such verification will not be required if the voter has a disability that prevents them from signing the ballot or that prevents them from signing the ballot in a way that matches the signature on file in the county voter registration records.

Authority to Extend the Advance Mail Ballot Deadline

The bill removes the authority of the Secretary of State (Secretary) to extend the deadline for receiving advance mail ballots. Under continuing law, the deadline for a county election office to receive advance voting ballots is the last mail delivery on the third day following an election; prior law authorized the Secretary to permit additional time.

False Representation of an Election Official

The bill creates the crime of false representation of an election official, defined as knowingly engaging in any of the following by phone, mail, email, website, or other online activity or other means of communication while not holding a position as an election official:

- Representing oneself as an election official;
- Engaging in conduct that gives the appearance of being an election official; or
- Engaging in conduct that would cause another person to believe a person engaging in such conduct is an election official.

The bill defines an "election official" to mean the Secretary, any employee of the Secretary, any county election commissioner or county clerk, any employee of any county election commissioner or county clerk, or any other person employed by a county election office. False representation of an election official will be a level 7 nonperson felony.

Registered Voter Reporting Requirements

The bill requires the Secretary to publish the following information on the official website of the Secretary each month:

- The total number of registered voters in each county;
- The total number of registered voters in each county who have been identified by the county election office as having mail that is undeliverable and the number of such voters as a percentage of all registered voters in the county; and
- The total number of registered voters for each political party.

The bill requires the Secretary, on the tenth day prior to any election, to publish on the official website of the Secretary, the total number of registered voters in each voting precinct, including the total number of such registered voters affiliated with each political party on the official website of the Secretary.

Delivering or Assisting with Advance Voting Ballots

The bill prohibits any person from delivering an advance voting ballot on behalf of another person, unless the person submits an accompanying written statement at the time of delivery, signed by both the voter and the person delivering the ballot. The bill specifies that only the person delivering such ballot could deliver the written statement.

The bill requires the statement to be on a form established by the Secretary containing:

- A sworn statement from the person delivering the ballot affirming they have not exercised undue influence on the voting decision of the voter, nor delivered more than ten advance voting ballots on behalf of other persons during the election; and
- A sworn statement by the voter affirming the authorization of the person to deliver the ballot, and the person has not exercised undue influence on the voting decision of the voter.

The bill prohibits:

- A candidate for office from delivering an advance voting ballot on behalf of another voter unless it is on behalf of an immediate family member [*Note:* The candidate could return no more than ten advance voting ballots total.]; and
- An individual from delivering more than ten advance voting ballots on behalf of other voters during an election.

A violation of these provisions will be a class B misdemeanor.

The bill prohibits a candidate for office from assisting any voter in marking an advance ballot or signing an advance ballot form, except it will not be a violation for the Secretary, an election official, or county election office to assist a voter while in the performance of the duties of such office. A violation of this provision will be a class C misdemeanor.

Electioneering

The bill expands the definition of "electioneering" in continuing law to include a candidate:

- Touching or handling a voter's ballot during the voting process, unless it is on behalf of an immediate family member;
- Distributing or counting ballots;
- Hindering or obstructing a voter from voting, entering, or leaving a polling place; or
- Hindering or obstructing an election board worker from performing election duties.

The new electioneering provisions will not apply to the Secretary, an election official, or county election office.

Under continuing law, electioneering is a class C misdemeanor.

Transparency in Revenues Underwriting Act

The bill creates the Transparency in Revenues Underwriting Act (Act), prohibiting election officials from knowingly accepting moneys, directly or indirectly, for any expenditures related to conducting, funding, or facilitating election administration.

The bill will not apply to:

- Acts of appropriation;
- Any moneys collected by an election official from the payment of fees or assessed costs;
- Any monetary campaign contributions for any candidate for the office of county clerk; or
- Moneys otherwise provided by law.

A violation of the Act will be a level 9 nonperson felony.

Severability

The bill contains a severability clause regarding all provisions.

Advance Voting and Election Laws, Election Tampering; Temporary Vacancy Appointment Process; HB 2332

HB 2332 creates and amends law concerning addresses maintained for registered voters, solicitation of advance voting ballot applications, alteration of election laws, and the crime of election tampering.

The bill establishes a process for the handling of temporary vacancies created by officers or employees of the State or political subdivisions of the State due to military service.

Addresses Maintained for Registered Voters

The bill requires each county election officer to maintain a residential address and mailing address for each registered voter if the mailing address is different from the residential address.

The bill requires the residential address of a registered voter to correspond to a physical location where the voter resides and not be a post office box or other address that does not correspond to a physical location that can be occupied. If the residential address does not meet these requirements, the voter is not validly registered.

The bill requires this information to be recorded in any electronic database maintained by each county election officer.

Solicitation of Advance Voting Ballot Applications

The bill requires any individual who solicits by mail a registered voter to file an application for an advance voting ballot, and in such mailing includes an application for an advance voting ballot, to include in such mailing:

- The name of the individual or organization causing such solicitation to be mailed;
- The name of the president, chief executive officer, or executive director, if an organization;
- The address of such individual or organization; and
- The statement: “Disclosure: This is not a government mailing. It is from a private individual or organization.”

The bill requires all such information to be included on both the exterior of the mailing and on each page contained within the mailing (except on the application for the advance voting ballot) in a clear and conspicuous label in 14-point or larger font.

The bill requires the advance voting ballot application included in such a mailing to:

- Be the official application for advance voting ballot by mail provided by the Secretary of State;
- Not have any portion of such application form completed prior to mailing; and
- Contain an envelope addressed to the appropriate county election office for the mailing of such application.

The bill prohibits the person mailing the application to the voter from directing the completed application be returned to such person.

The bill provides a violation of such requirements is a class C nonperson misdemeanor.

The bill exempts from such requirements the Secretary of State, any election official, county election offices, and the official protection and advocacy for voting access system for the State as provided in the Help America Vote Act of 2002, or any other entity required by federal law to provide information concerning elections and voting procedures. [*Note:* The Disability Rights Center of Kansas is the designated protection and advocacy system in Kansas.]

Additionally, the bill prohibits any person not a resident of Kansas or domiciled in Kansas from mailing or causing to be mailed an application for an advance voting ballot. The bill provides individuals may file a complaint with the Attorney General alleging a violation of this provision; such complaint must include the name of the person alleged to have violated this provision. The bill requires the Attorney General to investigate any allegations of violations under this provision and permits an action to be filed against any person found to have violated this provision. The bill provides any person who violates this provision is subject to a civil penalty of $20, and each mailing of an application for an advance voting ballot constitutes a separate violation.

These provisions of the bill become effective January 1, 2022.

Alteration of Election Laws

The bill creates law to prohibit the Governor, the Executive Branch, and the Judicial Branch from altering election laws.

The bill requires approval from the Legislative Coordinating Council prior to the Secretary of State entering into consent decrees with any court. The bill specifies that it could not be construed to limit or otherwise restrict the judicial power of the state government in the exercise of any of its constitutional powers.

The bill contains a severability clause regarding these provisions.

Election Tampering

The bill expands the crime of election tampering to include:

- Changing or attempting to change, alter, destroy, or conceal any vote cast by paper ballot or computer;

- Changing or attempting to change any vote by manipulating computer hardware or software, election machines, wireless or cellular transmissions, or vote tabulation methods; or

- Knowingly producing false vote totals.

The bill clarifies the crime of election tampering by making or changing any election record does not include making or changing any election record by a person who is lawfully carrying out an election duty.

Temporary Vacancy Appointment Process

If a temporary vacancy is created by officers or employees of the State or political subdivisions of the State due to military service, the bill requires, upon a determination by such officer that such officer's military service requires a temporary appointment for such officer's vacancy, such officer to submit an approved form to be filed:

- With the Secretary of State, if the officer is an elected state official;

- With the county clerk containing the largest portion of the territory of the political subdivision, if the officer is an elected official of a political subdivision; or

- With their human resources department or other official as determined by the officer's employer, if the officer is an employee who is not an elected official.

The bill also requires such officer to submit an approved form with the respective official or department upon such officer's return from military service.

The bill states, if the officer's military service creates a temporary vacancy and the officer has filed the approved form as outlined above:

- Such temporary vacancy must be appointed and temporarily filled by the appointive authority for the partisan elective office, if the officer is an elected official; and

- Such temporary vacancy may be appointed and temporarily filled by the appointive authority for the employee, if the employee is not an elected official.

The bill states individuals appointed by the process outlined above will hold the office or position they are appointed to during the temporary vacancy.

The bill expands the definition of "military service" to add active service in the Air Force, Coast Guard, Kansas Air National Guard, Kansas Army National Guard, Space Force, or any branch of the U.S. military reserves to active service in the Army, Navy, and Marine Corps, as in continuing law.

Federal For the People Act of 2021; HCR 5015

HCR 5015 states each state legislature should have the freedom and flexibility to determine election practices that best meet the needs of their state. The concurrent resolution states the authority to legislate changes to the election process should be left to the states.

The concurrent resolution contains whereas clauses related to the federal For the People Act of 2021, contained in H.R. 1 and S. 1.

The concurrent resolution requires the Secretary of State to send enrolled copies of the resolution to the President of the United States, the Majority Leader and Minority Leader of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Minority Leader of the U.S. House of Representatives, and each member of the U.S. Senate and U.S. House of Representatives serving Kansas.

Kansas Economic Recovery Loan Deposit Program; Credit Unions, Field of Membership; Privilege Tax, Deductions; SB 15

SB 15 establishes the Kansas Economic Recovery Loan Deposit Program (Program); amends law governing linked deposit programs and related investment procedures; amends field-of-membership requirements placed on state-chartered credit unions to increase the permissible geographic area for a credit union's field of membership; and permits national banking associations, state banks, trust companies, and savings and loan associations, for all taxable years commencing after December 31, 2022, to deduct from net income the net interest income received from qualified agricultural real estate loans and the net interest income received from single-family residence loans to the extent such interest is included in the Kansas taxable income of a corporation. [*Note:* Certain provisions of this bill are amended by SB 86.]

Kansas Economic Recovery Loan Deposit Program

Program Citation; Definitions

The bill designates new sections of the bill as the Kansas Economic Recovery Loan Deposit Program and further provides the Program shall be part of and supplemental to Article 42, Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys including the investment of state moneys, activities of the Pooled Money Investment Board, and the administration of certain loan deposit programs).

Definitions

The bill defines terms, including the following:

- "Economic recovery loan deposit" means an investment account placed by the Director of Investments under the provisions of statutes pertaining to investment of state moneys with an eligible lending institution for the purpose of carrying out the intent of the Program;

- "Economic recovery loan deposit loan" or "loan" means a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's economic recovery loan deposit as part of the Program;

- "Economic recovery loan deposit program" or "program" means a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit;

- "Eligible borrower" means any individual or entity operating a business primarily for commercial or agricultural purposes with no more than 200 full-time employees maintaining offices or operating facilities and transacting business in the state of Kansas and is not an individual obtaining a loan primarily for personal, family, or household purposes; and

- "Eligible lending institution" means a financial institution that is:
    - A bank, as defined in KSA 75-4201, that agrees to participate in the Program and is eligible to be a depository of state funds;
    - A credit union, as defined in the State Credit Union Code, that agrees to participate in the Program and provides securities acceptable to the Pooled Money Investment Board (PMIB) pursuant to statutes pertaining to investment of state moneys; or
    - An institution of the Farm Credit System organized under the federal Farm Credit Act of 1971, as amended, having at least one branch in the state of Kansas that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to statutes pertaining to investment of state moneys.

The bill also defines the terms "director of investments" and "economic recovery loan deposit loan package."

Program Administration and Purpose

The bill authorizes the State Treasurer to administer the Program and states the Program shall be for the purpose of providing incentives for the making of business loans. The bill further specifies the total aggregate amount of loans made under the Program must not exceed $60.0 million of unencumbered funds pursuant to statutes pertaining to investment of state moneys.

Rules and Regulations

The bill requires the State Treasurer to adopt all rules and regulations necessary to enact and administer the provisions of the Program. Such rules and regulations must be adopted no later than February 1, 2022.

Annual Report; Legislative Review

The bill requires the State Treasurer to submit an annual report to the Legislature and the Governor identifying the eligible lending institutions participating in the Program and the eligible borrowers who have received an economic recovery loan deposit loan. The bill also requires the annual report to provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. The report will be due on or before January 1, 2023, and each January 1 thereafter. The bill requires the Legislature perform a review of the Program as part of the State Treasurer's annual report on or after January 1, 2024.

Program Loan Package Requirements and Loan Information

The bill authorizes the State Treasurer to disseminate information and provide economic recovery loan deposit loan packages (loan packages) to the eligible lending institutions.

Eligible Borrowers, Applications, Loan Limitations

The bill provides the following requirements and other criteria for participation in the Program:

- The loan package must be completed by the eligible borrower before being forwarded to the lending institution for consideration;
- An eligible lending institution that agrees to receive an economic recovery loan deposit must accept and review applications for loans from eligible borrowers;
- The lending institution must apply all usual lending standards to determine the credit worthiness of eligible borrowers;
- No single economic recovery loan deposit loan can exceed $250,000;
- Only one economic recovery loan deposit loan can be made and be outstanding at any one time to any eligible borrower; and
- No loan may be amortized for a period of more than ten years.

Certification and Loan Approval

The bill requires an eligible borrower to certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in operating the borrower's business in Kansas. The eligible lending institution will be permitted to approve or reject a loan package based on the institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package, and other appropriate considerations. The eligible lending institution is required to forward to the State Treasurer an approved loan package in the prescribed form and manner. The bill requires the package to include a certification by the applicant that such applicant is an eligible borrower.

Evaluation of the Economic Recovery Loan Deposit Loan Package; Interest and Market Rates; Loan Agreement

The bill permits the State Treasurer to either accept or reject the loan package based on the State Treasurer's evaluation of whether the loan meets the Program requirements. The bill would further provide, if sufficient funds are not available for a loan deposit, then the applications may be considered in the order received when funds are once again available, subject to a review by the lending institution.

Upon acceptance of a loan package, the State Treasurer will be required to certify to the Director of Investments (Director) the required amount for the package and the Director will be required to place an economic recovery loan deposit in the amount certified with the eligible lending institution at an interest rate that is 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum

interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. The bill permits the State Treasurer to request the Director place an economic recovery loan deposit with the eligible lending institution prior to acceptance of a loan package when necessary.

An eligible lending institution is required to enter into an economic recovery loan deposit agreement with the State Treasurer. Such agreement will include requirements necessary to implement the purposes of the Program. The bill specifies requirements must include an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is not more than 3.0 percent greater than the interest rate made available to the lending institution (effectively capping the interest rate spread at 3.0 percent). The borrower's rate must be recalculated on an annual basis. The bill provides the loan agreement will include provisions for the loan deposit to be placed for a time not to exceed a period of ten years and that is considered appropriate in coordination with the underlying loan. The bill also requires the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

Funding of the Loan by the Lending Institution

The bill requires, upon placement of a loan deposit with an eligible lending institution, the institution to fund the loan to each approved eligible borrower listed in the loan package in accordance with the agreement between the institution and the State Treasurer. The bill requires the loan to be at the rate established in the agreement and established pursuant to requirements of this bill.

Liability for Default or Delay in Payments

The bill states the State and the State Treasurer shall not be liable to any eligible lending institution in any manner for payment of the principal or interest on any economic recovery loan deposit loan to an eligible borrower.

The bill also states any delay in payments or default on the part of the eligible borrower does not in any manner affect the economic recovery loan deposit agreement between the eligible lending institution and the State Treasurer.

Amendments to Linked Deposit Loan Program Law

The bill amends law governing the investment of state moneys, which also includes previously authorized linked deposit programs, to add those loan deposits made under the Program and applicable interest rates established by the bill.

Field of Membership—Credit Unions

The bill also amends geographic area criteria associated with defining field of membership for state-chartered credit unions in the State Credit Union Code (Code). Continuing law requires credit union members to be linked by one of three fields of membership: geographic area, occupation, or association.

Under former law, a geographic area was permitted to include a single political jurisdiction or multiple contiguous political jurisdictions, until the aggregate total of the population of the geographic area reaches 500,000. The law further provides, however, if the headquarters of the credit union is located within a metropolitan statistical area (MSA) of more than one county, a different maximum population limit would apply. That limit is determined by a formula:

> Multiply the population of the most populous MSA within Kansas (*i.e.*, the population of the Kansas City MSA counties within Kansas) by the fraction having 1.0 million as the numerator and 750,000 as the denominator. [*Note:* Current population numbers are those of the adjusted federal census information presented to the Legislature by the Secretary of State.]

The bill permits a single political jurisdiction (continuing law) but modifies other criteria to:

- Increase the permitted maximum for multiple contiguous political jurisdictions for an aggregate of the total population from 500,000 to 2.5 million, as determined by official state population figures, or any portion thereof, which are identical to the decennial census data from the enumeration conducted by the U.S. Census Bureau (language attributable to the Census data is located in the definition of "population data" in the field-of-membership requirements); and

- Remove language that separately applied to credit unions with headquarters located within an MSA of more than one county (allowed for a different maximum population limit).

The bill also modifies a requirement that provides, from and after July 1, 2008, no geographic area shall consist of any congressional district or the entire state of Kansas to instead state no geographic area shall consist of the entire state of Kansas.

The bill removes definitions within the Code for "MSA," "population data," and "overt act." Some of the requirements within the definitions had been specific to operations of credit unions, including branch locations, construction of new buildings, and membership of occupation or association groups on or before either February 1, 2008, or June 30, 2008.

Kansas Financial Institutions Privilege Tax—Definitions

The bill permits a deduction from net income, beginning in tax year 2023, for financial institutions subject to the Kansas Financial Institutions Privilege Tax (privilege tax) equal to the net interest income received from qualified agricultural real estate and single family residence loans attributable to Kansas to the extent such interest is included in the Kansas taxable income.

The bill creates definitions for the terms "interest," "qualified agricultural real estate," and "single family residence" and also creates a calculation methodology for "net interest income received from qualified agricultural real estate loans" and for "net interest income from single family residence loans" as follows:

- "Interest" means interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence;

- "Qualified agricultural real estate loans" means loans made on real property that is substantially used for the production of one of more agricultural products and that:

    - Have maturities of not less than 5 years and not more than 40 years;

    - Are secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property; and

    - Have an outstanding loan balance when made that is less than 85 percent of the appraised value of the real estate, except that a loan for which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent the loan amount in excess of 85 percent is covered by such insurance;

- "Net interest income received from qualified agricultural real estate loans attributed to Kansas" means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction;

- "Net interest income received from single family residence loans attributed to Kansas" means the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company, or savings and loan association without regard to this deduction; and

- "Single family residence" means a residence that is:

    - The principal residence of its occupant;

    - Located in Kansas in a rural area, as defined by the U.S. Department of Agriculture, that is not within an MSA and has a population of 2,500 or less as determined by the most recent census for which data is available; and

    - Purchased or improved with the proceeds of the loan.

Loan Deposit Programs—Kansas Extraordinary Utility Costs Loan Deposit Program; Changes to 2021 Law (SB 15, House Sub. for SB 88); SB 86

SB 86 creates the Kansas Extraordinary Utility Costs Loan Deposit Program (Program), which will provide incentives for the making of loans to eligible borrowers for the extraordinary natural gas costs incurred during the extreme winter weather event of February 2021. The total aggregate amount of loans issued under the Program, which is administered by the State

Treasurer, cannot exceed the amount of unencumbered funds certified by the State Treasurer and directed to be reinvested by provisions of this bill. The bill also amends law governing the investment of state moneys to add Program loans and applicable interest rates and modify provisions governing the City Utility Low-interest Loan Program.

The 2021 Legislature had earlier passed legislation creating a linked deposit program (SB 15, Kansas Economic Recovery Loan Deposit Program) and a loan deposit program (House Sub. for SB 88, City Utility Low-interest Loan Program). The provisions relating to the Kansas Economic Recovery Loan Deposit Program are repealed and reenacted within SB 86, allowing the provisions to be effective upon publication in the *Kansas Register*. Provisions pertaining to the City Utility Low-interest Loan Program are restated in the bill with amendments relevant to both that program and the program created by this bill.

Kansas Extraordinary Utility Costs Loan Deposit Program

The bill designates its provisions and amendments thereto as the Program and the Program part of and supplemental to Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys, including the investment of state moneys, activities of the Pooled Money Investment Board [PMIB], and the administration of certain loan deposit programs).

Program Definitions

The bill defines terms including:

- "Extraordinary utility costs loan deposit" to mean an investment account placed by the Director of Investments, PMIB, under the provisions of Article 42, Chapter 75 of the *Kansas Statutes Annotated* with an eligible lending institution for the purpose of carrying out the intent of the Program;

- "Extraordinary utility costs loan deposit loan" or "loan" to mean a loan made by an eligible lending institution to an eligible borrower from the eligible lending institution's extraordinary utility cost loan deposit as part of the Program;

- "Extraordinary utility costs loan deposit program" or "program" to mean a state-administered program in which eligible lenders are charged less than the market rate of interest and eligible borrowers receive a reduction in interest charged on a loan in the amount of the deposit;

- "Eligible borrower" to mean any wholesale natural gas customer located in the state of Kansas that incurs extraordinary natural gas costs due to the extreme winter weather event of February 2021 and is not an individual obtaining a loan for personal, family, or household purposes;

- "Eligible lending institution" to mean a financial institution that is:

    - A bank, as defined in KSA 75-4201, that agrees to participate in the Program and is eligible to be a depository of state funds;

- A credit union, as defined in the State Credit Union Code, that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to Article 42, Chapter 75 of the *Kansas Statutes Annotated*; or
- An institution of the Farm Credit System organized under the federal Farm Credit Act of 1971, as amended, having at least one branch in the state of Kansas that agrees to participate in the Program and provides securities acceptable to the PMIB pursuant to Article 42, Chapter 75.

The bill also defines the terms "director of investments" and "extraordinary utility costs loan deposit loan package."

Program Administration; Eligible Borrowers; Report and Legislative Review

The bill authorizes the State Treasurer to administer the Program. The bill states the Program's purpose is to provide incentives for the making of loans to eligible borrowers for the extraordinary natural gas costs incurred during the extreme winter weather event of February 2021. The bill restricts the total amount of loans under the Program to an amount not to exceed the amount of unencumbered funds certified by the State Treasurer and directed to be reinvested by provisions of this bill regarding administration of programs.

Eligible Borrowers—School Districts

The bill makes the following provisions applicable to school districts electing to participate as eligible borrowers:

- Notwithstanding the provisions of any statute to the contrary, a school district (as defined in KSA 72-6486) that is an eligible borrower will be authorized to enter into loan agreements under the Program;
- The provisions and restrictions of the cash basis and budget laws do not apply to any loan received by a school district under this Program;
- To the extent any of the provisions regarding the Program conflict with the provisions of Chapter 72, *Kansas Statutes Annotated*, the Program provisions of this bill will control; and
- Any loan made to a school district under the Program will not be considered bonded indebtedness for the purpose of any statute imposing a limitation on indebtedness of a school district.

Rules and Regulations

The State Treasurer is required to adopt all rules and regulations necessary to administer the Program. The bill requires Program rules and regulations to be adopted no later than February 1, 2022.

Report to the Legislature

The State Treasurer is required to submit an annual report to the Governor and Legislature identifying the eligible lending institutions participating in the Program and the eligible borrowers who have received a loan. The bill requires the report to provide the aggregate amount of moneys loaned and the amount of moneys still available for loan, if any. The report is due on or before January 1, 2023, and each January 1 thereafter. The Legislature is required to perform a review of the Program as part of the State Treasurer's annual report on or after January 1, 2024.

Program Loan Applications

The bill authorizes the State Treasurer to disseminate information and to provide extraordinary utility costs loan deposit loan packages (loan packages) to lending institutions eligible for Program participation.

The bill requires the loan package to be completed by the eligible borrower before being forwarded to the lending institution for consideration.

Eligible Borrowers, Applications, Loan Limitations

The bill requires the following for participation in the Program:

- An eligible lending institution that agrees to receive an extraordinary utility costs loan deposit is required to accept and review applications for loans from eligible borrowers;
- The lending institution is required to apply all usual lending standards to determine the credit worthiness of eligible borrowers;
- No single extraordinary utility costs loan deposit loan can exceed $500,000;
- Only one extraordinary utility costs loan deposit loan can be made and be outstanding at any one time to any eligible borrower; and
- No loan could be amortized for a period of more than three years.

Certification and Loan Approval

The bill requires an eligible borrower to certify on the loan application that the reduced rate loan will be used exclusively for the expenses involved in the borrower's utility costs in Kansas incurred during the extreme winter weather event of February 2021. The eligible lending institution is permitted to approve or reject a loan package based on the institution's evaluation of the eligible borrowers included in the package, the amount of the individual loan in the package, and other appropriate considerations.

The eligible lending institution is required to forward to the State Treasurer an approved loan package in the prescribed form and manner. The bill requires the package to include a certification by the applicant that the applicant is an eligible borrower.

Certification of Program Loans; Interest Rate

The bill authorizes the State Treasurer to accept or reject a loan package based on the State Treasurer's evaluation of whether the eligible borrower meets the Program requirements. If sufficient funds are not available for a Program loan deposit, the applications may be considered in the order received when funds become available, subject to a review by the lending institution. The bill further provides that receiving a loan under the Kansas Economic Recovery Loan Deposit Program will not preclude an eligible borrower from receiving a loan under this Program.

Upon the acceptance of an application, the bill requires the State Treasurer to certify to the Director of Investments the amount required for the loan package and the Director will place a deposit of this certified amount with the eligible lending institution at an interest rate that is 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum interest rate (or floor) would be 0.25 percent if the market rate is below 2.25 percent. When necessary, the bill permits the State Treasurer to request the Director place an extraordinary utility costs loan deposit with the eligible lending institution prior to acceptance of a loan package.

An eligible lending institution is required to enter into an extraordinary utility costs loan deposit agreement with the State Treasurer. Such agreement will include requirements necessary to implement the purposes of the Program. The bill specifies requirements will include an agreement by the eligible lending institution to lend an amount equal to the loan deposit to eligible borrowers at an interest rate that is no more than 3.0 percent greater than the interest rate made available to the lending institution (effectively capping the interest rate spread at 3.0 percent). The borrower's rate will be recalculated on an annual basis. The bill provides the loan agreement will also include provisions for the loan deposit to be placed for a time not to exceed a period of three years and that is considered appropriate in coordination with the underlying loan. The bill also requires the agreement to include provisions for the reduction of the loan deposit in an amount equal to any payment of loan principal by the eligible borrower.

Funding of the Loan by the Lending Institution

The bill requires, upon placement of a loan deposit with an eligible lending institution, the institution to fund the loan to each approved eligible borrower listed in the loan package in accordance with the agreement between the institution and the State Treasurer. The bill requires the loan to be at the rate established in the agreement and established pursuant to requirements of this bill. The bill also requires a certification of compliance with this section to be provided by the eligible lending institution in the form and manner prescribed by the State Treasurer.

Liability for Default or Delay in Payments

The bill states the State and the State Treasurer will not be liable to any eligible lending institution in any manner for payment of the principal or interest on any extraordinary utility costs loan deposit loan to an eligible borrower. The bill also states any delay in payments or default on the part of the eligible borrower does not in any manner affect the extraordinary utility costs loan deposit agreement between the eligible lending institution and the State Treasurer.

Kansas Economic Recovery Loan Deposit Program

The bill repeals and reenacts provisions pertaining to the Kansas Economic Recovery Loan Deposit Program. These sections were included in 2021 SB 15, signed into law on February 25, 2021, and would have become effective upon publication in the statute book. With enactment of SB 86, such provisions became effective upon publication in the *Kansas Register*.

[*Note:* Under SB 15 and provisions reenacted in this bill, the State Treasurer is authorized to administer the Kansas Economic Recovery Loan Deposit Program, which is established for the purpose of providing incentives for the making of business loans. The bill further specifies the total aggregate amount of loans made under this loan deposit program would not exceed $60.0 million of unencumbered funds pursuant to Article 42 of Chapter 75 of the *Kansas Statutes Annotated*.]

Amendments to 2021 House Sub. for SB 88

The bill amends 2021 law establishing the City Utility Low-interest Loan Deposit Program to provide for the use of unencumbered funds for the Program that established by this bill.

[*Note:* House Sub. for SB 88, effective upon publication in the *Kansas Register* (Issue 9A, March 4, 2021), authorized the State Treasurer to administer this loan deposit program. The law states this program's purpose is to provide loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The law restricts the total amount of loans under the Program to an amount not to exceed $100.0 million of unencumbered funds pursuant to Article 42 of Chapter 75, *Kansas Statutes Annotated*.]

Definitions

The bill amends the definition for the term "city" to include a municipal energy agency as defined in KSA 12-886.

Administration of Programs; Use of Unencumbered Funds

The bill amends a provision authorizing the State Treasurer to administer the City Utility Low-interest Loan Program to specify the State Treasurer and any city are authorized to enter into binding commitments for the provision and receipt of loans in accordance with the provisions of this loan deposit program.

Unencumbered funds, City Utility Low-interest Loan Program. The bill specifies that on the effective date of this act, the State Treasurer will certify to the Director of Investments the amount of $20.0 million of unencumbered funds under the City Utility Low-interest Loan Program. Upon receipt of this certification, the Director of Investments will be required to reinvest that certified amount in accordance with the Kansas Extraordinary Utility Costs Loan Deposit Program.

The bill also requires the State Treasurer, on June 1, 2021, to certify to the Director of Investments the amount of any remaining unencumbered funds under the City Utility Low-interest Loan Program. Upon receipt of the certification, the Director of Investments will be required to reinvest the certified amount in accordance with the Kansas Extraordinary Utility Costs Loan Deposit Program.

The bill also provides that any loan received by a city under the City Utility Low-interest Loan Program will be construed as bonds for the purposes of KSA 10-1116 (governing when limits of indebtedness may be exceeded).

Rules and regulations; reporting. The bill modifies required rules and regulations governing the City Utility Low-interest Loan Program to update the references to the effective date of the act. The bill also modifies a reporting requirement to remove language about moneys that may still be available for loan under this loan deposit program.

City Utility Low-interest Loan Program Loans and Applications

The bill amends law governing the City Utility Low-interest Loan Program loans to specify payments on such loans may be made monthly, quarterly, or semi-annually upon the execution of an agreement between the city and State Treasurer. Former law allowed payments to be made annually as well as more frequently.

Lien. The bill permits the State Treasurer to create a lien against the city's utility revenue and surcharges to satisfy any outstanding loan balance. Any city that receives a loan under this loan deposit program will be required to apply the proceeds of any lawsuit or restitution relating to the extraordinary electric or natural gas costs incurred during the extreme weather event of February 2021 to the payment of the outstanding loan balance.

Loans approved, limitation on. The bill also provides that no more than $20.0 million of loans shall be approved by the State Treasurer under the City Utility Low-interest Loan Program on and after the effective date of this act (*Kansas Register* publication), and further, that no loans shall be approved by the State Treasurer for this loan deposit program on and after June 1, 2021.

A referenced date also is updated.

Certification of City Utility Low-interest Loan Program Loans

Remittance to state fiscal agent. The bill adds provisions to direct the treasurer of each city to remit to the state fiscal agent at least 20 days before the due date of a loan payment sufficient moneys for such payment. The city treasurer, in lieu of remitting such moneys to the state fiscal agent, can provide the fiscal agent with electronic fund transfer

instructions on forms prescribed by the State Treasurer that certify there will be funds on deposit on the transaction date sufficient for the loan payment and that such funds will either reach the office of the fiscal agent on or before 12 noon of the third working day before the due date of such loan payment or reach the office of the fiscal agent on or before 12 noon of the first working day before the due date of such loan payment.

Use of moneys in the county treasury for payments. The bill also includes provisions for when cities require the use of moneys in the county treasury to make loan payments. The city treasurer would make a written request of the county treasurer for the amount needed no later than 25 days prior to the due date of such loan payment. If the full amount is not in the county treasury, the bill requires the county treasurer to forward that portion that is in the county treasurer's possession for such purpose.

The bill further provides that when a county treasurer is charged with the collection of tax moneys for a city, the territory of which is more than one county, the county treasurer will be required to forward any such funds collected to the proper county treasurer as soon as practical or no later than two days following the receipt of a request.

Failure to pay loan payment moneys. The bill provides failure to pay loan payment moneys when due would be any of the following:

- Failure of a county treasurer to forward moneys in the county treasury when requested as provided in this section;
- Failure of the city treasurer or any county treasurer to make timely request for moneys; or
- Failure of the city treasurer to make timely remittance of moneys for payments for loans under this loan deposit program when such moneys are available for remittance.

The bill provides that failure to pay loan payment moneys when due would be a class C misdemeanor.

Conflict of Provisions with Other Law Governing State Moneys

The bill amends law governing the City Utility Low-Interest Loan Program to provide, in the event a conflict arises between provisions of this bill (as amended) and provisions of Article 42 of Chapter 75, *Kansas Statutes Annotated*, or any other provision of law, the provisions of the bill's sections 15-20 shall control.

Requirements on City Treasurers

The bill also amends law governing the remittance of moneys by city treasurers to permit city treasurers to provide the state fiscal agent with electronic fund transfer instructions on forms prescribed by the State Treasurer that certify there will be funds on deposit on the transaction date sufficient for redemption.

Deposits of Securities; Secured Accounts

The bill amends provisions in Article 42, Chapter 75 (investment of moneys law) to add a credit union that has the prior approval of PMIB to the list of entities able to accept securities securing state bank accounts.

Program Interest Rates, Investment in State Moneys

The bill amends law governing the investment of state moneys, as amended by 2021 House Sub. for SB 88, to provide that:

- Notwithstanding the provisions of this section, economic recovery loan deposit loans made pursuant to the Kansas Economic Recovery Loan Deposit Program will be at an interest rate that is 2.0 percent less than the market rate provided by this section, which will be recalculated on the first business day of each calendar year using the market rate then in effect; and

- Notwithstanding the provisions of this section, extraordinary utility costs loan deposit loans made pursuant to the Program will be at an interest rate that is 2.0 percent less than the market rate provided by this section, which will be recalculated on the first business day of each calendar year using the market rate then in effect.

City Utility Low-Interest Loan Program; House Sub. for SB 88

House Sub. for SB 88 creates the City Utility Low-Interest Loan Program (Program), which provides loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021.

The total aggregate amount of loans issued under the Program, which will be administered by the State Treasurer, cannot exceed $100.0 million of unencumbered funds. The bill also amends law governing the investment of state moneys to add Program loans and applicable interest rates.

City Utility Low-Interest Loan Program

The bill designates its provisions and amendments thereto as the Program.

The Program is part of and supplemental to Article 42 of Chapter 75 of the *Kansas Statutes Annotated* (Article 42 pertains to state moneys, including the investment of state moneys, activities of the Pooled Money Investment Board, and the administration of certain loan deposit programs).

Program Definitions

The bill establishes definitions for terms including:

- "City" to mean a city organized and existing under the laws of Kansas; and

- "Loan" to mean a deposit of unencumbered state funds to a city pursuant to the Program.

The bill also defines the terms "director of investments" and "program."

Program Administration; Report and Legislative Review

The bill authorizes the State Treasurer to administer the Program. The bill states the Program's purpose is to provide loans to cities for extraordinary electric or natural gas costs incurred during the extreme winter weather event of February 2021. The bill restricts the total amount of loans under the Program to an amount not to exceed $100.0 million of unencumbered funds pursuant to statutes pertaining to investment of state moneys.

The State Treasurer is required to adopt all rules and regulations necessary to administer the Program, including the development of a streamlined application process, no later than January 1, 2022, except the streamlined application process must be established within 14 days from the effective date of the act (*Kansas Register* publication). The bill further specifies the adoption of such rules and regulations is not be a prerequisite for the approval of Program loans by the State Treasurer. The bill states the State Treasurer shall approve loans under the Program in the most expeditious manner possible on or after the effective date of this act.

The State Treasurer is required to submit an annual report to the Governor and Legislature identifying the cities participating in the Program. The report must provide the aggregate amount of moneys loaned and the amount of moneys available for loan. The report is due on or before January 1, 2022, and each January 1 thereafter. The Legislature is required to perform of a review of the Program as part of the State Treasurer's annual report on or after January 1, 2024.

Program Loan Applications

The bill authorizes the State Treasurer to disseminate information and to provide loan applications as soon as practicable on or after the effective date of this act to cities for Program participation.

A city must forward an application to the State Treasurer in a form and manner prescribed by the State Treasurer. The application is required to:

- Include information regarding the amount of the loan requested by the city and such information the State Treasurer may require, including, but not limited to, the specific fund or account of the city in which loan proceeds will be deposited; and

- Contain a certification by the governing body of the city that, if the city receives any federal moneys related to the extreme winter weather event of February 2021, the first priority for expenditure of such moneys is for the payment of any outstanding balance of a loan made to the city under the Program.

The bill further specifies a Program loan can be used only for those extraordinary electric or natural gas costs incurred during the extreme weather event of February 2021, as certified by the city's governing body, and not for any other utility costs previously budgeted for by the city.

The bill also provides that no loan can be amortized for a period of more than ten years. Payments on such loan will not be required to be more frequently than annually but can be made more frequently upon agreement between the city and State Treasurer.

Certification of Program Loans; Interest Rate

The bill authorizes the State Treasurer to accept or reject an application based on the State Treasurer's evaluation of whether the city meets the Program requirements. If sufficient funds are not available for a Program loan, the applications may be considered in the order received when funds become available.

Upon the acceptance of an application, the bill requires the State Treasurer to certify to the Director of Investments the amount required for the loan, and the Director will place a deposit of this certified amount in the specific fund or account of the city indicated in the loan application and approved by the State Treasurer.

The bill provides the interest rate on a loan must be 2.0 percent below the market rate provided in KSA 75-4237 (a floating rate). The bill requires such rate to be recalculated on the first business day of January each year using the market rate then in effect. The bill further specifies the minimum interest rate (or floor) will be 0.25 percent if the market rate is below 2.25 percent. The bill authorizes the State Treasurer to request the Director of Investments to place such deposit with the city prior to approval of an application when necessary.

The bill requires all moneys received by the State Treasurer from cities for payments of the Program loans to be deposited in the State Treasury to the credit of the Pooled Money Investment Portfolio.

Conflict of Provisions with Other Law Governing State Moneys; Exemption from Bonded Indebtedness

The bill provides, in the event a conflict arises between provisions of this bill and provisions statutes pertaining to investment of state moneys, or any other provision of law, the provisions of the bill shall control.

The bill also provides that any Program loan made to a city shall not be considered bonded indebtedness for the purposes of KSA 10-308 (pertaining to bonded indebtedness of cities) or any other statute imposing a limitation on indebtedness of a city.

Program Interest Rates, Investment in State Moneys

The bill amends law governing the investment of state moneys to add those loan deposits made under the Program and applicable interest rates established by the bill.

Trust Company Charter Conversions; SB 178

SB 178 amends provisions in the Kansas Banking Code governing organization and supervision to permit a national bank, federal savings association, or federal savings bank to convert to a state trust company. The bill also permits a trust company to convert its charter to one of the above-named financial institutions.

The bill updates references to include trust companies in law pertaining to renewal and extension of articles of incorporation (KSA 2020 Supp. 9-803); stockholder vote for conversion to a state bank (KSA 2020 Supp. 9-808); stockholder vote for conversion to a national bank (KSA 2020 Supp. 9-809); and prohibition against felons serving as directors, officers, or employees (KSA 2020 Supp. 9-1717). The bill also establishes a naming standard to require the name selected for a state trust company to be different or substantially dissimilar from the name of any other trust company doing business in the state.

Under continuing law, a national bank, federal savings and loan association, or federal savings bank is permitted to convert its charter to a state bank charter. Conversely, the law also allows a state bank to convert to a national bank, federal savings and loan association, or federal savings bank.

Technology-enabled Fiduciary Financial Institutions Act; Senate Sub. for HB 2074

Senate Sub. for HB 2074 enacts the Technology-enabled Fiduciary Financial Institutions Act (Act), which will be part of and supplemental to Chapter 9 of the *Kansas Statutes Annotated* (the Kansas Banking Code). On July 1, 2021, the bill requires the State Bank Commissioner issue a conditional charter to The Beneficient Company and establish a fidfin fiduciary institution pilot program with an economic growth zone designated in Harvey County. The bill also establishes an income and privilege tax credit beginning in tax year 2021 for trust banks in an amount equal to such fiduciary financial institution's qualified charitable distributions during such taxable year if the trust bank maintained such fiduciary financial institution's principal office in an economic growth zone.

Technology-enabled Fiduciary Financial Institution Defined

Under the bill, a "technology-enabled fiduciary financial institution" [referred to generally as a TEFFI] or "fiduciary financial institution" means any limited liability company, limited partnership, or corporation that:

- Is organized to perform any one or more of the activities and services authorized by the Act;
- Has been authorized to conduct business as a fiduciary financial institution under the Kansas Banking Code pursuant to the provisions of Section 2;
- Has made, committed to make, or caused to be made a qualified investment; and
- Has committed, in or as part of the application provided in Section 2, and amendments thereto, to conduct any fidfin transactions in accordance with Section 11, and amendments thereto, including the distributions required therein.

Designation of Act; Definitions

The bill names the Act and establishes definitions for the following terms:

- "Alternative asset" to mean professionally managed investment assets that are not publicly traded, including, but not limited to, private equity, venture capital, leveraged buyouts, special situations, structured credit, private debt, private real estate funds, and natural resources, including any economic or beneficial interest therein;

- "Alternative asset custody account" to mean an account created by the owner of an alternative asset that designates a fiduciary financial institution as a custodian or agent and into which the client transfers, electronically or otherwise, content, materials, data, information, documents, reports, and contracts in any form, including without limitation evidence of ownership; subscription agreements; private placement memoranda; limited partnership agreements; operating agreements; financial statements; annual and quarterly reports; capital account statements; tax statements; correspondence from the general partner, manager, or investment advisor of the alternative asset; an investment contract as defined in KSA 17-12a102(28)(E) [in the Uniform Securities Act]; and any digital asset as defined in KSA 58-4802 [the Revised Uniform Fiduciary Access to Digital Assets Act], whether such information is in hard copy form or a representation of such information that is stored in a computer-readable format;

- "Charitable beneficiaries" to mean one or more charities, contributions to which are allowable as a deduction pursuant to Section 170 of the federal Internal Revenue Code, that are designated as beneficiaries of a fidfin trust;

- "Custodial services" to mean the safekeeping and management of an alternative asset custody account, including the execution of customer instructions, serving as agent, fund administrative services, and overall decision-making and management of the account by a fiduciary financial institution; "custodial services" is deemed to involve the exercise of fiduciary and trust powers;

- "Economic growth zone" to mean an incorporated community with a population of not more than 5,000 people located within one of the listed 78 counties (those counties, with the exception of Harvey County, had previously been designated as Rural Opportunity Zone counties);

- "Excluded fiduciary" to mean a fiduciary financial institution in its capacity as a trustee of a fidfin trust, provided that a fiduciary financial institution shall only be deemed an "excluded fiduciary" to the extent the fiduciary financial institution is excluded from exercising certain powers under the instrument that may be exercised by the trust advisor or other persons designated in the instrument;

- "Fidfin trust" to mean a trust created to facilitate the delivery of fidfin services by a fiduciary financial institution;

- "Fiduciary" to mean a trustee, a trust advisor, or a custodian of an alternative asset custody account appointed under an instrument that is acting in a fiduciary capacity for any person, trust, or estate;

- "Qualified investment" to mean the purchase or development, in the aggregate, of at least 10,000 square feet of commercial, industrial, multiuse, or multifamily real estate in the economic growth zone where the fiduciary financial institution maintains its principal office pursuant to requirements in the bill (Section 9), provided that such community has committed to develop the necessary infrastructure to support a qualified investment.

  A "qualified investment":

  - Can include, as part of satisfying the square footage requirements, the suitable office space of such fiduciary financial institution, as provided in Section 9 of the bill, if owned by the fiduciary financial institution;

  - Is exempt from the provisions and limitations on holding real estate of KSA 9-1102;

  - Can be retained by a fiduciary financial institution for as long as the fiduciary financial institution operates in this state; and

  - Can be sold, transferred, or otherwise disposed of, including through a sale or transfer to an affiliate of the fiduciary financial institution, if the fiduciary financial institution continues to maintain its principal office in an economic growth zone.

    The bill also provides for qualified investment criteria in the instance a fiduciary financial institution leases any portion of a qualified investment made by another fiduciary financial institution as the lessee fiduciary financial institution's suitable office space;

- "Trust" to mean a trust created pursuant to the Kansas Uniform Trust Code (KSA 58a-101 *et seq*.) or the Kansas Business Trust Act (KSA 17-2027 *et seq*.); and

- "Trust advisor" to mean a fiduciary granted authority by an instrument to exercise; consent; direct, including the power to direct as provided in KSA 58a-808 (pertaining to duties of trustees); or approve all or any portion of the powers and discretion conferred upon the trustee of a fidfin trust, including the power to invest the assets of a fidfin trust or make or cause distributions to be made from such fidfin trust.

The bill also defines the terms "act"; "fidfin," "fidfin services," or "fidfin transactions"; and "instrument." The bill also states the definitions applicable to supervision provisions of the Kansas Banking Code apply to fiduciary financial institutions except as otherwise provided in the Act.

Certificate of Authority and Charter; State Banking Board; Office of the State Bank Commissioner; Department of Commerce

Certificate of Authority; Application Form and Approval of the Board

The bill states no fiduciary financial institution shall be organized under the laws of this state nor engage in fidfin transactions, custodial services, or trust business in this state until the application for such fiduciary financial institution's organization and the application for certificate of authority have been submitted to and approved by the State Banking Board (Board). The form for making this application will be prescribed by the Board, and the bill requires any application to the Board to contain such information as the Board may require. The bill further provides, except as provided in provisions pertaining to a pilot program, the Board shall not approve any application until The Beneficient Company conditional charter has been converted to a full charter and the State Bank Commissioner (Bank Commissioner) has completed a regulatory examination.

The bill further provides no bank, trust company, or fiduciary financial institution can engage in fidfin transactions in Kansas unless an application has been submitted under the Act and has been approved by the Board.

Requirements on Fiduciary Financial Institution Applicants

The bill provides the Board cannot accept an application for a fiduciary financial institution unless the:

- Fiduciary financial institution is organized by at least one person;
- Name selected is different or substantially dissimilar from that of any other bank, trust company, or fiduciary financial institution doing business in this state;
- Fiduciary financial institution's articles of organization contain the names and addresses of the fiduciary financial institution's members and the number of units subscribed by each. The articles of organization may contain other provisions as are consistent with the Kansas Revised Limited Liability Company Act, the Kansas Revised Uniform Limited Partnership Act, or the Kansas General Corporation Code;
- Fiduciary financial institution has made, committed to make, or caused to be made a qualified investment, as defined by the bill;
- Fiduciary financial institution has committed to structure any fidfin transaction to ensure that qualified charitable contributions, as defined in the bill, are made each calendar year that the fiduciary financial institution conducts fidfin transactions; and
- Fiduciary financial institution has consulted or agrees to consult with the Department of Commerce (Department) regarding the economic growth zones to be selected.

Role of the State Banking Board

The Board is allowed to deny the application if it makes an unfavorable determination with regard to the:

- Financial standing, general business experience, and character of the organizers; or

- Character, qualifications, and experience of the officers of the proposed fiduciary financial institution.

The Board will not be permitted to make membership in any federal government agency a condition precedent to granting the authority to do business.

The Board is permitted to require fingerprinting of any officer, director, organizer, or any other person of the proposed fiduciary financial institution related to the application deemed necessary by the Board. The bill allows the fingerprints to be submitted to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for the purposes of conducting a state and national criminal history record check. Should the Board require fingerprinting, the bill requires any associated costs to be paid by the applicant or parties to the application.

The Board or the Bank Commissioner is required to notify a fiduciary financial institution of the approval or disapproval of an application. Any final action of the Board approving or disapproving an application is subject to review in accordance with the Kansas Judicial Review Act.

Applicable Distribution, Compliance by Approved Applicants

The bill provides, in the event the application is approved, the fiduciary financial institution would be issued a charter upon compliance with the Act's requirements and upon demonstrating to the satisfaction of the Bank Commissioner that an applicable distribution has been made. An "applicable distribution" means a distribution of cash, beneficial interests, or other assets having an aggregate value equal to the greater of:

- 2.5 percent of the aggregate financing balances to be held by the fiduciary financial institution immediately upon issuance of the fiduciary institution's charter, as reflected in its application; or

- $5.0 million in accordance with the applicable distribution amount specified in the bill, except that if the fiduciary financial institution is chartered to provide only custodial services, the applicable distribution amount would be $500,000.

The bill states if the amount provided in accordance with the applicable distribution amount exceeds the amount provided as a percentage of the aggregate financing balances, the fiduciary financial institution would be entitled to a credit against the amount of the distribution under Section 11 of the bill.

The bill provides the distribution schedule for the required applicable distribution to the Department as follows:

Applicable distribution amount	Percentage to Department (%)
$0 to $500,000	90.0%
$500,001 to $1,000,000	50.0%
Above $1,000,000	10.0%

The bill specifies these distribution amounts apply to fiduciary financial institutions chartered prior to January 1, 2023. For fiduciary financial institutions chartered after this date, the Department will be authorized to publish one or more schedules in the *Kansas Register* as it deems reasonably necessary to facilitate economic growth and development in one or more economic growth zones. The Department is required to timely submit any published schedule to the Bank Commissioner. The Bank Commissioner will be required to provide a copy of such schedule(s) to any applicant for a fiduciary financial institution charter prior to the issuance of such charter. A fiduciary financial institution will be subject to the schedule in existence on the date its charter is issued.

The bill requires the Department to remit all distributions made to the State Treasurer. Upon receipt of such remittances, the State Treasurer is required to deposit the entire amount to the credit of the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund. The bill further provides the balance of the applicable distribution must be distributed to one or more qualified charities, as defined in the bill, as selected by the fiduciary financial institution. The bill further states nothing in this section shall preclude a distribution to one of more qualified charities in excess of the amounts provided in this section.

The bill also provides an economic growth zone or qualified charity shall have no obligation to repay any distributions received under the Act or to make any contributions to a fiduciary financial institution.

Fees and Assessments, Bank Commissioner

Initial Fee and Expenses

The bill requires every fiduciary financial institution be assessed an initial fee of $500,000 to be remitted concurrently with the issuance of such fiduciary financial institution's charter. The bill requires the expense of every annual regular fiduciary financial institution examination, together with the expense of administering fiduciary financial institution laws, including salaries, travel expenses, third-party fees for consultants or other entities necessary to assist the Bank Commissioner, and supplies and equipment, to be paid by the fiduciary financial institutions of Kansas.

Annual Assessment

The bill requires the Bank Commissioner, prior to the beginning of each fiscal year, to make an estimate of fiduciary financial institution expenses to be incurred by the Office of the State Bank Commissioner (OSBC) during such fiscal year in an amount not less than $1.0 million. The bill requires the Bank Commissioner to allocate and assess each fiduciary financial institution on the basis of such institution's total fidfin transaction balances, consisting of the aggregate fidfin financing balances of the fiduciary financial institution reflected in the last December 31 report filed with the Bank Commissioner, filed pursuant to reporting provisions of

KSA 9-1704. The bill provides a separate assessment allocation for those entities that have no fidfin transaction balances but are providing custodial services or trust services. The bill further provides a fiduciary financial institution that has no fidfin transaction balances and no alternative asset custody accounts reflected in its last December 31 report may be granted inactive status.

An inactive fiduciary financial institution could be assessed an annual assessment in an amount not to exceed $10,000. The bill requires the annual fee be first assessed in the year immediately following the year the fiduciary financial institution received a certificate of authority to engage in fidfin transactions, custodial services, and trust business and for each year thereafter.

The bill requires the statement of each assessment to be transmitted by the Bank Commissioner on December 1 or the next business day to each fiduciary financial institution. The bill further permits the assessment to be collected as needed and in such installments as the Bank Commissioner deems appropriate. The Bank Commissioner is permitted to impose a penalty in the amount of $50 for each day past due, when the annual assessment is more than 15 days past due.

The Bank Commissioner will remit all moneys received from such fees and assessments to the State Treasurer. The State Treasurer will deposit the entire amount in the State Treasury and credit 75.0 percent of each remittance to the Bank Commissioner Fee Fund and 25.0 percent to the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund.

Application of Provisions, Chapter 9

The bill provides, to the extent a conflict does not exist between the Act and the Kansas Banking Code, the provisions of the Code (Chapter 9) shall apply to a fiduciary financial institution in the same manner as they apply to a trust company except that references in Chapter 9 to:

- “Capital stock” include membership capital and partner capital;
- “Stock” include membership units and partnership interests;
- “Common stock” include common units and common interests;
- “Preferred stock” include preferred units and preferred interests;
- “Stockholders” include members and partners;
- “Articles of incorporation” include articles of organization and articles of limited partnership;
- “Incorporation” include organization;
- “Corporation” include company and partnership;

- "Corporate" include company and partnership; and

- "Trust business" and "business of a trust company" include fidfin and fiduciary financial institution business.

The bill also provides if any conflict exists between any provision of Chapter 9 (the Kansas Banking Code) and this act, the provisions of this act would control.

Capital

The bill defines "capital" to mean the total of the aggregate par value of a fiduciary financial institution's outstanding membership units, its surplus, and its undivided profits. The bill provides the required capital for fiduciary financial institutions must be $250,000 when:

- The fiduciary financial institution does not accept deposits, other than alternative asset custody accounts;

- The fiduciary financial institution maintains no third-party debt except debts owed to the members of the fiduciary financial institution or its affiliates; and

- The fiduciary financial institution has secured an agreement from its members whereby such members agree to contribute additional capital to the fiduciary financial institution if needed to ensure its safety and soundness. A fiduciary financial institution that fails to satisfy the capital requirements is subject to the capitalization requirements of KSA 9-901a, as applicable to trust companies.

The bill provides the capital of a fiduciary financial institution shall be divided, with 60.0 percent of the amount as aggregate par value of outstanding membership units, 30.0 percent as surplus, and 10.0 percent as undivided profits.

Business of Fiduciary Financial Institutions, Management and Control

The bill requires the business of any fiduciary financial institution to be managed and controlled by such fiduciary financial institution's board of directors. The bill provides this board must consist of not fewer than 5 nor more than 25 members who are elected by the members at any regular annual meeting. The bill specifies at least one director must be a resident of Kansas. The bill also provides provisions pertaining to holding meetings that cannot occur on the date specified in the operating agreement or bylaws and meeting notice requirements.

The bill requires annual meetings of fiduciary financial institutions to be held in Kansas. The bill permits any other meetings of such institution's management or directors, including a meeting required by KSA 9-1116 (quarterly meetings), to be held in any location determined by the fiduciary financial institution's officers or directors.

Changes in Directorship; Vacancies on the Board of Directors; Administration of Oath

The bill requires any new directorship to be approved and elected by members in the manner provided in the fiduciary financial institution's organizational documents or, in the

absence of such provisions, in the manner provided by the Kansas Revised Limited Liability Company Act, the Kansas Revised Uniform Limited Partnership Act, or the Kansas General Corporation Code. The bill permits the convening of a special meeting at any time for such purpose. The bill also provides that any vacancy in the board of directors could be filled by the board of directors in the manner provided in the fiduciary financial institution's organizational documents or, in the absence of such provisions, pursuant to the Kansas laws previously referenced.

The bill requires, within 15 days after the annual meeting, the president or cashier submit to the Bank Commissioner a certified list of members and the number of units owned by each member. The Bank Commissioner is allowed to require the list be filed *via* electronic means.

The bill requires each director to take and subscribe an oath to administer the affairs of the fiduciary financial institution diligently and honestly and to not knowingly or willfully permit any of the laws relating to fiduciary financial institutions to be violated. The bill requires a copy of each oath to be retained and permits the Bank Commissioner to require oaths to be filed *via* electronic means.

The bill requires every fiduciary financial institution to notify the Bank Commissioner of any change in the chief executive officer, president, or directors, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer, president, or directors.

Reporting to the Bank Commissioner; Evaluation of Safety and Soundness

The bill requires a fiduciary financial institution to make a report to the Bank Commissioner pursuant to the provisions of the Kansas Banking Code applicable to requiring reports of banks and trust companies, upon request of the Bank Commissioner (KSA 9-1704). In making such report, the bill requires a fiduciary financial institution to:

- Report the fiduciary financial institution's fidfin transactions pursuant to generally accepted accounting principles (GAAP); and

- Calculate such fiduciary financial institution's capital solvency by including the value of all tangible and intangible assets owned by the fiduciary financial institution, regardless of use.

Safety and Soundness

The bill requires the Board and Bank Commissioner, when evaluating the safety and soundness of a fiduciary financial institution, to:

- Consider that collateral or underlying assets associated with fidfin transactions are volatile in nature and that such volatility has been accepted by the members and customers of the fiduciary financial institution;

- Respect the form, treatment, and character of fidfin transactions under the laws of this state, notwithstanding the treatment or characterization of such transactions under GAAP or for tax purposes;

- Evaluate the soundness based on whether available capital, including the members' contribution to capital, exceeds the institution's obligations, determined in accordance with GAAP; and

- Evaluate the safety based on the background and qualifications of the fiduciary financial institution's executive officers and directors and its internal controls and audit processes to ensure adherence to the policies and procedures of the institution.

Profitability. The bill states profitability shall not be a consideration in evaluating the safety and soundness of a fiduciary financial institution if sufficient capital and equity exist in the business, including, without limitation, membership capital, surplus, undivided profits, and commitments by members to contribute additional capital to the fiduciary financial institution.

Advertising, Use of Name

The bill permits a fiduciary financial institution to use in its business name or advertising the words "fiduciary financial institution" or any similar term or phrase, but such institution will not be permitted to use "bank" or "trust company" or without reference to fidfin trusts any term that tends to imply it is a bank or trust company, unless the Bank Commissioner has approved the use in writing after finding that such use will not be misleading.

The bill also states:

- While a fiduciary financial institution is a trust company for the purposes of federal and state law, regulations, and rules, and possesses trust powers under this act, it is the intent of this section to impose restrictions on the name of such institution in order to avoid confusion with other banks and trust companies that operate in this state but are not fiduciary institutions;

- The naming restrictions imposed under this section shall in no way reduce or eliminate the trust powers granted to a fiduciary financial institution as a trust company under this act; and

- Other than indicating the fiduciary financial institution is headquartered and chartered in Kansas, no fiduciary financial institution name or advertising shall infer or imply that such fiduciary financial institution is endorsed by, an affiliate of, or otherwise connected with, the State of Kansas.

Economic Growth Zone, Requirements on Office Space, Employment, and Business Performed in Kansas

The bill requires fiduciary financial institutions to maintain suitable office space in an economic growth zone; employ, engage, or contract with at least three employees; and perform

fidfin transactions, custodial services, and trust business in Kansas. The bill also permits a fiduciary financial institution to engage in fidfin transactions, custodial services, and trust business in other states to the extent permitted by applicable law. The term "suitable office space" means at least 2,000 square feet of class A office space located in an economic growth zone selected by the fiduciary financial institution that the fiduciary financial institution utilizes as its principal office. The bill also places requirements on the principal office of the fiduciary financial institution, including that such office must be located in an economic growth zone selected by the trust bank and have a secure computer terminal or other electronic device that provides access to such records necessary to facilitate an efficient and effective examination.

Business Performed in Kansas

The bill deems fidfin transactions, custodial services, and trust business to have been performed in Kansas if such transaction or custodial service agreements are approved or signed in this state on behalf of the fiduciary financial institution and at least three of the following acts are performed by a technology platform wholly or partly operated in this state: annual account reviews, annual investment reviews, trust or custodial accounting, account correspondence, reviewing and signing trust account or custodial account tax returns, or distributing account statements.

Fiduciary Financial Institution Powers; Fidfin Transactions

The bill authorizes a fiduciary financial institution to exercise by its board of directors or duly authorized officers or agents, subject to law, the following powers:

- To engage in fidfin transactions in accordance with the bill (in a section on powers and duties pertaining to extension of credit or credit to a fidfin trust);
- To receive, retain, and manage alternative asset custody accounts in accordance with the bill (in a section on custodial services); and
- To engage in trust business as defined in provisions of the Kansas Banking Code applicable to supervision (KSA 9-701).

Additional Powers, Duties, and Responsibilities—Extension of Credit and Financing; Required Distribution Amount

The bill permits, if authorized by the terms of an instrument (as defined in the bill), a fiduciary financial institution to:

- Extend financing or extensions of credit to a fidfin trust when:
    - The fiduciary financial institution serves as trustee of the borrowing fidfin trust;
    - The financing is collateralized or supported by the assets of the fidfin trust;

  - The financing is nonrecourse as to the fiduciary financial institution's customer and is not otherwise guaranteed by such customer;
  - The fiduciary financial institution agrees, in the applicable financing agreement or other written document, that the fiduciary financial institution is providing financing in a fiduciary capacity; and
  - The fiduciary financial institution agrees that such institution is providing financing in a fiduciary capacity; and

- Acquire or invest in an alternative asset on behalf of and through a fidfin trust.

Fidfin Transactions

The bill further specifies the financing of a fidfin trust is considered a fiduciary finance or fidfin transaction. The bill also states, if authorized or directed by the terms of an instrument, a fiduciary financial institution will not be deemed to have a conflict of interest, have violated a duty to a fidfin trust or the beneficiaries thereof, or have engaged in self-dealing by entering into a fidfin transaction.

The bill provides that the combination rules on limitations on loans and borrowing will not be applicable to a fiduciary financial institution's fidfin transactions regardless of the identify of the fidfin trust beneficiary if:

- The borrower is a fidfin trust; and

- The fiduciary financial institution serves as trustee of the borrowing fidfin trust.

The bill further states a fiduciary financial institution that engages in a fidfin transaction shall be a fiduciary and specifies when such fiduciary financial institution would be deemed to be exercising fiduciary powers.

The bill again specifies the required distribution, percentage of distribution to the Department, and requirement on publication of the schedule as it applies to the fidfin transactions of a fiduciary financial institution.

The bill also provides an economic growth zone or qualified charity shall have no obligation to repay any distributions received under the Act or to make any contributions to a fiduciary financial institution.

The bill also states the form, treatment, and character of fidfin transactions under the laws of this state shall be respected for all purposes of this act, notwithstanding the treatment or characterization of such transactions under GAAP for tax purposes.

Employment of Professionals; Professional Services

The bill allows a fiduciary financial institution to employ and engage various professionals to advise and assist the fiduciary financial institution in its business. A fiduciary financial institution is permitted, among those activities outlined in the bill, to:

- Employ one or more agents to perform any act of fidfin transactions, custodial services, or trust business; and

- License Internet-related services, including web services, software, mobile applications, technology-enabled platforms, and processes to or from affiliates, third parties, other fiduciary financial institutions, and their affiliates.

The bill also specifies a party engaged by a fiduciary financial institution will not be deemed to have engaged in fidfin transactions by reason of providing services to a fiduciary financial institution or licensing products or forms, platforms, systems, or processes of the fiduciary financial institution.

Use of Technology-enabled Platform

The bill specifies if a fiduciary financial institution offers its platform to provide fidfin services to residents of other states, neither the marketing, use, and deployment of such platform by parties in other states nor the origination of fidfin services through such platform will constitute an out-of-state trust facility under State Banking Code provisions applicable to trust companies (KSA 9-2111), if the fiduciary financial institution complies with provisions of the bill (office space and employment or contracting).

The fiduciary financial institution is required to provide notice to the Bank Commissioner if it engages a party under the bill's provisions for employment of a professional for advice and assistance.

Custodian of an Asset Custody Account

The bill permits a fiduciary financial institution to serve as a custodian, which includes serving as a qualified custodian (as defined by the U.S. Securities and Exchange Commission) of an asset custody account. In providing such services, a fiduciary financial institution is required to:

- Implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules and regulations for custodial services;

- Maintain information technology best practices relating to alternative assets held in custody;

- Fully comply with applicable federal anti-money laundering, customer identification, and beneficial ownership requirements; and

- Take other actions necessary to comply with the requirements of the bill.

The bill provides a fiduciary financial institution performing custodial services will be deemed to be serving as a fiduciary and exercising fiduciary powers.

Instrument of the Trust Advisor

The bill provides that any instrument providing for a trust advisor may also provide such advisor with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under Kansas law or under such instrument. Unless the instrument provides otherwise, a trust advisor would have no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunities, or authority provided or allowed by the instrument to such trust advisor.

Excluded Fiduciaries; Exemption from Liability

The bill provides for the exemption from liability of an excluded fiduciary, either individually or as a fiduciary, from:

- Any loss that results from compliance with a direction of the trust advisor; or
- Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor.

The bill provides for instances when the excluded fiduciary would be relieved from obligations to review or evaluate a direction from a trust advisor and the duty to communicate with the trust advisor. The bill also provides, in any action against an excluded fiduciary, the burden of proof will be on the person seeking to hold the excluded fiduciary liable under the clear and convincing evidence standard.

Trust Advisors; Presumption of Acting as Fiduciary

The bill states a trust advisor is presumed to be a fiduciary when exercising such trust advisor's authority under the Act. The bill specifies that by accepting appointment to serve as a trust advisor to a fidfin trust or an alternative asset custody account, a trust advisor submits to jurisdiction of the courts of Kansas even if agreements provide otherwise.

The bill also provides an instrument may appoint an individual, corporation, or limited liability company as the trust advisor of a fidfin trust or an alternative asset custody account.

Exemption from Article 8 of the State Banking Code

The bill specifies, for an entity appointed as a trust advisor, when certain provisions of the State Banking Code (Article 8, organization) would not apply. Those instances include if such entity:

- Is established for the exclusive purpose of acting as a trust advisor;
- Is acting in such capacity under an instrument that names a fiduciary financial institution as trustee or custodian;
- Is not engaged in trust business with the general public as a public trust company or with any family as a private trust company;

- Does not hold itself out as being in the business of acting as a fiduciary for hire as either a public or private trust company; and

- Agrees to be subject to examination by the OSBC at the discretion of the Bank Commissioner.

The bill requires the governing documents of any such entity limit that entity's authorized activities to those of a trust advisor.

Indemnification

The bill provides that an instrument may relieve and indemnify a trust advisor and fiduciary financial institution that serves as a trustee of a fidfin or alternative asset custody account that serves as a trustee from liability for breach of fiduciary liability duty if any such provision is unenforceable to the extent that it relieves the trust advisor or fiduciary financial institution from liability for a breach of fiduciary duty committed in bad faith, intentionally, or with reckless indifference to the interest of a beneficiary.

Compensation of the Trustee

The bill provides requirements governing the compensation of a trustee, specifying each trustee is entitled to be compensated as provided in the terms of a fidfin trust, except that such compensation may be increased or decreased upon approval by the trustee and by unanimous consent of the beneficiaries. The bill also specifies when the court will be permitted to allow additional compensation of a trustee.

Privacy Protections

The bill establishes privacy protections for those establishing a fidfin trust or alternative asset custody account, in court proceedings, upon petition of the acting trustee, custodian, trustor, or any beneficiary. Upon the filing, documents would be sealed and not be part of the public record, except that the petition would be available.

Definition of Form; Review of Forms for Informational Purposes

The bill permits the Bank Commissioner to, upon a written request from a fiduciary financial institution prior to a form submission, offer to review a form and reply with informational comments only. The bill further states such comments shall not, in any manner, constitute approval or endorsement of such form, and the fiduciary financial institution shall not represent that such form has been approved by the OSBC.

The bill defines "form" to include:

- An instrument as that term is defined in the bill;

- A transaction agreement between a fiduciary financial institution and a fidfin trust;

- Any other documents executed by a fiduciary financial institution or a fidfin trust in connection with a fidfin transaction; and

- Any document executed by a fiduciary financial institution or a customer in connection with the creation and management of an alternative custody account.

Rules and Regulations; Professional Services and Technical Assistance

The bill requires the Bank Commissioner to adopt rules and regulations on or before January 1, 2022, as necessary to administer the Act.

The bill permits the OSBC to enter into contracts for technical assistance and professional services as necessary to administer the provisions of this act and to meet the specified deadline for adoption of the rules and regulations.

Interest Rate or Charge; Written Agreement

The bill provides, notwithstanding the provisions of Chapter 16 of the *Kansas Statutes Annotated* (contracts and promises) or other law, there is no maximum interest rate or charge or usury rate restriction between or among a fiduciary financial institution and a fidfin trust if the rate or charge is established by written agreement.

A "written agreement" means a document in writing, whether in physical or electronic form, in which the parties have demonstrated their agreement to the terms and conditions of an extension of credit, including the rate of interest.

Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund

The bill establishes the Technology-enabled Fiduciary Financial Institutions Development and Expansion Fund (Fund) in the State Treasury to be administered by the Secretary of Commerce. The bill requires expenditures from the Fund to be for the purposes of distributing to economic growth zones for the purposes of economic development projects or opportunities and promoting and facilitating the development and growth of trust banks, fidfin activities, and custodial services in Kansas and to locate trust banks' office space in an economic growth zone.

The bill also requires transfers from the State General Fund to the Fund of interest earnings of Fund moneys.

Issuance of Charter to The Beneficient Company; FidFin Fiduciary Financial Institution Pilot Program

On July 1, 2021, the bill will require the Bank Commissioner to grant a conditional fiduciary financial institution charter to The Beneficient Company (Beneficient) upon the filing of an application and satisfying requirements as detailed in the bill.

Harvey County Community; Pilot Program

The bill requires Beneficient to designate a community within Harvey County as the first economic growth zone.

The Bank Commissioner is required to establish a FidFin Fiduciary Financial Institution Pilot Program that will include Beneficient as a participant, assess an initial fee of $1.0 million in lieu of the initial charter fee established in the bill, and impose a requirement for Beneficient to distribute or facilitate the distribution of cash, beneficial interests, or other assets having an aggregate value of $9.0 million. This distribution will be distributed in accordance with requirements in the bill and shall be construed as the applicable distribution amount, as specified in the bill.

Upon the issuance of the conditional charter, Beneficient will be subject to all requirements imposed on trust banks under the Act, but will not be permitted to conduct fidfin transactions, custodial services, or trust business in Kansas until the earlier of December 31, 2021, or the date the Bank Commissioner adopts rules and regulations.

Extension of Time Frame before Transactions and other Business; Reports to Legislature

Reporting. The bill permits the Bank Commissioner to extend the period of time in which Beneficient may not commence fidfin transactions, custodial services, or trust business in Kansas for a period not to exceed six months if the Bank Commissioner submits a report to the chairperson of the Senate Committee on Financial Institutions and Insurance (Senate Committee) and the House Committee on Financial Institutions and Rural Development (House Committee) identifying the specific reasons for which such extension was necessary. The bill requires such report to be submitted on or before January 10, 2022.

The bill also requires, on or before January 10, 2022, the OSBC to provide a report to the House Committee and the Senate Committee with an update on the progress of the pilot program. This bill requires the report to include recommendations from the OSBC for any legislation necessary to implement the provisions of this act.

Required distributions. The bill further allows Beneficient to satisfy the application distribution requirements of the bill by placing assets in escrow with one or more qualified charities provided that such funds shall be released when Beneficient is permitted to commence fidfin transactions, custodial services, or trust business.

Interest in a Fidfin Trust

The bill provides that no interest held in a fidfin trust shall be void or invalid by reason of any common law rule including, but not limited to, the rule against perpetuities or rule limiting the duration of trusts.

Classification of Business Trust, Taxation Purposes

The bill provides that, for state taxation purposes, a fiduciary financial institution that serves as a trustee under the Act shall be classified as a corporation, association, a partnership, a trust, or otherwise, as determined by the federal Internal Revenue Code.

Income and Privilege Tax Credit; "Qualified Charitable Distributions"

The bill establishes an income and privilege tax credit beginning with tax year 2021 for fiduciary financial institutions in an amount equal to such fiduciary financial institution's qualified charitable distributions during such taxable year if the fiduciary financial institution maintained such fiduciary financial institution's principal office in an economic growth zone. The bill allows a tax credit to be carried forward. The credit could be carried forward for up to five taxable years following the years in which the credit is first allowed. These provisions are part of and supplemental to the Kansas Income Tax Act.

Pass-through Entities

The bill includes provisions pertaining to fiduciary financial institutions that are considered pass-through entities for Kansas tax purposes and this credit. The bill specifies tax credits allowed and earned under this section shall not be sold, assigned, conveyed, or otherwise transferred.

Tax Liability for Unmet Qualified Charitable Deductions

The bill specifies that a fiduciary financial institution must pay the greater of the qualified charitable distributions made during such taxable year or the tax liability of a fiduciary financial institution imposed pursuant to the Kansas Income Tax Act or the privilege tax imposed pursuant to Article 11, Chapter 79 of the *Kansas Statutes Annotated* (the financial institutions privilege tax).

Qualified Charitable Distributions; Qualified Charities

The bill creates definitions for "qualified charitable distributions" and "qualified charities." The bill specifies "qualified charities" are charities that have:

- Been organized pursuant to a charter promulgated by the Department for the purposes of making distributions for the benefit of economic growth zones;

- Committed in writing to utilize the entire amount of the qualified charitable distributions, excluding reasonable administrative expenses, exclusively for the benefit of charitable causes located in one or more economic growth zone or postsecondary educational institution; and

- Agreed to provide an annual report to the Department detailing qualified distributions received during such year, distributions made, and the remaining balance of qualified distributions as of the end of the reporting year.

The bill also specifies when such requirements will not apply.

Joint Committee on Fiduciary Financial Institutions Oversight

The bill establishes a nine-member Joint Committee on Fiduciary Financial Institutions Oversight (Joint Committee) that is composed of four senators and five representatives.

Membership and Meeting Requirements

The four members of the Senate are the chairperson of the Senate Committee or a member of the committee designated by the chairperson, two members appointed by the President, and one member appointed by the Minority Leader. The five members of the House of Representatives are the chairperson of the House Committee or a member of the committee designated by the chairperson, two members appointed by the Speaker, and two members appointed by the Minority Leader.

The bill specifies the terms of all Joint Committee members will expire on the first day of the regular session in odd-numbered years and specifies when the chairperson is appointed by either the Speaker or President. The Joint Committee is permitted to meet at any time and any place on call of the chairperson. The bill provides a quorum of the Joint Committee would be a majority of the members.

The bill also provides for member compensation, travel expenses, and subsistence expenses or allowances and provision for professional services as may be provided by the Legislative Coordinating Council.

Legislation and Role of Joint Committee

The Joint Committee is permitted to introduce legislation as deemed necessary in performing its functions. The Joint Committee is required to:

- Monitor, review, and make recommendations regarding fiduciary financial institutions' operations in the state of Kansas;

- Monitor, review, and make recommendations regarding the pilot program; and

- Receive a report from the OSBC prior to December 31, 2021, that provides an update on the implementation of the Act and pilot program. The bill requires the report to include recommendations from the OSBC for any legislation necessary to implement the provision of the Act.

The bill also requires the OSBC to appear before the Joint Committee annually and present a report on the fiduciary financial institution industry.

First-time Home Buyer Savings Account; HB 2187

HB 2187 enacts the First-time Home Buyer Savings Account Act (Act) and establishes modifications to the Kansas adjusted gross income of an individual for contributions to a first-time home buyer savings account (account).

Definitions

The bill defines the terms "account" or "first-time home buyer savings account," "designated beneficiary," "eligible expenses," "financial institution," "first-time home buyer," and "Secretary."

First-time Home Buyer Savings Accounts

The bill allows an individual, on and after July 1, 2022, to open an account with a financial institution and designate the entirety of the account as an account used to pay or reimburse a designated beneficiary's eligible expenses for the purchase or construction of a primary residence in Kansas. The bill allows an individual to be the account holder of multiple accounts and jointly own an account, provided the account holders file a joint income tax return. An account holder in compliance with the Act is eligible for income tax modifications of KSA 79-32,117.

The bill requires the account holder, by April 15 of the year after the taxable year in which the account holder established the account, to designate a beneficiary of the account. The bill does not prohibit an account holder from designating the account holder as the designated beneficiary. An account holder is allowed to change the designated beneficiary at any time, but no account can have more than one designated beneficiary at one time. An individual can be the designated beneficiary of more than one account if the accounts are held by separate account holders, but no account holder is authorized to designate the same designated beneficiary on multiple accounts held by the same account holder.

The bill applies the following limits to an account established pursuant to the Act:

- Maximum contribution to an account in any tax year:
    - $3,000 for an individual; and
    - $6,000 for a married couple filing a joint return.
- Maximum amount of all contributions to an account in all tax years:
    - $24,000 for an individual; and
    - $48,000 for a married couple filing a joint return.
- Maximum total amount in an account: $50,000.

The bill allows moneys to remain in an account for an unlimited duration without the interest or income being subject to recapture or penalty. Further, the bill prohibits the account holder from using moneys in an account to pay expenses for administering the account, except for a service fee that may be deducted by a financial institution. In addition, the account holder is responsible for maintaining documentation for the account and for eligible expenses related to the designated beneficiary's purchase or construction of a primary residence.

Account Moneys

Use of Account Moneys

The bill allows the moneys in an account to be used for the following:

- Eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located in Kansas;

- Eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located outside of Kansas if the designated beneficiary is active-duty military and was stationed in Kansas for any time after the creation of the account;

- Eligible expenses that would have qualified pursuant to this section, but the contract for purchase or construction was not closed;

- Transfer to another newly created account; and

- Payment of service fees assessed by the financial institution.

The bill allows the moneys to be used for the above purposes even if a designated beneficiary is a joint owner of a primary residence with another person who is not a designated beneficiary of the account.

Moneys in an account cannot be used to purchase a manufactured or mobile home that is not taxed as real property.

Recapture of Account Moneys and Penalties

The bill subjects moneys withdrawn from an account to recapture by the Secretary of Revenue (Secretary) in the tax year in which they are withdrawn if:

- At the time of withdrawal, it has been less than a year since the first deposit in the account; or

- The moneys are used for any purpose other than the expenses or transactions authorized pursuant to the uses outlined in this section.

Moneys subject to recapture are equal to the amount withdrawn from an account and are added to the Kansas adjusted gross income of the account holder or of the designated beneficiary, if the account holder is deceased. If any moneys are subject to recapture, the account holder is required to pay a penalty in the following amounts:

- If the withdrawal of moneys occurred ten or fewer years after the first deposit of the account, 5 percent of the amount subject to recapture; or

- If the withdrawal of moneys occurred more than ten years after the first deposit in the account, 10 percent of the amount subject to recapture.

The penalties do not apply if the withdrawn moneys are:

- Used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence outside Kansas; or

- From an account in which the designated beneficiary is deceased and the account holder did not designate a new designated beneficiary during the same tax year.

Further, if the account holder or account holders are deceased and the account does not have a surviving transfer-on-death beneficiary, the moneys in the account resulting from contributions or income earned from assets in the account are subject to recapture in the tax year of the death or deaths, but no penalty is assessed.

Reports

The bill requires the Secretary to establish forms for an account holder to annually report information about any accounts held by the account holder. An account holder is required to annually file all forms required by the Secretary, the form 1099 for the account issued by the financial institution, and any other supporting documentation required by the Secretary with the account holder's state income tax return.

The bill requires the Secretary to adopt rules and regulations necessary to administer the Act prior to July 1, 2022.

Financial Institutions

The bill states financial institutions are not required to:

- Designate an account as a first-time home buyer savings account or designate the beneficiaries of an account in the financial institution's account contracts or systems in any way;

- Track the use of moneys withdrawn from an account; or

- Report any information to the Department of Revenue or any other governmental agency that is not otherwise required by law.

The bill states financial institutions are not responsible or liable for:

- Determining or ensuring an account holder is eligible for a Kansas adjusted gross income modification;

- Determining or ensuring moneys in the account are used for eligible expenses; or

- Reporting or remitting taxes or penalties related to the use of account moneys.

Modifications to Kansas Adjusted Gross Income of an Individual

The bill adds to an individual's federal adjusted gross income for all taxable years beginning after December 31, 2021:

- The amount of any contributions to, or earnings from, an account if distributions from the account were not used to pay for expenses or transactions authorized by or were not held for the minimum length of time pursuant to the bill; and

- Contributions to, or earnings from, the account, including any amount resulting from the account holder not designating a surviving transfer-on-death beneficiary pursuant to the bill.

The bill also subtracts from an individual's federal adjusted gross income for all taxable years beginning after December 31, 2021:

- The amount contributed to an account in an amount not to exceed $3,000 for an individual or $6,000 for a married couple filing a joint return; or

- Amounts received as income earned from assets in an account.

Audiology and Speech-Language Pathology Interstate Compact; SB 77

SB 77 enacts the Audiology and Speech-Language Pathology Interstate Compact (Compact). The Compact's uniform provisions are outlined below.

Purpose

The purpose of the Compact is to facilitate the interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services.

Definitions

The Compact defines various terms used throughout the Compact.

State Participation in the Compact

The Compact provides licensure requirements for states participating in the Compact. Licenses issued by a home state to an audiology or speech-language pathologist are recognized by each member state as authorizing the practice of audiology or speech-language pathology in each member state. States are required to implement criminal history record checks of license applicants. The privilege to practice audiology or speech-language pathology is derived from the home state license. Member states are authorized to charge a fee for granting a compact privilege and are required to comply with bylaws and rules of the Audiology and Speech-Language Pathology Compact Commission (Compact Commission).

Compact Privilege

The Compact requires audiologists and speech-language pathologists to comply with certain requirements to exercise compact privilege and state audiologists and speech-language pathologists can hold only one home state license at a time. The Compact establishes the requirements to restore an encumbered license.

Compact Privilege to Practice Telehealth

The Compact requires member states to recognize the right of an audiologist or speech-language pathologist licensed in a member state to practice in another member state *via* telehealth.

Active Duty Military Personnel or Their Spouses

The Compact allows active duty military personnel or their spouses to designate a home state where such service member or spouse has a license in good standing and allows such military personnel or spouse to retain that home state designation during the period of time the service member is on active duty.

Adverse Actions

The Compact allows a member state to take adverse action against an audiologist's or speech-language pathologist's privilege to practice in such member state and to issue subpoenas. Only the licensee's home state has the power to take adverse action against the audiologist's or speech-language pathologist's license issued by such home state. The Compact allows joint investigations of licensees by member states.

Establishment of the Audiology and Speech-Language Pathology Compact Commission

The Compact creates the Compact Commission and includes provisions relating to the membership, voting, powers and duties, and financing of the Compact Commission.

Data System

The Compact requires the Compact Commission to develop, maintain, and utilize a coordinated database and reporting system on all licensed individuals in member states. Additionally, the Compact Commission is required to promptly notify all member states of an adverse action taken against a licensee or applicant. Any information contributed to the database can be designated by a member state as not for the public.

Rulemaking

The Compact authorizes the Compact Commission to exercise rulemaking powers. The bill requires notice of proposed rules to be filed at least 30 days prior to the meeting where the Compact Commission will consider such rule. Additionally, the Compact Commission is required to grant the opportunity for a public hearing if certain conditions are met. However, the Compact provides for emergency rulemaking procedures.

Oversight, Dispute Resolution, and Enforcement

The Compact requires the Commission, upon member request, to resolve disputes arising among member states and between member states and nonmember states. In addition, the Compact Commission is allowed to enforce the provisions of the Compact and, by majority vote, could initiate legal action in federal court against a member state.

Date of Implementation of the Interstate Commission for Audiology and Speech-Language Pathology Practice 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. Any member state is allowed to withdraw from the Compact by enacting a statute that repeals the Compact, but this does not take effect until six months after the enactment of the repealing statute. Member states can amend the Compact, but any amendment is not effective until it is enacted by all member states.

Construction and Severability

The Compact is to be liberally construed and the provisions of the Compact are severable.

Binding Effect of Compact and Other Laws

The Compact does not prevent the enforcement of any other law of a member state that is not inconsistent with the Compact. Laws in conflict with the Compact are superseded to the extent of the conflict and all lawful actions of the Compact Commission are binding upon member states.

Psychology Interjurisdictional Compact; Physical Therapy Licensure Compact; SB 170

SB 170 enacts the Psychology Interjurisdictional Compact (PSYPACT), and provides for the interjurisdictional authorization of psychologists across state boundaries to practice telepsychology using telecommunication technologies and provide temporary in-person, face-to-face psychology services.

The bill also enacts the Physical Therapy Licensure Compact (PT Compact) and amends the Physical Therapy Practice Act. The PT Compact provides interstate practice authority for physical therapists (PTs) in compact states. The PT Compact also provides for the creation of a Physical Therapy Compact Commission, with each member state represented by one delegate, and outlines the voting and meeting requirements.

The bill adds a provision to the Act to authorize the State Board of Healing Arts (Board) to require fingerprinting and state and federal criminal history record checks under specific circumstances. The bill amends the Act to clarify the Board may take disciplinary action regarding compact privilege, requires PTs licensed in a home state and practicing in Kansas under the PT Compact to maintain professional liability insurance coverage, and requires the Board to include PTs licensed in a home state and practicing in Kansas under the PT Compact in the rules and regulations that establish the minimum education and training requirements for the practice of dry needling.

Psychology Interjurisdictional Compact

Licensure or Renewal Fees

The Behavioral Sciences Regulatory Board (BSRB) is permitted to assess a fee, not to exceed $25, at the time of licensure or license renewal for any person seeking compact privilege to practice under the PSYPACT whose home state is Kansas, in addition to any other fees authorized by law for licensure. The BSRB is required to adopt rules and regulations to establish the amount of the fee.

Enactment Date

The bill declares this compact is to be cited as the Psychology Interjurisdictional Compact (PSYPACT). The PSYPACT is in effect on and after January 1, 2022.

Purpose

The bill specifies the purpose of the PSYPACT is to regulate the day-to-day practice of telepsychology, the provision of psychological services using telecommunication technologies; to regulate the temporary (30 days within a calendar year) in-person, face-to-face practice of telepsychology by psychologists across state boundaries in performing their psychological practice as assigned by an appropriate authority; and to authorize state psychology regulatory authorities to legally recognize, in a manner consistent with the terms of the PSYPACT, psychologists licensed in another state.

The PSYPACT does not apply to a psychologist licensed in both the home and receiving states and to the permanent, in-person, face-to-face practice of psychology.

The bill states the PSYPACT's design is to achieve the following purposes and objectives:

- Increase public access to professional psychological services by allowing telepsychological practice across state lines and temporary in-person, face-to-face services into a state in which the psychologist is not licensed to practice psychology;

- Enhance the states' ability to protect the public's health and safety, especially client/patient safety;

- Encourage the cooperation of compact states in the areas of psychology licensure and regulation;

- Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history;

- Promote compliance with the laws governing psychological practice in each compact state; and

- Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

Definitions

The PSYPACT defines applicable terms, including the following:

- "Association of State and Provincial Psychology Boards" (Association) means the recognized membership organization composed of state and provincial psychology regulatory authorities responsible for the licensure of psychologists throughout the United States and Canada;

- "Authority to practice interjurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under the PSYPACT, in another compact state;

- "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to Article X;

- "Compact state" means a state, the District of Columbia, or a U.S. territory that has enacted PSYPACT legislation and has not withdrawn pursuant to Article XIII(c) or been terminated pursuant to Article XII(b);

- "Coordinated licensure information system" or "coordinated database" means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, administered by the recognized membership organization composed of state and provincial psychology regulatory authorities;

- "Distant state" means the compact state where a psychologist is physically present, not through the use of telecommunications technologies, to provide temporary in-person, face-to-face psychological services;

- "E.Passport" means a certificate issued by the Association that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines;

- "Home state" means the compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing interjurisdictional psychology, the home state is the compact state where the psychologist is physically present when the services are delivered. If the psychologist is licensed in more than one compact state under a temporary authorization to practice, the home state is any compact state where the psychologist is licensed;

- "Interjurisdictional practice certificate" means a certificate issued by the Association that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily and verification of one's qualifications for such practice;

- "Psychology Interjurisdictional Compact Commission" (Commission) means the national administration of which all compact states are members;

- "Receiving state" means a compact state where the client/patient is physically located when the telepsychological services are delivered; and

- "Rule" means a written statement by the Commission promulgated pursuant to Article XI that meets the four requirements set out, including having the force and effect of statutory law in a compact state.

Home State Licensure

Under the PSYPACT, a home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

- Currently requires the psychologist to hold an active E.Passport;
- Has a mechanism in place for receiving and investigating complaints about licensed individuals;
- Notifies the Commission, in compliance with the terms of the PSYPACT, of any adverse action or significant investigatory information regarding a licensed individual;
- Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation (FBI), or other designee with similar authority, not later than ten years after activation of the PSYPACT; and
- Complies with the bylaws and rules of the Commission.

Under the PSYPACT, a home state's license grants temporary authorization to practice to a psychologist in a distant state only if the same five conditions noted above required for authorization to practice interjurisdictional psychology are met.

PSYPACT Privilege to Practice Telepsychology

The PSYPACT requires compact states to recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice telepsychology in other compact states, or receiving states, in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the PSYPACT.

The PSYPACT establishes specific requirements for a psychologist licensed to practice in a compact state to exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of the PSYPACT.

The PSYPACT provides the home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology is subject to the receiving state's scope of practice.

The PSYPACT authorizes a receiving state, in accordance with the state's due process laws, to limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and to take any other necessary actions under that state's applicable law to protect the health and safety of the receiving state's citizens. The PSYPACT requires a state taking such disciplinary action to notify the home state and the Commission.

The PSYPACT requires the E.Passport to be revoked and a psychologist no longer be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology if the psychologist's license in any home state or another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended, or otherwise limited.

PSYPACT Temporary Authorization to Practice

The PSYPACT requires compact states to also recognize the right of a psychologist licensed in a compact state in conformance with Article III to practice temporarily in other compact states, or distant states, in which the psychologist is not licensed, as provided in the PSYPACT.

The PSYPACT establishes specific requirements for a psychologist licensed to practice in a compact state to exercise the temporary authorization to practice under the terms and provisions of the PSYPACT. These requirements are the same as those for PSYPACT privilege to practice telepsychology.

With regard to a psychologist practicing into a distant state under the temporary authorization to practice, the PSYPACT requires the psychologist to:

- Practice within the scope of practice authorized by the distant state; and
- Be subject to the distant state's authority and law.

The distant state's authority to limit or revoke a psychologist's temporary authorization to practice in the distant state and its requirement to promptly notify the home state and the Commission of such disciplinary actions is the same as that of a receiving state with regard to a psychologist's authority to practice interjurisdictional authority in a receiving state.

The PSYPACT requires the revocation of an interjurisdictional practice certificate under the same conditions that require the revocation of an E.Passport.

Conditions of Telepsychology Practice in a Receiving State

The PSYPACT authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the Commission, and under the following circumstances:

- The psychologist initiates a client/patient contact in a home state *via* telecommunications technologies with a client/patient in a receiving state; and
- Other conditions regarding telepsychology as determined by rules promulgated by the Commission.

Adverse Actions

The PSYPACT establishes the following with regard to adverse actions against a psychologist:

- A home state has the power to impose adverse action against a psychologist's license issued by the home state. A distant state has the power to take adverse action on a psychologist's temporary authorization to practice within the distant state;

- A receiving state is authorized to take action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state is allowed to take adverse action based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice;

- If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport revoked. The psychologist's temporary authorization to practice is terminated and the interjurisdictional practice certificate is revoked. The PSYPACT requires all home state disciplinary orders that impose adverse action and adverse actions by compact states to be reported to the Commission, in accordance with the rules of the Commission;

- A home state's psychology regulatory authority is required to investigate and take appropriate disciplinary action with regard to reported inappropriate conduct that occurred in a receiving state as if such conduct had occurred within the home state. In these cases, the home state's law controls the determination of any adverse action against a psychologist's license. In like manner, a distant state is required to investigate and take appropriate action against a psychologist practicing under a temporary authorization for reported inappropriate conduct that occurred in the distant state, as if such conduct had occurred within the home state. The distant state's law controls in determining any adverse action against a psychologist's temporary authorization to practice;

- The PSYPACT does not override a compact state's decision that a psychologist's participation in an alternative program be used in lieu of adverse action and that participation remain nonpublic if required by the compact state's law. During the term of the alternative program, compact states are prohibited from allowing psychologists in an alternative program to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state; and

- No other judicial or administrative remedies are available to a psychologist in the event a compact state imposes an adverse action that results in the revocation of an E.Passport or an interjurisdictional practice certificate.

Additional Authorities Invested in a PSYPACT State's Psychology Regulatory Authority

In addition to powers granted under state law, the PSYPACT provides a compact state's psychology regulatory authority with additional authorities, including:

- Issuing subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence; and

- Issuing cease and desist or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology or temporary authorization to practice.

Coordinated Licensure Information System

The PSYPACT provides for the development and maintenance of a coordinated licensure information system and reporting system containing licensure and disciplinary action information on all individuals to whom the PSYPACT is applicable in all compact states.

Notwithstanding any other provision of state law to the contrary, a compact state is required to submit a specified uniform data set to the coordinated database on all licensees as required by the rules of the Commission. The PSYPACT requires the coordinated database administrator to promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state. PSYPACT states are allowed to designate information reported to the coordinated database that is not to be shared with the public without the express permission of the compact state reporting the information. Information submitted to the coordinated database subsequently required to be expunged by state law of the compact state reporting the information will be removed from the coordinated database.

Establishment of the Commission

Creation of Commission. The PSYPACT requires compact states to create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission. The Commission is a body politic and an instrumentality of the compact states. Venue is proper, and judicial proceedings by or against the Commission must brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. To the extent the Commission adopts or consents to participate in alternative dispute resolution, the Commission may waive venue and jurisdictional defenses. Nothing in the PSYPACT is to be construed as a waiver of sovereign immunity.

Membership, voting, and meetings. The Commission consists of one voting representative appointed by each compact state who serves as that state's commissioner. The state psychology regulatory authority appoints its delegate, who is empowered to act on behalf of the compact state. Limitations on who may be appointed as a delegate are outlined in the PSYPACT.

The PSYPACT allows any commissioner to be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy

occurring in the Commission is filled according to the laws of the compact state in which the vacancy exists.

The PSYPACT provides for the voting procedure for commissioners and establishes the meeting requirements, including requiring meetings be open to the public and public notice of the meetings. The PSYPACT allows closed, nonpublic meetings to be convened if the Commission is required to discuss specific matters as outlined in the PSYPACT and requires specific procedures be followed when such meetings are held.

Bylaws and rules. The PSYPACT requires the Commission, by a majority vote of the commissioners, to prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the PSYPACT. The PSYPACT describes the nature of such bylaws and rules.

Powers of the Commission. The PSYPACT grants the following powers to the Commission:

- Promulgating uniform rules to facilitate and coordinate implementation and administration of the PSYPACT, which have the force and effect of law and are binding in all compact states;

- Bringing and prosecuting legal proceedings or actions in the name of the Commission, provided the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure 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 compact state;

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

- Accepting any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receiving, utilizing, and disposing of the same, provided that at all times the Commission strives to avoid any appearance of impropriety or conflict of interest;

- Leasing, purchasing, accepting appropriate gifts or donations of, or otherwise owning, holding, improving, or using, any real or personal property, or mixed, provided the Commission at all times strives to avoid the appearance of impropriety;

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

- Establishing a budget and making expenditures;
- Borrowing money;
- Appointing committees, including advisory committees, with membership as described;
- Providing and receiving information from, and cooperating with, law enforcement agencies;
- Adopting and using an official seal; and
- Performing such other functions as may be necessary or appropriate to achieve the purpose of the PSYPACT consistent with the state regulation of psychology licensure, temporary in-person, face-to-face, and telepsychology practice.

Executive Board. The PSYPACT provides the elected officers serve as the Executive Board. The Executive Board has the power to act on behalf of the Commission according to the terms of the PSYPACT. The PSYPACT designates the composition of the six-member Executive Board, including one ex officio member from the recognized membership organization composed of state and provincial psychology regulatory authorities; allows for removal of an Executive Board member as provided in the bylaws; sets the frequency of the Executive Board meetings; and establishes the duties and responsibilities of the Executive Board.

Financing of the Commission. The PSYPACT requires the Commission to pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities. The Commission is:

- Allowed to accept any and all appropriate revenue resources, donations and grants of money, equipment, supplies, material, and resources;
- Allowed to levy on and collect an annual assessment from each compact 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 in an amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment is allocated based on a formula determined by the Commission, and the Commission is required to promulgate a rule binding upon all compact states;
- Prohibited from incurring obligations of any kind prior to securing the funds adequate to meet the same or from pledging the credit of any of the compact states, except by and with the authority of the compact state; and
- Required to keep accurate accounts of all receipts and disbursements. Such receipts and disbursements are subject to the audit and accounting procedures established under the Commission's bylaws. Additionally, the PSYPACT requires all receipts and disbursements of funds handled by the Commission to be audited yearly by a certified or licensed public accountant and the report of the audit be included in and become part of the annual report of the Commission.

Qualified immunity, defense, and indemnification. The PSYPACT provides the members, officers, 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 any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, provided that no such person is protected from suit or liability for any damage, loss, injury, or liability caused by the intentional, willful, or wanton misconduct of such person.

The PSYPACT requires the Commission to defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. Such person is not prohibited from retaining his or her own counsel. The actual or alleged act, error, or omission cannot have resulted from such person's intentional, willful, or wanton misconduct.

The PSYPACT requires the Commission 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 that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided the act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

Rulemaking

The PSYPACT requires the Commission to exercise its rulemaking power according to this Article and the rules adopted thereunder. Additional rulemaking provisions include the following:

- Rules and amendments are binding as of the date specified in each rule or amendment;

- If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the PSYPACT, then such rule has no further force and effect in any compact state;

- Rules or amendments to the rules are to be adopted at a regular or special meeting of the Commission;

- The Commission is required to file a notice of proposed rulemaking prior to the promulgation and adoption of a final rule or rules by the Commission at least 60 days in advance of the meeting at which the rule is to be considered and voted upon;

- The notice of proposed rulemaking must contain certain specific items, as outlined in the bill;

- Prior to the adoption of a proposed rule, the Commission must allow persons to submit written data, facts, opinions, and arguments, which are to be made available to the public;

- The Commission is required to grant an opportunity for a public hearing before the adoption of a rule or amendment if a hearing is requested by at least 25 persons who submit comments independently of each another, a governmental subdivision or agency, or a duly appointed person in an association that has at least 25 members;

- If a hearing is held on the proposed rule or amendment, the Commission is required to publish the place, time, and date of the scheduled public hearing. The PSYPACT provides for written notification by persons wishing to provide public comment, the manner of conduct of the meeting to allow for such public comment, and provisions for transcripts and recordings of the hearing, and allows for rules grouped for hearings for the convenience of the Commission;

- Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing is not held, the Commission is required to consider all written and oral comments received;

- The Commission takes final action on the proposed rule by a majority vote of all members and determines the effective date of the rule, if any, based on the rulemaking record and the full text of the rule;

- The Commission is allowed to proceed with the promulgation of the proposed rule without a public hearing if no written notice of intent to attend the public hearing by interested parties is received;

- Upon determination that an emergency exists, the Commission is authorized to consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided for in the PSYPACT and in this Article are retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. The PSYPACT defines an emergency rule; and

- The Commission or an authorized committee of the Commission is allowed 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. The method of public notice and challenges to such revisions is outlined in the bill.

Oversight, Dispute Resolution, and Enforcement

Oversight. The PSYPACT provides for the following oversight:

- Executive, legislative, and judicial branches of state government in each compact state are required to enforce the PSYPACT and take all actions necessary and appropriate to effectuate the PSYPACT's purposes and intent. The provisions of the PSYPACT and the rules promulgated thereunder have standing as statutory law;

- All courts are required to take judicial notice of the PSYPACT and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the PSYPACT that may affect the powers, responsibilities, or actions of the Commission; and

- The Commission is entitled to receive service of process and has standing to intervene in such proceedings for all purposes. Failure to provide service of process to the Commission renders the judgment or order void as to the Commission, the PSYPACT, or promulgated rules.

Default, technical assistance, and termination. The PSYPACT requires the Commission, upon determination that a compact state has defaulted in the performance of its obligations or responsibilities under the PSYPACT or promulgated rules, to provide written notice to the defaulting state and other compact states of the default, the proposed means of remedying the default, and any other action to be taken by the Commission, and provide remedial training and specific technical assistance regarding the default.

If a compact state in default fails to remedy the default, the PSYPACT provides, upon an affirmative vote of a majority of the compact states, the defaulting state may be terminated from the PSYPACT, and all rights, privileges, and benefits conferred by the PSYPACT are terminated on the effective date of the termination. A remedy of the default does not relieve the offending state of obligations and liabilities incurred during the period of default.

Termination of membership in the PSYPACT is imposed only after all other means of securing compliance have been exhausted. The PSYPACT requires the Commission to provide written notice of the intent to suspend or terminate to the governor and the majority and minority leaders of the defaulting state's legislature and each of the compact states.

The PSYPACT requires a compact state that has been terminated to be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination.

Unless agreed upon in writing between the Commission and the defaulting state, the PSYPACT prohibits the Commission from bearing the costs incurred by the state found to be in default or that has been terminated from the PSYPACT.

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

Dispute resolution. Upon request by a compact state, the Commission is required to attempt to resolve disputes related to the PSYPACT that arise among compact states and between compact and non-compact states. The PSYPACT requires the Commission to

promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

Enforcement. The PSYPACT requires the Commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of the PSYPACT. By majority vote, the Commission is authorized to initiate legal action in the U.S. District Court for the State of Georgia, or the federal district court where the PSYPACT has its principal offices, against a compact state in default to enforce compliance with the provisions of the PSYPACT and its promulgated rules and bylaws. The PSYPACT provides that both injunctive relief and damages may be sought. If judicial enforcement is necessary, the prevailing member is awarded all costs of such litigation, including reasonable attorney fees. The PSYPACT provides the remedies in this Article are not the exclusive remedies of the Commission, and the Commission is authorized to pursue other remedies available under federal or state law.

Date of Implementation of the Commission and Associated Rules, Withdrawal, and Amendments

Effective date. The PSYPACT comes into effect on the date on which it is enacted into law in the seventh compact state. The provisions that come into effect at that time are limited to the powers granted to the Commission related to assembly and promulgation of rules. The Commission meets and exercises rulemaking powers necessary to implement and administer the PSYPACT. [*Note:* The seventh state enacted the PSYPACT in April 2019.]

The PSYPACT requires any state joining the PSYPACT after the Commission's initial adoption of rules to be subject to the rules as they exist on the date on which the PSYPACT becomes law in such state and has the full force and effect of law.

A compact state is allowed to withdraw from the PSYPACT by enacting a statute repealing the same. The PSYPACT provides that a compact state's withdrawal does not take effect until six months after enactment of the repealing statute and does not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of the PSYPACT prior to the effective date of withdrawal.

The PSYPACT does not invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a non-compact state that does not conflict with the provisions of the PSYPACT.

The compact states are authorized to amend the PSYPACT. No amendment to the PSYPACT will become effective and binding upon any compact state until it is enacted into the law of all compact states.

Construction and Severability

The bill states the PSYPACT is liberally construed to effectuate its purposes. If the PSYPACT is held to be contrary to the constitution of any state member, the PSYPACT remains in full force and effect in the remaining compact states.

Physical Therapy Licensure Compact

The PT Compact is a part of and supplemental to the Physical Therapy Practice Act (Act).

Purpose

The PT Compact designates its purpose as facilitating the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The PT Compact states it preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The PT Compact states it is designed to:

- Increase public access to physical therapy services by providing for the mutual recognition of other member-state licenses;
- Support spouses of relocating military members;
- Enhance the exchange of licensure, investigative, and disciplinary information between member states; and
- Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

Definitions

The PT Compact defines applicable terms, including these key terms:

- "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a PT or work as a PT assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter;
- "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, or both, educational and professional activities relevant to practice or the area of work;
- "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action;
- "Home state" means the member state that is the licensee's primary state of residence;
- "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state;

- "Member state" means a state that has enacted the PT Compact;

- "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or a compact privilege;

- "Physical Therapy Compact Commission" or "Commission" (PT Commission) means the national administrative body whose membership consists of all states that have enacted the PT Compact; and

- "Remote state" means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

State Participation in the PT Compact

To participate in the PT Compact, each state is required to:

- Participate fully in the PT Commission's data system;

- Have a mechanism in place to receive and investigate complaints about licensees;

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

- Fully implement a criminal background check requirement by receiving the results of the FBI record search on criminal background checks and using the results to make licensure decisions in accordance with the PT Compact;

- Comply with the rules of the PT Commission;

- Utilize a recognized national examination as a requirement for licensure, pursuant to the rules of the PT Commission; and

- Have continuing competence requirements as a condition of licensure renewal.

The PT Compact provides that, upon adoption of the PT Compact, a member state is authorized to obtain biometric-based information from each PT licensure applicant and to submit the information to the FBI for a criminal background check in accordance with the cited federal law.

The PT Compact requires a member state to grant the compact privilege to a licensee holding a valid unencumbered license in another member state according to the terms of the PT Compact and rules. The PT Compact authorizes a member state to charge a fee for granting a compact privilege.

PT Compact Privilege

To exercise the compact privilege, a licensee is required to:

- Hold a license in the home state;
- Have no encumbrance on any state license;
- Be eligible for compact privilege in any member state in accordance with the provisions of the PT Compact;
- Have not had any adverse action against any license or compact privilege within the previous two years;
- Notify the PT Commission that the licensee is seeking the compact privilege within a remote state;
- Pay any applicable fees, including any state fee, for the compact privilege;
- Meet any jurisprudence requirements established by the remote state in which the licensee is seeking compact privilege; and
- Report to the PT Commission adverse action taken by any nonmember state within 30 days from the date the adverse action is taken.

The PT Compact provides that the compact privilege is valid until the expiration date of the home license.

The PT Compact requires a licensee providing therapy in a remote state to function within the laws and regulations of the remote state and be subject to that state's regulatory authority.

The PT Compact allows a remote state to remove a licensee's compact privilege in the remote state for a specific period of time or impose fines, or both, and take any other action necessary to protect the health and safety of its citizens. The licensee will not be eligible for compact privilege in any state until the specific time for removal has passed and all fines are paid. If a home state license is encumbered, the PT Compact requires the licensee to lose the compact privilege in any remote state until certain conditions are met. Once an encumbered license in the home state is restored to good standing, the PT Compact requires the licensee to meet the conditions for compact privilege to again obtain a compact privilege in any remote state.

If a licensee's compact privilege in any remote state is removed, the PT Compact requires the individual to lose the compact privilege in any remote state until certain requirements are met. The PT Compact then requires the individual to meet the conditions for compact privilege cited in Section 4 of the PT Compact to obtain a compact privilege in a remote state.

Active Duty Military Personnel or Their Spouses

The PT Compact allows a licensee who is active duty military or is the spouse of such a licensee to select the licensee's home state as allowed in the bill.

Adverse Actions

The PT Compact provides that a home state has exclusive power to impose adverse action against a license issued by the home state and may take such action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action. Nothing in the PT Compact overrides a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such investigation remain nonpublic if required by the member state's laws.

The PT Compact specifies the conditions placed on member states when dealing with a licensee in an alternative program and the authority of member states to investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a PT or PT assistant holds a license or compact privilege.

The PT Compact also outlines the authority of the remote state to take adverse action against a licensee's compact privilege in the state and issue subpoenas for hearings and investigations. The PT Compact allows a member state to participate with other member states in joint investigations of licensees and requires member states to share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the PT Compact.

Establishment of the Physical Therapy Compact Commission

The PT Compact directs compact member states to create a joint public agency known as the Physical Therapy Compact Commission, which is an instrumentality of the compact states.

The PT Compact clarifies venue is in a court of competent jurisdiction where the principal office of the PT Commission is located and provides for the waiving of venue and jurisdictional defenses to the extent the PT Commission adopts or consents to participate in alternative dispute resolution proceedings. The PT Compact does not waive sovereign immunity.

Membership, voting, and meetings. The PT Compact specifies that each member state will have one delegate selected by that member state's licensing board as a member of the PT Commission. The PT Compact provides for the qualifications for PT Commission delegates, the process for a delegate's removal or suspension from office, the voting requirements, and the frequency of PT Commission meetings.

The PT Compact specifies the various powers and duties of the PT Commission, including establishing and electing an Executive Board that has the power to act on behalf of the PT Commission according to the terms of the PT Compact. PT Commission meetings are open to the public, and public notice of meetings is required.

The PT Compact describes the Executive Board membership, the PT Commission's authority to remove Executive Board members, the frequency of meetings, and the duties and responsibilities of the Executive Board.

The PT Compact authorizes the PT Commission, Executive Board, or other committees of the PT Commission to convene closed, nonpublic meetings to discuss specific topics delineated in the PT Compact.

The PT Compact requires the PT Commission to keep detailed minutes of meetings, but minutes of closed meetings will remain under seal, subject to specific conditions for release.

Financing the Commission. The PT Compact provides that the PT Commission:

- Must pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities;

- May accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services;

- May levy on 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 PT Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not being provided by other sources. The annual assessments are allocated based upon a formula to be determined by the PT Commission, which must promulgate a rule binding upon all member states;

- May not incur obligations of any kind prior to securing the funds adequate to meet the same nor pledge the credit of any member states, except by and with the authority of the member state; and

- Must keep accurate accounts of all receipts and disbursements, which are subject to the audit and accounting procedures established under its bylaws. The PT Compact requires annual audits by a certified or licensed public accountant and including the audit report in the PT Commission's annual report.

Qualified immunity, defense, and indemnification. Except when the actual or alleged act, error, or omission resulted from the intentional, willful, or wanton acts of members, officers, executive directors, employees, or representatives of the PT Commission, the PT Compact provides these individuals with the following protections:

- Immunity from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of PT Commission employment, duties, or responsibilities;

- Defense in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of PT Commission employment, duties, or responsibilities. The PT Compact states it is not to be construed to prohibit these persons from retaining their own counsel; and

- Indemnification and being held harmless for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred or was reasonably believed to have occurred within the scope of PT Commission employment, duties, or responsibilities.

Data System

The PT Compact requires the PT Commission to provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states. Notwithstanding any state law to the contrary, the PT Compact requires a member state to submit a uniform data set to the data system on all individuals to whom the PT Compact is applicable as required by the rules of the PT Commission.

The PT Compact requires the uniform data set to include identifying information, licensure data, adverse actions against a license or compact privilege, nonconfidential information related to alternative program participation, any denial of application for licensure and the reason for the denial, and other information that may facilitate the administration of the PT Compact, as determined by rules of the PT Commission.

The PT Compact provides for the following with regard to information in the coordinated database and reporting system:

- Investigative information pertaining to a licensee in any member state is available only to other party states;

- The PT Commission is required to notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state is available to any other member state;

- Member states are allowed to designate information contributed to the data system that may not be shared with the public without express permission from the contributing state; and

- Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

Rulemaking

The PT Compact requires the PT Commission to exercise its rulemaking powers according to the criteria set forth and adopted under the provisions of this section of the PT Compact. The PT Compact provides that if a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the PT Compact within four years of the date of adoption of the rule, the rule has no further force and effect on any member state.

The PT Compact provides the process for promulgating and adopting rules, filing the notice of proposed rulemaking and the required content of the notice, submitting information that is to be available to the public prior to adoption of a rule, requesting a public hearing on a rule and notification of such hearing, and testifying at a public hearing. The hearings are recorded, with a copy of the recording available upon request. The PT Compact does not require a separate hearing on each rule; rather, rules may be grouped for the convenience of the PT Commission in any required hearing.

The PT Compact establishes the process to be followed after any required public hearing or, in the absence of a public hearing, to take final action on the proposed rule. If an emergency exists, the PT Compact provides for the PT Commission to consider and adopt an emergency rule without prior notice, comment, or hearing. The rulemaking procedures are retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the rule. The PT Compact establishes the conditions under which an emergency order is indicated.

The PT Compact establishes the procedure for technical revisions of previously adopted rules or amendments.

Oversight, Dispute Resolution, and Enforcement

Oversight. The PT Compact specifies the executive, legislative, and judicial branches of state government in each member state are required to enforce the PT Compact and take all actions necessary and appropriate to effectuate the PT Compact's purposes and intent. The provisions of the PT Compact and the rules promulgated thereunder have standing as statutory law.

The PT Compact requires all courts take judicial notice of the PT Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the PT Compact that may affect the powers, responsibilities, or actions of the PT Commission. The PT Commission is entitled to receive service of process in any such proceeding and have standing to intervene. The PT Compact specifies failure to provide service of process to the PT Commission renders a judgment or order void as to the PT Commission, the PT Compact, or promulgated rules.

Default, technical assistance, and termination. The PT Compact provides, if the PT Commission determines a member state has defaulted in the performance of its obligations or responsibilities under the PT Compact or its promulgated rules, the PT Commission is required to 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 PT Commission and to provide remedial training and specific technical assistance regarding the default.

If a state fails to cure the default, the PT Compact allows the defaulting state to be terminated from the PT Compact upon an affirmative vote of the majority of the member states. The PT Compact authorizes all rights, privileges, and benefits conferred by the PT Compact to be terminated on the effective date of termination. The PT Compact provides that the cure of the default by an offending state does not relieve the offending state of obligations or liabilities incurred during the period of default.

The PT Compact specifies termination of PT Compact membership is to be imposed only after all other means of securing compliance have been exhausted. The PT Commission is required to provide notice of intent to suspend or terminate membership to the defaulting state's governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

Under the PT Compact, the terminated state is responsible for all assessments, obligations, and liabilities incurred through the effective date of the termination, including obligations that extend beyond the effective date of the termination. Unless agreed upon in writing between the PT Commission and the defaulting state, the PT Commission is prohibited from bearing any costs related to the state found to be in default or that has been terminated from the PT Compact. The PT Compact provides the defaulting state with the opportunity to appeal the PT Commission's action by petitioning the U.S. District Court for the District of Columbia or the federal district court where the PT Commission has its principal offices. The PT Compact requires all costs of such litigation, including reasonable attorney fees, to be awarded to the prevailing member state.

Dispute resolution. The PT Compact requires the PT Commission to attempt to resolve disputes related to the PT Compact that arise among member states and between member states and nonmember states at the request of a member state. The PT Compact requires the PT Commission promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

Enforcement. The PT Compact requires the PT Commission, in the reasonable exercise of its discretion, to enforce the provisions and rules of the PT Compact. The PT Compact authorizes the PT Commission, by majority vote, to initiate legal action against a member state in default to enforce compliance with the provisions of the PT Compact and its promulgated rules and bylaws. If judicial enforcement is necessary, the PT Compact requires the prevailing member to be awarded all costs of such litigation, including reasonable attorney fees. The PT Compact authorizes the PT Commission to pursue any other remedies available under federal or state law.

Date of Implementation of the Interstate Commission for Physical Therapy Practice and Associated Rules, Withdrawal, and Amendment

The PT Compact specifies it becomes effective on the date on which the PT Compact statute is enacted into law in the tenth member state. [*Note:* The PT Compact became effective on April 25, 2017.] The PT Compact provides the provisions effective upon enactment of the PT Compact in the tenth state are the powers granted to the PT Commission relating to assembly and the promulgation of rules, with the PT Commission meeting thereafter to exercise rulemaking powers necessary to the implementation and administration of the PT Compact. States joining the PT Compact after the initial adoption of the rules are subject to the rules as they exist on the date on which the PT Compact becomes law in that state, and such rules have the full force and effect of law upon the PT Compact becoming law in the state.

The PT Compact allows a member state to withdraw from the PT Compact by enacting a statute repealing the same, and such withdrawal is to take effect six months after enactment of the repealing statute. The PT Compact requires the withdrawing state's physical therapy licensing board comply with the investigative and adverse action reporting requirements until the effective date of the withdrawal.

The PT Compact does not invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of the PT Compact.

The PT Compact is open to amendment by the member states, but no amendment becomes effective and binding on any member state until it is enacted into the laws of all member states.

Construction and Severability

The bill states the PT Compact is to be liberally construed to effectuate its purposes. The provisions of the PT Compact are severable, allowing for the remainder of the PT Compact to remain valid if any portion of the PT Compact is held to be invalid. If the PT Compact is held contrary to the constitution of any party state, the PT Compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable provisions.

Physical Therapy Practice Act

The bill adds a section to the Act regarding criminal history record checks and amends sections regarding disciplinary action, professional liability insurance, and rules and regulations.

Criminal History Record Checks

The bill amends the Act to add a new section to authorize the State Board of Healing Arts (Board) to require a person to be fingerprinted and submit to a state and national criminal history check as part of:

- An original application for a license as a PT or a certificate as a PT assistant;
- An original application for reinstatement of a license or certificate; or
- Any investigation of any holder of a license or certificate.

The bill authorizes the Board to submit fingerprints to the Kansas Bureau of Investigation and the FBI. The bill allows the Board to use the information obtained from fingerprinting and the criminal history to verify the identity of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a license or certificate. The bill requires local and state law enforcement officers to assist the Board in taking and processing the fingerprints of applicants for and holders of any license or certificate and to release all records of adult convictions and nonconvictions and adult convictions or adjudications of another state or country to the Board.

The bill allows the Board to fix and set a fee as may be required by the Board in an amount necessary to reimburse the Board for the cost of fingerprinting and the criminal history record check, and it requires any funds collected to be deposited in the State Treasury to the credit of the Healing Arts Fee Fund.

Disciplinary Action on PT Compact Privilege

The bill amends the Act to clarify the Board is authorized to take disciplinary action regarding the compact privilege of PTs and PT assistants.

Professional Liability Insurance Coverage

The bill amends the Act to require PTs licensed in a home state and practicing in Kansas under the PT Compact to maintain professional liability insurance coverage. Under continuing law, the Board is required to fix by rules and regulations the minimum level of coverage for such professional liability insurance.

Rules and Regulations

The bill requires the Board to include PTs licensed in a home state and practicing in Kansas under the PT Compact in the rules and regulations that establish the minimum education and training requirements for the practice of dry needling.

Pharmacy Act of the State of Kansas and Emergency Medical Services Act; Sub. for SB 238

Sub. for SB 238 amends and updates the Pharmacy Act of the State of Kansas (Act) with regard to the powers, duties, and functions of the State Board of Pharmacy (Board). The bill updates the Emergency Medical Services Act (EMS Act) to clarify the oversight provided by medical directors with regard to emergency medical services and to provide an alternate procedure for appointment of a medical director.

The bill creates law to address the confidentiality of investigations, inspections, and audits and provide for exceptions under specific circumstances; allow for the cost of additional compliance inspections and audits required as a condition of probation or other disciplinary action to be charged to a licensee or registrant; define the practice of telepharmacy; require the Board to adopt rules and regulations for the oversight and administration of telepharmacy; and address the registration of manufacturers and virtual manufacturers. The bill makes these new sections part of and supplemental to the Act.

The bill amends the Act to modify and add definitions, make the Board's disciplinary authority consistent across all license and registration types and include compliance with federal requirements, and address prescription adaptation and transfer. The bill requires all civil fines assessed for violations of the Act that are collected to be credited to the State Board of Pharmacy Fee Fund (Fee Fund), instead of a portion being credited to the State General Fund.

Amendments to the Act and EMS Act are described below.

Pharmacy Act of the State of Kansas

Confidentiality of Investigations and Related Documents

The bill makes confidential any complaint, investigation, report, record, or other information relating to a complaint or investigation that is received, obtained, or maintained by the Board. The bill prohibits the Board or its employees from disclosing such information in a manner that identifies or enables identification of the person who is the subject or source of the information. The bill allows disclosure of such information as follows:

- In any proceeding conducted by the Board or in an appeal of an order of the Board entered in a proceeding, or to any party to a proceeding or appeal or the party's attorney;

- To the person who is the subject of the information or to any person or entity when requested by the person who is the subject of the information, but the Board may require disclosure in a manner that prevents identification of any other person who is the subject or source of the information; or

- To a state or federal licensing, regulatory, or enforcement agency with jurisdiction over the subject of the information or to an agency with jurisdiction over acts or conduct similar to acts or conduct that constitute grounds for action under the Act.

The bill prohibits an agency receiving any confidential complaint or report, record, or other information disclosed by the Board, as authorized by the bill, from disclosing such information, unless otherwise authorized by law. Except as specifically authorized in the bill, an applicant, registrant, or individual is prohibited access to any complaint, investigation, report, record, or information concerning an investigation in progress until the investigation and enforcement action is completed.

The bill prohibits the release of a record, report, or other information that is subject to other specific state or federal laws concerning its disclosure.

Costs of Compliance Inspections and Audits

The bill authorizes the Board to charge a licensee or registrant the actual costs of additional inspections and audits that occur as a condition of probation or other disciplinary action. The bill allows the Board to impose additional disciplinary action if the licensee or registrant fails to comply with a Board order regarding payment of such costs.

The actual costs of inspections include, but are not limited to, salaries and wages; travel, mileage, and lodging; subsistence allowances; document storage, shipping, and handling; or other expenses deemed reasonable and necessary by the Board. All moneys collected for the inspections are to be deposited into the State Treasury to the credit of the Fee Fund.

Telepharmacy and Rules and Regulations

Definitions. The bill defines the following terms:

- "Telepharmacy" means the practice of pharmacy by a pharmacist located in Kansas using telecommunications or other automations and technologies to deliver personalized, electronically documented, real-time pharmaceutical care to patients, or their agents, who are located at sites other than where the pharmacist is located, including prescription dispensing and counseling and to oversee and supervise telepharmacy outlet operations; and

- "Telepharmacy outlet" means a pharmacy located in Kansas that:

    - Is registered as a pharmacy under the Act;
    - Is owned by the managing pharmacy;
    - Is connected *via* computer link, video link, audio link, or other functionally equivalent telecommunications equipment with a supervising pharmacy located in Kansas; and
    - Has a pharmacy technician on-site who performs activities under the electronic supervision of a pharmacist located in Kansas.

The bill requires a pharmacist to be in attendance at the telepharmacy outlet by connecting to the telepharmacy outlet *via* computer link, video link, and audio link, or other functionally equivalent telecommunications equipment, and requires the pharmacist to be available to consult with and assist the pharmacy technician in performing activities.

Rules and regulations for a managing pharmacy and telepharmacy. The bill requires the Board to adopt rules and regulations necessary to specify additional criteria for a managing pharmacy and telepharmacy outlet not later than January 1, 2023. The criteria to be specified include, but are not limited to:

- Application requirements;

- Structural, security, technology, and equipment requirements;

- Staffing, training, and electronic supervision requirements;

- Inventory record keeping and storage requirements;

- Labeling requirements;

- Establishment of policies and procedures;

- The number of telepharmacy outlets that may be operated by a supervising pharmacy;

- Use of automated dispensing machines; and

- Criteria for requesting exemptions or waivers from the requirements set forth in rules and regulations pertaining to the established criteria for a managing pharmacy and telepharmacy outlet.

Registration of Manufacturers and Virtual Manufacturers

The bill clarifies the registration requirements for a manufacturer or virtual manufacturer. The bill authorizes the Board to require an applicant for registration as a manufacturer or virtual manufacturer, or an applicant for renewal of such registration, to provide the following information:

- The name, full business address, and telephone number of the applicant;
- All trade or business names used by the applicant;
- All addresses, telephone numbers, and the names of contact individuals for all facilities used by the applicant for storage, handling, and distribution of prescription drugs or devices;
- The type of ownership or operation of the applicant;
- The name of the owner or operator of the applicant, including:
    - If an individual, the name of the individual;
    - If a partnership, the name of each partner and the name of the partnership;
    - If a corporation, the name and title of each corporate officer and director of the corporation, and the name of the state of incorporation; or
    - If a sole proprietorship, the full name of the sole proprietor and the name of the business entity; and
- Any other information the Board deems appropriate.

The bill requires changes in any of the above information to be submitted to the Board in a form and manner prescribed by the Board.

Qualifications for manufacturer and virtual manufacturer applicants. The bill requires the Board to consider the following factors in reviewing the qualifications for applicants for initial registration or renewal of registration as a manufacturer or virtual manufacturer:

- Any convictions of the applicant under any federal, state, or local laws relating to drug samples, manufacture of drugs or devices, wholesale or retail drug distribution, or distribution of controlled substances;
- Any felony convictions of the applicant under federal or state laws;

- The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

- The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

- Discipline, censure, warning, suspension, or revocation by federal, state, or local government of any license or registration currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

- Compliance with registration requirements under previously granted registrations, if any;

- Compliance with requirements to maintain or make available to the Board or to federal, state, or local law enforcement officials those records required by the federal Food, Drug, and Cosmetic Act and rules and regulations adopted pursuant to such act; and

- Any other factors or qualifications deemed by the Board to be relevant to and consistent with public health and safety.

The bill authorizes the Board, after consideration of the qualifications for applicants for registration as a manufacturer or virtual manufacturer, to deny an initial application for registration or application for renewal of a registration if the Board determines the granting of such registration is not in the public interest. The authority of the Board to deny such registration as a manufacturer or virtual manufacturer is in addition to other statutory authority of the Board pertaining to the suspension, revocation, placement on probationary status, or denial of a registration.

Rules and regulations. The bill requires the Board, by rules and regulations, to require personnel employed by any person registered as a manufacturer or virtual manufacturer have appropriate education or experience to assume responsibility for positions related to compliance with state registration requirements.

The bill authorizes the Board, by rules and regulations, to implement this section of the bill on the registration of manufacturers and virtual manufacturers to conform with any requirements of the federal Drug Supply Chain Security Act [21 USC § 351 *et seq.*] in effect on July 1, 2021.

Inspections. The bill requires each facility that manufactures drugs or devices to undergo an inspection by the Board, or a third party recognized by the Board, prior to initial registration and periodically thereafter according to a schedule determined by the Board, but not less than once every three years. The bill requires the Board to adopt rules and regulations no later than July 1, 2022, to establish standards and requirements for the issuance and maintenance of manufacturer and virtual manufacturer registration, including inspections.

Registration requirements for manufacturers and virtual manufacturers registered in other states. The bill authorizes the Board to register a manufacturer or virtual manufacturer licensed or registered under the laws of another state if the requirements of that state are

deemed by the Board to be substantially equivalent to Kansas requirements, or the applicant is inspected by a third party recognized and approved by the Board.

Standards and requirements for registration. The bill requires the Board, by rules and regulations, to establish standards and requirements for the issuance and maintenance of manufacturer and virtual manufacturer registration, including, but not limited to, requirements regarding:

- An application and renewal fee;
- A surety bond;
- Registration and periodic inspections;
- Certification of a designated representative;
- Designation of a registered agent;
- Storage of drugs and devices;
- Handling, transportation, and shipment of drugs and devices;
- Security;
- Examination of drugs and devices and treatment of those found to be unacceptable as defined by the Board;
- Due diligence regarding other trading partners;
- Creation and maintenance of records, including transaction records;
- Procedures for operation; and
- Procedures for compliance with the requirements of the federal Drug Supply Chain Security Act.

Use of Titles

The bill clarifies the use or exhibition of the titles “drugstore,” “pharmacy,” or “apothecary” or any combination of such titles. The bill clarifies it is unlawful to use such terms or any title or description of like import, or any term designed to take the place of such titles, if the title is used in the context of health, medical, or pharmaceutical care and the individual, firm, or corporation has not provided a disclaimer sufficient to notify customers that a pharmacist is not employed at the location.

Definitions

The bill amends and adds definitions to the Act as follows:

- "Address" means, with respect to prescriptions, the physical address where a patient resides, including street address, city, and state;

- "Compounding" is amended to clarify compounding does not include reconstituting any mixed drug according to the U.S. Food and Drug Administration (FDA)-approved labeling for the drug. [*Note:* The term "oral or topical drug" is replaced with "mixed drug," and language regarding compounding not including preparing any sterile or nonsterile preparation that is essentially a copy of a commercially available product is deleted.];

- "Current good manufacturing practices" or "CGMP" means requirements for ensuring drugs and drug products are consistently manufactured, repackaged, produced, stored, and dispensed in accordance with 21 CFR §§ 207, 210, and 211;

- "Device" means an instrument, apparatus, implement, machine, contrivance, implant, *in vitro* reagent, or other similar or related article, including a component part or accessory that:

    - Is recognized in the official national formulary, or the U.S. Pharmacopoeia, or any supplement of those; is intended for use in the diagnosis of disease or other conditions; is used for the care, mitigation, treatment, or prevention of disease in human or other animals; or is intended to affect the structure or any function of the body of human or other animals; and

    - Does not achieve its primary intended purposes through chemical action within or on the body of human or other animals and is not dependent upon being metabolized for the achievement of any of its primary intended purposes;

- "Direct supervision" is amended to mean the process by which the responsible pharmacist shall observe and direct the activities of a pharmacist intern or pharmacy technician; be readily and immediately available at all times activities are performed; provide personal assistance, direction, and approval throughout the times the activities are performed; and complete the final check before dispensing;

- "Dispense" or "dispensing" is amended to mean to deliver prescription medication to the ultimate user or research subject by or pursuant to the lawful order of a practitioner or pursuant to the prescription of a mid-level practitioner, including, but not limited to, delivering prescription medication to a patient by mail, common carrier, personal delivery, or third-party delivery to any location requested by the patient;

- "Dispenser" is amended to replace the term "medication" with "drugs or devices" with regard to the items dispensed by a dispenser who is a practitioner or pharmacist. "Dispenser" also means a retail pharmacy, hospital pharmacy, or group of pharmacies under common ownership and control that do not act as a wholesale distributor. Affiliated warehouses or distribution centers of such entities under common ownership and control that do not act as a wholesale distributor are removed from the definition;

- "Diversion" means the transfer of a controlled substance from a lawful to an unlawful channel of distribution or use;

- "Institutional drug room" is amended to add residents of a juvenile correctional facility to those whose needs are provided by an institutional drug room;

- "Interchangeable biological product" is amended to mean a biological product the FDA has identified in the "Purple Book: Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations" as meeting the standards for "interchangeability" as defined in federal law regarding licensure of biological products as biosimilar or interchangeable in effect on January 1, 2017;

- "Medical care facility" is amended to mean the same as defined in KSA 65-425, except the term also includes psychiatric hospitals and psychiatric residential treatment facilities as defined in KSA 2020 Supp. 39-2002;

- "Medication order" is amended to mean a written or oral order by a prescriber, or the prescriber's authorized agent, for administration of a drug or device to a patient in a Kansas licensed medical care facility or a Kansas licensed nursing facility or nursing facility for mental health, as defined by KSA 39-923;

- "Pharmacist intern" or "intern" is amended to mean a student currently enrolled in and in good standing with an accredited pharmacy program;

- "Pharmacy," "drugstore," or "apothecary" is amended to include any electronic medium. The definition is also amended to clarify where the following terms could be displayed as used in the context of health, medical, or pharmaceutical care or services: "pharmacist," "pharmaceutical chemist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "drug sundries," or any of these words or combinations of these words or words of similar import displayed in any language or on any sign containing any of these words, and the characteristic symbols of pharmacy or the characteristic prescription sign "Rx";

- "Pharmacy prescription application" is amended to mean software used to process prescription information that is either installed on a pharmacy's computers or servers and is controlled by the pharmacy or is maintained on the servers of an entity that sells electronic pharmacy prescription applications as a hosted service where the entity controls access to the application and maintains the software and records on its server;

- "Preceptor" is amended to mean a licensed pharmacist who possesses at least two years' experience as a pharmacist and who supervises and is responsible for the actions of pharmacist interns obtaining pharmaceutical experience;

- "Prescription" or "prescription order" is amended to mean the front and back of a lawful written, electronic, or facsimile order from a prescriber or an oral order from a prescriber or the prescriber's authorized agent that communicates the prescriber's instructions for a prescription drug or device to be dispensed;

- "Readily retrievable" or "readily available" is amended to mean records kept in hard copy or by automatic data processing applications or other electronic or mechanized record-keeping systems that can be separated from all other records quickly and easily during an inspection or investigation or within a reasonable time not to exceed 48 hours of a written request from the Board or other authorized agent;

- "Reverse distributor" replaces the terms "returns processor" and "reverse logistics provider," but retains the meaning of those terms;

- "Virtual manufacturer" means an entity that engages in the manufacture of a drug or device for which it:

    - Owns the new drug application or abbreviated new drug application number, if a prescription drug;
    - Owns the unique device identification number, as available, for a prescription device;
    - Contracts with a contract manufacturing organization for the physical manufacture of the drug or device;
    - Is not involved in the physical manufacture of the drug or device; and
    - Does not store or take physical possession of the drug or device;

- "Virtual wholesale distributor" means a wholesale distributor that sells, brokers, or transfers a drug or device but never physically possesses the product;

- "Wholesale distributor" is amended to mean any person engaged in wholesale distribution or reverse distribution of drugs or devices, other than a manufacturer, co-licensed partner, or third-party logistics provider; and

- "Wholesale distribution" is amended to replace the term "prescription drug" with "drug or device" and "third-party returns processor" with a registered "reverse distributor" where those terms appear in the definition, to update a reference to the edition and section of the Internal Revenue Code regarding a charitable organization, and to remove multiple references to what the definition of a wholesale distribution does not include.

The bill removes the definitions of "application service provider," "intermediary," and "return" from the Act.

Disciplinary Action

Pharmacist. The bill modifies the disciplinary action the Board is authorized to take on an application, renewal, or license of a pharmacist. The bill authorizes the Board to also limit, condition, or place in a probationary status the license of any pharmacist upon certain findings. The bill clarifies one of the findings that warrants disciplinary action to include violations of both the federal and state Uniform Controlled Substances Act. The bill authorizes the Board to take disciplinary action if the licensee has failed to keep, has failed to file with the Board, or has falsified records required to be kept or filed by the provisions of the Act, the federal or state Uniform Controlled Substances Act, or rules and regulations adopted by the Board.

Retail dealer. The bill authorizes the Board to suspend, revoke, place in probationary status, or deny an application for a retail dealer's permit when information in the possession of the Board discloses such operations are not being conducted according to law or the rules and regulations of the Board.

Pharmacy. The bill authorizes the Board to deny an application or renewal, limit, condition, or place in a probationary status the registration of a pharmacy upon the existence of certain findings.

Provisions authorizing the above actions of the Board regarding conviction for a violation of the Act, the federal or state Uniform Controlled Substances Act, or the federal or state Food, Drug, and Cosmetic Act are amended to apply to a pharmacy as well as to an owner or pharmacist. Similarly, provisions regarding fraudulently claiming money for pharmaceutical services apply to pharmacies.

The bill adds the following findings for such purposes:

- The registrant has obtained, renewed, or attempted to obtain or renew a registration by false or fraudulent means, including misrepresentation of a material fact or falsification of any application;

- The registrant has refused to permit the Board or its duly authorized agents to inspect the registrant's establishment according to the provisions of the Act, federal or state Uniform Controlled Substances Act, or federal or state Food, Drug, and Cosmetic Act;

- The registrant has failed to keep, has failed to file with the Board, or has falsified records required to be kept or filed by the provisions of the Act, federal or state Uniform Controlled Substances Act, or rules and regulations adopted by the Board;

- A pharmacy has been operated in such a manner that violations of the provisions of the federal or state Food, Drug, and Cosmetic Act; federal or state Uniform Controlled Substances Act; or any rule and regulation of the Board have occurred;

- A pharmacy has been operated in such a manner that violations of the Prescription Monitoring Program Act of the State of Kansas or any rules and regulations of the Board have occurred;

- The registrant has failed to furnish the Board, its investigators, or its representatives any information legally requested by the Board; or

- The registrant has violated or failed to comply with any lawful order or directive of the Board.

Other registrations. The bill amends law regarding disciplinary action against various other registrations to clarify such action is allowed with regard to registrations to manufacture or repackage drugs or devices or to operate as an outsourcing facility, institutional drug room, or automated dispensing system. The bill adds limitations and conditions of registrations and denial of applications for renewal to the actions the Board is authorized to take against those providers and wholesale distributors, third-party logistics providers, and sellers of durable medical equipment. The bill authorizes the Board to take such actions on applications and registrations if any of the findings specified occur. The bill amends law and adds findings authorizing the Board to take disciplinary action if a registrant or a registrant's agent:

- Has obtained, renewed, or attempted to obtain or renew a registration by false or fraudulent means, including misrepresentation of a material fact or falsification of any application;

- Has been convicted of a felony under any federal or state law relating to the manufacture, compounding, dispensing, or distribution of drugs or devices;

- Has had any federal registration for the manufacture, compounding, dispensing, or distribution of drugs or devices suspended, limited, denied, disciplined, censured, or revoked;

- Has refused to permit the Board or its duly authorized agents to inspect the registrant's establishment according to the provisions of the Act, federal and state Uniform Controlled Substances Act, or the federal and state Food, Drug, and Cosmetic Act;

- Has failed to keep, has failed to file with the Board, or has falsified records required to be kept or filed by the provisions of the Act, the federal or state Uniform Controlled Substances Act, or rules and regulations adopted by the Board;

- Has violated the federal Uniform Controlled Substances Act; the federal Food, Drug, and Cosmetic Act; or any rules and regulations adopted under such act;

- Has had a registration revoked, suspended, or limited; has been censured; or has had other disciplinary action taken or an application for registration denied by the proper registering authority of another state, territory, District of Columbia, or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence of the action. When the Board determines that action under this subsection of the bill requires the immediate protection of the public interest, the bill requires the Board to conduct an emergency proceeding under the Kansas Administrative Procedure Act;

- Has failed to furnish the Board, its investigators, or its representatives any information legally requested by the Board; or

- Has violated or failed to comply with any lawful order or directive of the Board.

Examinations

The bill authorizes the Board to adopt rules and regulations relating to the score an applicant must receive in order to pass the examinations required for licensure. The bill requires the Board to only accept a passing score on an examination required for licensure from an applicant's first five attempts at taking such examination.

Reciprocal licensure. The bill allows the Board, in its discretion, to license a pharmacist, without examination, who is duly registered or licensed by examination in some other state, except the Board is allowed to require the individual to take the multi-state jurisprudence examination approved by the Board. The bill authorizes the Board to adopt rules and regulations relating to the score such individual is required to receive in order to pass the multi-state jurisprudence examination. The bill requires the Board to only accept a passing score on an examination required for licensure from an applicant's first five attempts taking the examination.

The bill provides that reciprocal licensure may be denied for any reasons set forth in statute that authorize the Board to deny an application or renewal of any pharmacist license.

The bill removes a provision prohibiting an applicant who has taken an examination for licensure approved by the Board and failed to complete it successfully from being considered for licensure by reciprocity within one year from the date the applicant sat for the examination.

Prescription Orders

The bill clarifies, regardless of the means of transmission to a pharmacy, a pharmacist or a pharmacist intern is authorized to receive a new prescription order or a refill or renewal order from a prescriber or transmitting agent. The bill authorizes a registered pharmacy technician to receive a refill, renewal, or order for the continuation of therapy that contains no changes from the original prescription from a prescriber or transmitting agent if such registered pharmacy technician's supervising pharmacist has authorized that function.

Continuing law requires all prescriptions to be filled or refilled in strict conformity with any directions of the prescriber but provides exceptions. The bill amends these exceptions as follows:

- A pharmacist who receives a prescription order for a brand-name product is authorized to exercise brand exchange with a view toward achieving a lesser cost to the purchaser, unless:

    - The prescriber indicates "dispense as written" on the prescription or when communicating a prescription by oral order;

  - The FDA has determined a biological product is not an interchangeable biological product for the prescribed biological product [*Note:* Former law excluded biological products from brand exchange.]; or
  - The FDA has determined a drug product of the same generic name is not bioequivalent to the prescribed brand name prescription medication. [*Note:* This is continuing law.]

- Except for a prescription for a controlled substance, a pharmacist is allowed to use professional judgment to make adaptations to a prescription order if a patient consents, the prescriber has not indicated "dispense as written" on the prescription, the pharmacist documents the adaptation on the patient's prescription record, and the pharmacist notifies the prescriber. The adaptions include:
  - Changing the prescribed quantity if the prescribed quantity or package size is not commercially available, the change in quantity is related to a change in dosage form, or the change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program;
  - Changing the prescribed dosage form, strength, or directions for use if it is in the best interest of the patient and the change achieves the intent of the prescriber; or
  - Completing missing information on the prescription order if there is evidence to support the change.

[*Note:* Continuing law allows a pharmacist to provide up to a three-month supply of a prescription that is not a controlled substance or a psychotherapeutic drug when a practitioner has written a drug order to be filled with a smaller supply but included sufficient numbers of refills for a three-month supply.]

The bill increases from a maximum 7-day supply to a maximum 30-day supply the prescription amount a pharmacist is authorized to refill without the prescriber's authorization, when all reasonable efforts to contact the prescriber have failed and when, in the pharmacist's professional judgment, continuation of the medication is necessary for the patient's health, safety, and welfare.

Unlawful Acts

The bill amends the descriptions of unlawful acts under the Act as follows:

- Devices are added to those items a person is prohibited from distributing at wholesale without first obtaining a registration as a wholesale distributor from the Board;

- Devices are added to the items a person is prohibited in any manner from distributing or dispensing samples of without first having obtained a permit from the Board to do so;

- It is unlawful for any person to manufacture in Kansas any drugs or devices except under the personal and immediate supervision of a pharmacist or such other individual approved by the Board after an investigation and determination by the Board that such individual is qualified by scientific and technical training or experience to perform such duties of supervision necessary to protect public health and safety. No individual is authorized to manufacture any drugs or devices without first obtaining a registration to do so from the Board;

- The list of exceptions to the unlawful act of selling or distributing a controlled substance in a pharmacy is amended to require an individual purchasing, receiving, or otherwise acquiring such controlled substance to produce a photo identification that is valid;

- It is unlawful for a person to supply medical-grade oxygen to an end user without first obtaining a registration from the Board. This does not apply to sales made in the regular course of the person's business or sales by charitable organizations exempt from federal income taxation pursuant to the Internal Revenue Code of 1986; and

- It is unlawful for any person to distribute drugs or devices into Kansas as an out-of-state manufacturer of such drugs or devices without first obtaining a registration as a manufacturer from the Board.

Nonresident Fees

The bill requires an application for a registration or permit submitted for a facility physically located outside of Kansas to be accompanied by an additional nonresident fee prescribed by the Board through rules and regulations. The bill requires the fee to not exceed $350 for a new registration and $250 for a renewal.

Transfer of Prescriptions

The bill allows for the filling or refilling of a valid prescription for prescription drugs not listed in Schedule II of the Uniform Controlled Substances Act that is on file in a pharmacy registered in any state and has been transferred from one pharmacy to another. [*Note:* Continuing law allows such action for licensed pharmacies only.]

The conditions and exceptions to such action are amended as follows:

- Prior to dispensing, pursuant to any such prescription, the dispensing pharmacist is required to ensure records and notifications are in compliance with rules and regulations adopted by the Board; and

- Upon receipt of a request for the transfer of a prescription record, if the requested pharmacist is satisfied in the professional judgment of the pharmacist the request is valid and legal, the requested pharmacy is required to:

    - Provide such information accurately and completely;

- Ensure records and notifications are made in compliance with rules and regulations adopted by the Board; and
- Provide information in a timely manner to avoid interruption in the medication therapy of the patient.

The bill allows a pharmacy to forward to another pharmacy an original, unfilled prescription for a noncontrolled substance or electronically forward an original, unfilled, electronic prescription for a controlled substance, at the request of the patient, in compliance with the provisions of the federal or state Uniform Controlled Substances Act.

Nonresident Pharmacy

The bill prohibits nonresident pharmacies from shipping, mailing, or delivering, in any manner, prescription drugs or devices to a patient, patient's agent, or prescriber's office in Kansas unless registered as a nonresident pharmacy in Kansas. [*Note:* Prior law addressed only the shipping, mailing, or delivering of prescription drugs to a patient in Kansas.]

The bill deletes provisions authorizing the Board to assess civil fines, file a complaint against a nonresident pharmacy, and remit the fees for disciplinary action taken. [*Note:* Provisions addressing civil fines are addressed for all licensees and registrants in Section 14 of the bill.]

The bill authorizes the Board to limit, condition, revoke, suspend, or place in probationary status a registration or deny an application for issuance or renewal of any registration of a nonresident pharmacy on any ground that authorizes the Board to take action against the registration of a pharmacy.

Civil Fines

Continuing law authorizes the Board, in addition to any other penalty prescribed under the Act, to assess civil fines, after a notice and opportunity to be heard in accordance with the Kansas Administrative Procedure Act, against the following licensees and registrants: pharmacists, any licensee in accordance with emergency adjudicative proceedings under the Kansas Administrative Procedure Act, retail dealers, and pharmacies. The bill expands the list of licensees and registrants to which the civil fine provision applies to include manufacturers or repackagers of drugs or devices, wholesale distributors, third-party logistics providers, outsourcing facilities, institutional drug rooms or automated dispensing systems, sellers of durable medical equipment, or places of business where such operations take place.

The bill clarifies, in addition to civil fines assessed for violation of the Act and rules and regulations of the Board adopted under the Act, the Board is authorized to assess civil fines for violation of the federal or state Uniform Controlled Substances Act and rules and regulations of the Board adopted under such acts. The bill authorizes the Board to assess civil fines for violation of the federal or state Food, Drug, and Cosmetic Act or rules and regulations adopted by the Board under such acts.

The bill amends provisions regarding where civil fines assessed or collected are to be credited to have all fines credited to the Fee Fund instead of a portion going to the State General Fund.

Emergency Medical Services Act

The bill amends the EMS Act to clarify the oversight to be provided by medical directors with regard to emergency medical services and to provide an alternate procedure for appointment of a medical director. The bill defines "medical oversight" to mean to review, approve, and implement medical protocols and to approve and monitor the activities, competency, and education of emergency medical service providers. The term "medical oversight" replaces existing terms describing the oversight provided by a medical director.

Since the definition of medical oversight includes the approval of medical protocols, the bill amends the definition of "medical protocols" to remove language referencing the required approval of medical protocols by a county medical society or the medical staff of a hospital to which the ambulance service primarily transports patients or, if neither are able or available, by the Medical Advisory Council.

The bill clarifies that an operator is required to designate a medical director to provide medical oversight, which includes the review, approval, and implementation of medical protocols. However, the Emergency Medical Services Board is allowed to approve an alternate procedure for medical oversight by a physician if no medical director is available for designation by the operator. [*Note:* Continuing law defines "operator" as a person or municipality with a permit to operate an ambulance service.]

The bill also removes the designation of a supervising physician to clarify an emergency medical services provider is protected from liability for civil damages for implementing instructions from a physician, a physician assistant, an advanced practice registered nurse, or a licensed practical nurse when rendering emergency care. Under continuing law, emergency medical services providers are not protected from civil liability for damages resulting from their gross negligence or willful or wanton acts or omissions.

COVID-19 Vaccination Plan; SR 1707

SR 1707 recognizes the COVID-19 pandemic and acknowledges the work of developing a vaccine for distribution to combat the disease. The resolution acknowledges the vaccination and distribution plan by the Governor and the data provided by the U.S. Centers for Disease Control and Prevention regarding Kansas and its ranking among other states in vaccine distribution. The resolution states the then-current vaccination plan submitted by the Governor of Kansas prioritized the COVID-19 vaccination of healthy, incarcerated individuals over Kansans between the ages of 16 to 64 who have severe medical risks.

The resolution calls upon the Governor to revise the COVID-19 vaccination plan by removing prisoners from the front of the line in Phase 2 and instead prioritize the vaccination of the elderly, teachers, and Kansans aged 16 to 64 who have severe medical risks.

Rural Emergency Hospital Act, Innovation Grant; CCBHCs; Telemedicine Waivers for Out-of-State Physicians; Licensure, Temporary Permits, and Regulatory Requirements; Senate Sub. for HB 2208

Senate Sub. for HB 2208 enacts the Rural Emergency Hospital Act (Act) and creates a category of licensure to enable certain Kansas hospitals to receive federal health care reimbursement as rural emergency hospitals; establishes certification for certified community

behavioral health clinics (CCBHCs); authorizes licensed out-of-state physicians with telemedicine waivers to practice telemedicine in Kansas; and modifies licensure, temporary permit, and regulatory requirements on the Behavioral Sciences Regulatory Board (BSRB) and its licensees.

Rural hospitals. The bill establishes the Rural Hospital Innovation Grant Program (Program) and the Rural Hospital Innovation Grant Fund (Fund). The bill requires a rural hospital to exhaust all opportunities for federal moneys available to the hospital for transitional assistance, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes, before a Rural Hospital Innovation Grant may be awarded. Additionally, the bill requires the Director of the Budget to certify and determine on June 15, 2021, the unencumbered federal funds received by the State that may be used to award the grants. An aggregate amount equal to $10.0 million in available special revenue funds is to be transferred to the Fund on July 1, 2021. If the aggregate certified special revenue funds are less than $10.0 million, the bill requires the difference between $10.0 million and the amount certified to be transferred from the State General Fund (SGF) to the Fund on July 1, 2021. The bill requires benefits coverage for services provided by rural emergency hospitals if covered when performed by a general hospital or critical access hospital. The bill defines applicable terms, including "rural emergency hospital," in the Act, and references the definition in the Kansas Medical Facilities Survey and Construction Act.

Certified community behavioral health clinics. The bill establishes certification for CCBHCs and prescribes the powers, duties, and functions of the Kansas Department for Aging and Disability Services (KDADS) with regard to CCBHCs.

Boards and licensure. The bill authorizes a licensed out-of-state physician with a telemedicine waiver issued by the State Board of Healing Arts (BOHA) to practice telemedicine in Kansas. The bill also amends the disciplinary authority of the BSRB and modifies licensure and temporary permit requirements of professional counselors, social workers, marriage and family therapists, addiction counselors, psychologists, and master's level psychologists.

Rural Emergency Hospital Act

The bill establishes eligibility and application requirements for licensure as a rural emergency hospital and requires the Secretary of Health and Environment (Secretary) to adopt rules and regulations establishing minimum standards for the establishment and operations of rural emergency hospitals in accordance with the Act. Further, the bill requires the Secretary, in formulating rules and regulations under the Kansas Medical Facilities Survey and Construction Act, to give due consideration to the requirements for receiving federal reimbursement for the particular type of medical care facility.

Definitions

The bill defines multiple terms, including the following:

- "Rural emergency hospital" means an establishment that:
    - Meets the eligibility requirements described below;
    - Provides rural emergency hospital services;

  - Provides rural emergency hospital services in the facility 24 hours per day by maintaining an emergency medical department that is staffed 24 hours per day, 7 days per week, with a physician, nurse practitioner, clinical nurse specialist, or physician assistant;
  - Has a transfer agreement with a level I or level II trauma center; and
  - Meets such other requirements as the Kansas Department of Health and Environment (KDHE) finds necessary in the interest of the health and safety of individuals who are provided rural emergency hospital services and to implement state licensure that satisfies requirements for reimbursement by federal health care programs as a rural emergency hospital; and

- "Rural emergency hospital services" means the following services, provided by a rural emergency hospital, that do not require in excess of an annual per-patient average of 24 hours in the rural emergency hospital:
  - Emergency department services and observation care; and
  - At the election of the rural emergency hospital, for services provided on an outpatient basis, other medical and health services as specified in regulations adopted by the U.S. Secretary of Health and Human Services and authorized by KDHE.

State Policy

The bill outlines how the Kansas Legislature seeks to address the provision and regulation of a structured and integrated system of health care services. The bill declares the State's policy is to create a category of licensure to enable certain hospitals to receive federal health care reimbursement as rural emergency hospitals, and the implementation of the Act facilitates that policy.

Eligibility for Licensure

The bill provides that a facility is eligible to apply for a rural emergency hospital license, if the facility, as of December 27, 2020, is a:

- Licensed critical access hospital;
- General hospital with not more than 50 licensed beds located in a county in a rural area as defined in Section 1886(d)(2)(D) of the federal Social Security Act; or
- General hospital with not more than 50 licensed beds that is deemed as being located in a rural area pursuant to Section 1886(d)(8)(E) of the Social Security Act.

The bill requires a facility applying for licensure as a rural emergency hospital to include the following with the licensure application:

- An action plan for initiating rural emergency hospital services, including a detailed transition plan listing the specific services the facility will retain, modify, add, and discontinue;
- A description of services the facility intends to provide on an outpatient basis; and
- Such other information as required by rules and regulations adopted by KDHE.

The bill outlines additional prohibitions and requirements for rural emergency hospital licensure as follows:

- Inpatient beds are prohibited, except a distinct unit that is part of the hospital and licensed as a skilled nursing facility may provide post-hospital extended care services;
- A rural emergency hospital is allowed to own and operate an entity that provides ambulance services; and
- A licensed general hospital or critical access hospital that applies for and receives licensure as a rural emergency hospital and elects to operate as a rural emergency hospital retains its original license as a general hospital or critical access hospital. The original license remains inactive while the rural emergency hospital license is in effect.

Authority to Enter into Contracts for Federal Reimbursement

The bill authorizes all rural emergency hospitals, including city, county, hospital district, or other governmental or quasi-governmental hospitals, to enter into any contracts required to be eligible for federal reimbursement as a rural emergency hospital.

Protections Provided

The bill provides, in addition to the limited liability protections provided in KSA 65-4909 when acting in good faith and without malice, that entities engaging in activities and entering into contracts required to meet the requirements for licensure as a rural emergency hospital, and officers, agents, representatives, employees, and directors of such entities, are considered to be acting pursuant to clearly expressed state policy as established in the Act under the supervision of the State. Such entities are not subject to state or federal antitrust laws while acting in this manner.

Rules and Regulations Authority

The bill requires the Secretary to adopt rules and regulations establishing minimum standards for the establishment, operation, and licensure of rural emergency hospitals in accordance with the Act.

Required Service Coverage

The bill requires benefits for services performed by a rural emergency hospital to be covered if such services are covered under the following policies, contracts, or coverage, if performed by a general hospital:

- Each individual and group policy of accident and sickness insurance;
- Each contract issued by a health maintenance organization; and
- All coverage maintained by an entity authorized under KSA 40-2222 (those entities providing coverage in Kansas for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, that are presumed to be subject to the jurisdiction of the Commissioner of Insurance, unless the entities fall under the listed exemptions) or by a municipal group-funded pool authorized under KSA 12-2618.

Rural Hospital Innovation Grant Program and Fund

Definitions

The bill defines the following terms:

- "Eligible county" means a county in Kansas other than Douglas, Johnson, Sedgwick, Shawnee, or Wyandotte county;
- "Hospital" means the same as in KSA 65-425, in the Kansas Medical Facilities Survey and Construction Act; and
- "Transitional assistance" means any assistance related to changing a hospital's current health care delivery model to a model more appropriate for the community the hospital serves, including, but not limited to:
    - Conducting a market study of health care services needed and provided in the community;
    - Acquiring and implementing new technological tools and infrastructure, including, but not limited to, telemedicine delivery methods; and

- Acquiring the services of appropriate personnel, including, but not limited to, additional medical residents or individuals trained to be needed health care professionals.

Rural Hospital Innovation Grant Program

The bill establishes the Program, administered by the Secretary, for the purpose of strengthening and improving the health care system and increasing access to health care services in eligible counties, helping communities in those counties achieve and maintain optimal health by providing transitional assistance to hospitals. The Secretary may award a Rural Hospital Innovation Grant (grant) to a county that applies in accordance with the provisions of the bill.

The board of county commissioners of an eligible county, or the board's designee, may apply to the Secretary for a grant in the form and manner determined by the Secretary. The bill requires the application to include:

- A description of the hospital for which the money would be expended, including the name and location of the hospital;
- The amount of money requested;
- A description of the needs of the hospital, the type of transitional assistance the grant would fund, and how the grant would support the hospital in meeting its needs;
- A certification the hospital has exhausted all opportunities for federal moneys available to such hospital for transitional assistance purposes, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes; and
- Any other information the Secretary deems necessary.

The bill requires, before grant moneys are awarded, the Secretary to enter into a written agreement with the county, requiring the county to:

- Expend the grant moneys to provide transitional assistance to a hospital, as approved by the Secretary;
- Report to the Secretary within one year after the grant moneys are awarded, detailing the effect of the grant on the health and other outcomes in the county and affected community;
- Repay all awarded grant moneys to the Secretary if the county fails to satisfy any term or condition of the grant agreement; and
- Any other terms and conditions the Secretary deems necessary.

The bill prohibits the awarding of a grant unless the hospital has exhausted all opportunities for federal moneys available to such hospital for transitional purposes, including, but not limited to, any federal moneys related to COVID-19 relief that may be used for such purposes.

The bill allows any eligible county to enter into memorandums of understanding and other necessary agreements with private stakeholders and other eligible counties.

Private Stakeholders

The bill allows the Secretary to award a grant only if the state moneys to be awarded in the grant have been matched by private stakeholders, including hospital foundations or other organizations, on a basis of $2 of private stakeholder moneys for every $1 of state moneys.

Under the bill, the Secretary may receive moneys by bequest, donation, or gift to fulfill the public-private match of moneys required by the bill. Any received moneys are remitted to the State Treasurer and deposited in the State Treasury to the credit of the Fund.

The bill allows a private stakeholder to certify to the Secretary that an amount of money is dedicated to the Program, but allows the certified dedicated moneys to remain with the private stakeholder until the grant is awarded. The bill requires the Secretary to count such moneys to fulfill the public-private match required by the bill.

In addition, the bill allows a private stakeholder to specify a certain county to receive a grant using the private stakeholder's moneys. If the Secretary does not award a grant to the specified county in the same fiscal year as the request, the bill requires the Secretary to return the amount of contributed moneys to the private stakeholder, and the certification lapses.

Rural Hospital Innovation Grant Fund; Appropriation

The bill establishes the Fund, administered by the Secretary. The bill requires moneys credited to the Fund to be used only for purposes related to the Program, and all expenditures from the Fund to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports pursuant to vouchers approved by the Secretary, or the Secretary's designee.

The bill provides, notwithstanding the provisions of Chapter 1 of the 2020 Special Session Laws of Kansas or any other provision of law to the contrary, on June 15, 2021, the Director of the Budget shall determine the amount of moneys received by the State that are identified as moneys from the federal government for aid to the State of Kansas for coronavirus relief as appropriated in the acts listed below; that are eligible to be used for the purpose of awarding grants under this section; that may be expended at the discretion of the State in compliance with the U.S. Office of Management and Budget's uniform administrative requirements, cost principles, and audit requirements for federal awards; and that are unencumbered.

The acts specified are:

- The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136), the federal Coronavirus Preparedness and Response Supplemental Appropriation Act (Public Law 116-123), the federal Families First Coronavirus Response Act (Public Law 116-127), and the federal Paycheck Protection Program and Health Care Enhancement Act (Public Law 116-139);

- The federal Consolidated Appropriations Act, 2021 (Public Law 116-260);

- The American Rescue Plan Act of 2021 (Public Law 117-2); and

- Any other federal law that appropriated moneys to the State for aid for coronavirus relief.

Of the moneys identified above, the bill requires the Director of the Budget to determine an aggregate amount equal to $10.0 million available in special revenue funds, or if such identified moneys are less than $10.0 million, determine the maximum amount available. The bill requires the Director of the Budget to certify the amount determined from each fund to the Director of Accounts and Reports. At the same time the certification is transmitted, the Director of the Budget is required to transmit a copy of such certification to the Director of Legislative Research.

The bill requires, on July 1, 2021, or as soon as the moneys are available, the Director of Accounts and Reports to transfer an aggregate amount equal to the certified amount determined by the Director of the Budget from the funds to the Fund. If the aggregate amount of moneys certified is less than $10.0 million, the Director of Accounts and Reports is required to transfer from the SGF to the Fund the difference between the $10.0 million and the amount certified.

Rules and Regulations

The Secretary is required to adopt rules and regulations as necessary to implement the Program.

Reporting Requirements

The bill requires, on or before October 1 of each year, a county to prepare and submit a report to the Secretary on each grant awarded, describing the amount and purposes of any grant moneys, the fulfillment of the terms and conditions of the grant agreement, and the transitional assistance upon which the moneys have been spent.

The bill also requires, on or before February 1 of each year, the Secretary to compile the information received and submit a report to the Governor and Legislature, including the received information and a description of and reasoning for any grant applications that were denied.

Sunset

The Program sunsets July 1, 2025, at which time:

- All moneys in the Fund are transferred to the SGF;
- All liabilities of the Fund are transferred to and imposed on the SGF; and
- The Fund is abolished.

Kansas Medical Facilities Survey and Construction Act

The bill defines "rural emergency hospital" for this purpose by referencing the definition in the Rural Emergency Hospital Act.

Rules and Regulations

The bill amends the Kansas Medical Facilities Survey and Construction Act by adding that, in formulating rules and regulations with respect to different types of medical care facilities to be licensed under such act, KDHE is required to give due consideration to the requirements for the receipt of medical reimbursement for the type of medical facility.

The bill also provides that a rural emergency hospital be deemed to satisfy the rules and regulations requirements for a hospital consisting of more than one establishment if the rural emergency hospital meets its licensing requirements established by the licensing agency.

KDADS Responsibilities for CCBHC Certification

The bill requires KDADS to establish a process to certify CCBHCs.

The bill requires KDADS to certify as a CCBHC any community mental health center (CMHC) licensed by KDADS that provides the following services: crisis services; screening, assessment, and diagnosis, including risk assessment; person-centered treatment planning; outpatient mental health and substance use services; primary care screening and monitoring of key indicators of health risks; targeted case management; psychiatric rehabilitation services; peer support and family supports; medication-assisted treatment; assertive community treatment; and community-based mental health care for military service members and veterans.

KDHE Responsibilities

The bill requires KDHE to establish a prospective payment system (PPS) under the Kansas Medical Assistance Program to fund CCBHCs on or before May 1, 2022. Daily or monthly rate payments are allowed in the PPS.

The bill requires KDHE to submit to the U.S. Centers for Medicare and Medicaid Services any approval request necessary to implement the PPS.

KDADS Rules and Regulation Authority

The bill authorizes KDADS to adopt rules and regulations as necessary to implement and administer provisions related to CCBHCs.

Implementation Schedule

The bill establishes a staggered implementation schedule for CCBHC certification and requires KDADS, subject to certification applications, to certify:

- Six facilities currently receiving grants to operate as CCBHCs by no later than May 1, 2022;
- Three additional facilities by no later than July 1, 2022;
- Nine additional facilities by no later than July 1, 2023; and
- Eight additional facilities by no later than July 1, 2024.

The bill authorizes KDADS to certify CCBHCs, including portions of the specified facility numbers, in advance of the above-cited deadlines.

Out-of-state Telemedicine Practice

The bill authorizes a physician holding a license issued by the applicable licensing agency of another state or who otherwise meets the requirements of the bill to practice telemedicine to treat patients located in Kansas if the physician receives a telemedicine waiver issued by the BOHA.

The bill requires the BOHA to issue the waiver within 15 days from receipt of a complete application, if the physician:

- Submits a complete application, which may include an affidavit from an authorized third party that the applicant meets the requirements, in a manner determined by the BOHA, and pays a fee not to exceed $100; and
- Holds an unrestricted license to practice medicine and surgery in another state or meets the qualifications required under Kansas law for a license to practice medicine and surgery and is not the subject of any investigation or disciplinary action by the applicable licensing agency.

The bill requires a physician to practice telemedicine in accordance with the bill to conduct an appropriate assessment and evaluation of a patient's current condition and document an appropriate medical indication for any prescription issued.

The bill does not supersede or affect the provisions of KSA 65-4a10 (Performance of abortions restricted to a physician licensed to practice medicine in Kansas) or KSA 2020 Supp. 40-2,210 *et seq.* (Kansas Telemedicine Act).

Rules and Regulations for Telemedicine Waivers

The bill requires any person who receives a telemedicine waiver to be subject to all rules and regulations pertaining to the practice of the licensed profession in Kansas and be considered a licensee for the purposes of the professional practice acts administered by the BOHA. The bill also requires any waiver issued to expire on the date established, unless renewed by the BOHA upon receipt of payment of an annual renewal fee not to exceed $100 and evidence the applicant continues to meet the qualifications of the bill.

The bill does not prohibit a licensing agency from denying a waiver application if the licensing body determines granting the application may endanger the health and safety of the public.

Out-of-state Authorizations

The bill authorizes:

- A physician holding a license issued by the applicable licensing agency of another state to provide, without limitation, consultation through remote technology to a physician licensed in Kansas; and

- An applicable health care licensing agency of this state to adopt procedures consistent with this section to allow other health care professionals licensed and regulated by the licensing agency to practice telemedicine within the profession's scope of practice by Kansas law as deemed by the licensing agency to be consistent with ensuring patient safety.

Definition of Telemedicine

The bill defines "telemedicine" to mean the delivery of health care services by a health care provider while the patient is at a different physical location.

Clinical Professional Counselor Licensure

The bill amends the licensure requirements to become a clinical professional counselor to:

- Reduce from 350 to 280 the minimum number of hours of direct client contact or additional postgraduate supervised experience as determined by the BSRB;

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;

- Reduce from 150 to 100 the minimum number of hours of face-to-face clinical supervision as defined by the BSRB in rules and regulations;

- Require no less than 50 of the face-to-face clinical supervision hours to include individual supervision, although the BSRB may waive:
    - The requirement such supervision be face-to-face upon finding extenuating circumstances; and Half of the required hours for an individual who has a doctoral degree in professional counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience;
- Specify a temporary license may be issued after the applicant pays the temporary license fee; and
- Increase from 6 to 12 the number of months after issuance a temporary license shall expire, absent extenuating circumstances approved by the BSRB.

Clinical Social Work Licensure

The bill amends requirements to become a licensed specialist clinical social worker to:

- Remove the requirement an individual complete 350 hours of direct clinical contact or additional postgraduate supervised experience as determined by the BSRB;
- Specify the 100 hours of clinical supervision are face to face, as defined by the BSRB in rules and regulations; and
- Require the 100 hours of face-to-face clinical supervision to include no less than 50 hours of individual supervision, although the BSRB may waive the requirement such supervision be face to face upon finding extenuating circumstances.

Clinical Marriage and Family Therapist Licensure

The bill amends the licensure requirements to become a clinical marriage and family therapist to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations; and
- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB may waive:

- The requirement such supervision be face to face upon finding extenuating circumstances; and
- Half of the required hours for an individual who has a doctoral degree in marriage and family therapy or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Addiction Counselor Licensure

The bill amends the licensure requirements to become a clinical addiction counselor to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations;
- Require the face-to-face clinical supervision hours to include no less than 50 hours of individual supervision, although the BSRB may waive:
  - The requirement such supervision be face to face upon finding extenuating circumstances; and
  - Half of the required hours for an individual who has a doctoral degree in addiction counseling or a BSRB-approved related field and who completes half of the required hours in one or more years of supervised professional experience.

Clinical Psychotherapist Licensure

The bill amends the licensure requirements to become a clinical psychotherapist to:

- Reduce from 4,000 to 3,000 the minimum number of hours of supervised professional experience;
- Reduce from 150 to 100 the minimum number of hours of clinical supervision and specify the hours be face to face, as defined by the BSRB in rules and regulations; and
- Require the face-to-face clinical supervision hours include no less than 50 hours of individual supervision, although the BSRB may waive the requirement such supervision be face to face upon finding extenuating circumstances.

Temporary Permits

The bill amends the requirements for professional counselors, clinical social workers, clinical marriage and family therapists, clinical addiction counselors, psychologists, and clinical master's level psychologists licensed in another jurisdiction to practice in Kansas under a temporary permit to:

- Require individuals to have practiced in their jurisdiction for at least two years immediately preceding the application, except clinical social workers must only have practiced in their jurisdiction, without the two-year requirement;

- Increase from 15 to 30 the maximum number of days per year the individual could practice in Kansas; and

- Require the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

The bill also specifies the temporary practice permit expires one year after issuance, and the BSRB may extend the permit for no more than one additional year upon the individual's written application no later than 30 days before the permit's expiration and under emergency circumstances, as defined by the BSRB. The bill provides that any extended permit authorizes the individual to practice in Kansas for an additional 30 days during the additional year and requires the individual to provide quarterly reports to the BSRB detailing the total days of practice in Kansas.

Board License Refusal and Revocation Authorities

The bill amends the reasons the BSRB may refuse to issue, renew, reinstate, condition, limit, revoke, or suspend a professional counseling, social work, marriage and family therapy, addiction counseling, psychology, or master's level psychology license or censure or impose a fee on such licensee to:

- Remove reference to specific professions and specify the condition whether the individual has had any professional registration, license, or certificate revoked, suspended, or limited, or has had other disciplinary action taken, or an application for registration, license, or certification denied, by the proper regulatory authority of another state, a territory, the District of Columbia, or another country;

- Add the District of Columbia as another location where a substantiated finding of abuse and neglect results in an individual being listed on a child abuse registry or an adult protective services registry, except the District of Columbia is not included with regard to psychologists; and

- Add the condition whether the individual has violated any lawful order or directive of the BSRB.

Clinical Supervisor Application Fee

The bill authorizes the BSRB to establish, by rules and regulations approved by the BSRB, a maximum $50 fee for an application for approval as a BSRB-approved clinical supervisor of professional counselors or marriage and family therapists.

Irrevocable Prearranged Funeral Agreements; Coroner's Permit and Documentation; HB 2254

HB 2254 increases the monetary cap on irrevocable prearranged funeral agreements, contracts, or plans, on and after July 1, 2021, to $10,000, which will increase in an amount equal to the average percentage increase in the Consumer Price Index each year. The bill also amends the documentation a licensed crematory operator or crematory operator in charge is required to receive, prior to the cremation of any dead human body, to only a completed and executed coroner's permit to cremate, if required under the Uniform Vital Statistics Act (Act).

Irrevocable Prearranged Funeral Agreements

Former law allowed such funeral agreements, contracts, or plans to be irrevocable as to the retail price of a casket, urn, and outside burial container, and as to the first $7,000 of funds paid and set aside at the direction of the purchaser.

The bill, in addition to increasing the monetary cap to $10,000, states on July 1, 2022, and each July 1 thereafter, such amount will increase in an amount equal to the average percentage increase in the Consumer Price Index for all urban consumers in the Midwest region, as published by the U.S. Bureau of Labor Statistics.

Coroner's Permit and Documentation

The bill amends the Act to require a coroner's permit to be executed only if the death or cause of death occurred in Kansas or in a state where such a permit to cremate is required. The Act also is amended to allow an electronic as well as a telefacsimile signed copy of a coroner's permit to cremate as legal authorization to cremate. Further, the bill amends the Act by repealing the statute requiring Kansas funeral directors to provide the Secretary of Health and Environment with a monthly report of the bodies prepared for burial.

Urging the Legislative Coordinating Council to Revoke Any Executive Order Mandating Face Coverings; HR 6015 and SR 1717

HR 6015 and **SR 1717** urge the Legislative Coordinating Council (LCC) to revoke any executive order issued by the Governor pursuant to the Kansas Emergency Management Act establishing a face coverings protocol, if such executive order is issued by the Governor while the Legislature is not in Session or is adjourned for three or more days during the Legislative Session. The resolution directs the Chief Clerk of the House to send an enrolled copy of the resolution to the chairperson of the LCC.

Insurance Producer Licensing Requirements; SB 37

SB 37 amends provisions governing agent licensing and renewal licensure requirements in the Uniform Agents Licensing Act and in the Public Adjusters Licensing Act and also amends a statute governing the examination of applicants for agent licensure. The bill also provides for an exemption and extension in complying with the continuing education requirements of licensed insurance agents serving on active duty in the National Guard or armed services of the United States for a specified period of time. The bill further requires certification by pre-need-only insurance agents that the agent transacted no other insurance business.

Examination for Applicant Agent Licensure

The bill modifies the requirement of examination for applicants and prospective applicants for an agent's license to remove a six-month waiting period for the retaking of an examination after a third or subsequent failure.

Uniform Insurance Agents Licensing Act

Definitions

The bill modifies the definition of "biennial due date" as the term applies to both agents (the last day of the agent's birth month) and to registered businesses (the last day of the month of the business' initial licensure).

Biennial Renewal Fee and Continuing Education Requirements for Licensure

Biennial renewal fee. In addition to the continuing criteria specified for residential agents to meet educational requirements in the biennial license period, the bill requires agents to submit an application for renewal on a form prescribed by the Commissioner of Insurance (Commissioner) and, on and after January 1, 2022, to pay a $4.00 biennial renewal application fee.

Continuing education credits. Under current law, licensed agents holding only a property and casualty (P&C) or a life, accident, and health (L&H) qualification are required to obtain biennially a minimum of 12 continuing education credits (CECs), including at least 1 hour in insurance ethics and no more than 3 CECs in insurance agency management. If an agent holds both the P&C and L&H certifications, the agent is required to obtain a minimum of 24 CECs biennially.

On and after January 1, 2022, the bill amends the CEC requirement for agents to require each licensed agent to earn 18 CECs biennially, permit at least 3 hours of instruction in ethics, and remove the required insurance agency management hours.

The bill updates the CEC requirements for specified lines of insurance to add exemptions for insurance agents licensed to hold only a qualification in either self-service storage unit or travel insurance.

Pre-need agent reporting requirement. The bill requires that, at the biennial due date, a licensed insurance agent, who is an individual and holds a life insurance license only for the purpose of selling pre-need funeral insurance or annuity products, provide certification from an officer of each insurance company that has appointed such agent that the agent transacted no other business during the period covered by the report. Under prior law, the certification was required only upon request of the Commissioner.

Exemption and extension for licensed agents in active duty armed services. The bill exempts a licensed agent who is a member of the National Guard or any reserve component of the armed services of the United States who serves on active duty for at least 90 consecutive days from continuing education requirements during the time such insurance agent is on active duty. The bill requires the Commissioner to grant an extension to any such licensed agent until the biennial due date that occurs in the year next succeeding the year in which such active duty ceases.

Appointment of Agents; Notification

Appointment of agents. The bill removes affiliation requirements for business entities (insurance companies). Under prior law, each officer, director, partner, and employee of the business entity who acted as an insurance agent was required to be licensed as an insurance agent. The business entity is required to disclose to the Kansas Insurance Department (Department) the names of all of its officers, directors, partners, and employees, regardless of whether such persons are licensed as insurance agents. The notification requirement and licensure of the business entity's representatives included an associated time frame for notification to the Department and penalties for failure to notify. The bill removes the notification time frames and penalties.

The bill, on and after January 1, 2022, also removes a required annual certification and related certification fee for a licensed insurance agent who is an officer, director, partner, or employee or is otherwise legally associated with a corporation, association, partnership, or other legal entity appointed by an insurance company. Under current law, an annual certification fee must be paid for each licensed agent certified by the company at the time the company files its premium tax returns.

Notification. The bill creates reporting requirements on each person or entity licensed in the state as an insurance agent. The bill requires the following information to be reported to the Commissioner within 30 calendar days of an occurrence:

- Each disciplinary action on the agent's license or licenses by the regulatory agency of another state or territory of the United States;
- Each disciplinary action on an occupational license held by the licensee, other than an insurance agent's license;
- Each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit or misrepresentation, or a violation of any insurance law;
- All details of any conviction of a misdemeanor or felony (details are specified in the bill; minor traffic violations may be omitted);

- Each change in name (if the change is effected by court order, a copy of such order must be provided to the Commissioner);

- Each change in residence or mailing address, email address, or telephone number;

- Each change in the name or address of the agency with which the agent is associated; and

- Each termination of a business relationship with an insurer if the termination is for cause, including the reason for the termination.

In addition, each person or entity licensed in Kansas as an insurance agent is required to provide to the Commissioner, upon request, a current listing of company affiliations and affiliated insurance agents. Business entities licensed in Kansas as insurance agents are required to report each change in legal or mailing address, email address, and telephone number to the Commissioner within 30 days of occurrence. These entities also are required to report each change in the name and address of the licensed agent who is responsible for the business entity's compliance with the insurance laws of Kansas to the Commissioner within 30 days of occurrence.

Commissioner—Licenses and Renewals; Permissible Considerations

Under continuing law, the Commissioner is permitted to deny, suspend, revoke, or refuse renewal of licenses if the Commissioner finds violation of several listed actions of the applicant or license holder (*e.g.*, providing incorrect, misleading, incomplete, or untrue information; violations of insurance law; a misdemeanor or felony conviction). The bill adds "failed to respond to an inquiry from the Commissioner within 15 business days" to this list of actions.

In addition, the bill requires the Commissioner to consider the following criteria when determining whether to grant or renew a license:

- Applicant's age at the time of the conduct;

- Recency of the conduct;

- Reliability of the information concerning the conduct;

- Seriousness of the conduct;

- Factors underlying the conduct;

- Cumulative effect of the conduct or information;

- Evidence of rehabilitation;

- Applicant's social contributions since the conduct;

- Applicant's candor in the application process; and

- Materiality of any omissions or misrepresentations.

Separately, the Commissioner is required to consider when determining whether to reinstate or grant to an applicant a license that has been revoked:

- Present moral fitness of the applicant;

- Demonstrated consciousness by the applicant of the wrongful conduct and disrepute that the conduct has brought to the insurance profession;

- Extent of the applicant's rehabilitation;

- Seriousness of the original conduct;

- Applicant's conduct subsequent to discipline;

- Amount of time that has elapsed since the original discipline;

- Applicant's character, maturity, and experience at the time of the revocation; and

- Applicant's present competence and skills in the insurance industry.

The bill provides that an applicant to whom a license has been denied after a hearing may not apply for a license again until after the expiration of a period of one year from the date of the Commissioner's order. A licensee whose license was revoked cannot reapply until after two years from the date of the order.

Renewal Application—Penalties

The bill amends provisions applying to the renewal of licensure for an insurance agent to create corresponding penalty provisions when the required renewal application is not received by the Commissioner by the agent's biennial due date. The bill provides, if the required renewal application is late:

- Such individual insurance agent's qualification and each corresponding license shall be suspended automatically for a period of 90 calendar days or until such time as the agent satisfactorily submits a completed application, whichever occurs first; and

- The Commissioner shall assess a penalty of $100 for each license suspended:

    - If such agent fails to provide the required renewal application and the monetary penalty within 90 calendar days of the biennial due date, the agent's qualification and each corresponding license will expire on such agent's biennial due date;

- If, after more than 3 but less than 12 months from the date the license expired, the agent desires to reinstate his or her license, the agent must provide the required renewal application and pay a reinstatement fee in the amount of $100 for each license suspended; and
- If, after more than 12 months have passed since license expiration, the agent desires to reinstate the license, this agent is required to apply for an insurance agent's license, provide the required proof of CEC completion, and pay a reinstatement fee in the amount of $100 for each license suspended.

The bill permits, upon receipt of a written application from an agent claiming extreme hardship, the Commissioner to waive any penalty associated with renewal of an agent's license.

Public Adjusters Licensing Act

The bill amends the Public Adjusters Licensing Act to add fingerprinting and criminal history record checks of applicants. Under the bill, the Commissioner is allowed to:

- Require a person applying for a public adjuster license to be fingerprinted and submit to a state and national criminal history record check, to submit a background check, or both:
  - The fingerprints shall be used to identify the applicant and to determine whether the applicant has a record of criminal history in this state or another jurisdiction. The Commissioner is required to submit the fingerprints to the Kansas Bureau of Investigation and the Federal Bureau of Investigation for a state and national history record check. Local and state law enforcement officers and agencies are required to assist the Commissioner in the taking and processing of fingerprints of applicants and to release all records of an applicant's arrests and convictions to the Commissioner; and
- Conduct or have a third party conduct a background check on a person applying for a public adjuster license.

The bill requires the applicant to pay any associated costs whenever the Commissioner requires fingerprinting or a background check, or both. The Commissioner is permitted to use the information obtained from a background check, fingerprinting, and the applicant's criminal history only for purposes of verifying the identity of the applicant and in the official determination of the applicant's fitness to be issued a license as a public adjuster.

The bill also amends the biennial renewal provisions for licensure as a public adjuster to clarify the term "biennial due date" and increase, from 12 to 18 hours, the biennial minimum continuing education courses for licensees and to specify such education include 3 hours of ethics. The bill removes a requirement that such education include 11 hours of P&C or general continuing education courses.

Credit for Reinsurance Model Regulation; Amendments to Insurance-related Acts, Health Care Stabilization Fund Law; Risk-based Capital Instructions; House Sub. for SB 78

House Sub. for SB 78 amends several provisions in the Insurance Code and codifies the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation (Model Regulation) into statute. Amendments to the Insurance Code pertain to credit for reinsurance, service contracts, surplus lines insurance, the Standard Nonforfeiture Law for Individual Deferred Annuities (Standard Nonforfeiture Law), the Utilization Review Organization Act and oversight of utilization review organizations, and risk retention groups. The bill also amends the Insurance Company Holding Act, the Professional Employer Organization Registration Act, the effective date for the risk-based capital instructions promulgated by the NAIC, and certain coverage and oversight requirements in the Health Care Provider Insurance Availability Act.

The bill also repeals the Automobile Club Services Act and a statute relating to the power of the Commissioner of Insurance (Commissioner) to examine and investigate into the affairs of persons engaged in the business of insurance to determine whether any unfair method of competition or unfair or deceptive act or practice has occurred (KSA 40-2405).

Codification of NAIC Credit for Reinsurance Model Regulation

[*Note:* Reinsurance is often referred to as "insurance for insurance companies" and serves as a contract of indemnity between a reinsurer and insurer. In this contractual arrangement, the insurance company (termed the "cedent" or "ceding insurer") transfers the risk to the reinsurer, which assumes some or all of the policies issued by the ceding insurer.]

Purpose

The stated purpose of the Model Regulation is that the actions and information required are necessary and appropriate in the public interest and for the protection of the ceding insurers in Kansas.

Severability

If any provision in the Model Regulation, or the application of the provision to any person or circumstance, is found to be invalid, the remainder of the act, or the application of the provision to persons or circumstances other than those to which it is held invalid, is not affected.

Credit for Reinsurance—Reinsurer Licensed in Kansas

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for the reinsurance ceded by a domestic insurer to an assuming insurer licensed in Kansas as of any date on which statutory financial statement credit for reinsurance is claimed.

Credit for Reinsurance—Accredited Reinsurers

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer accredited as a reinsurer in Kansas as of the date on which statutory financial statement credit for reinsurance is claimed. The Model Regulation sets out the filing requirements of an accredited reinsurer and the requirement to maintain a surplus with regard to policyholders of not less than $20.0 million or to obtain approval of the Commissioner based on a finding the accredited reinsurer has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

If the Commissioner determines the assuming insurer failed to meet or maintain any of the above qualifications, the Commissioner is permitted to suspend or revoke the accreditation, upon written notice and opportunity for hearing. If an assuming insurer's accreditation is revoked, or if the reinsurance is ceded while the assuming insurer's accreditation is under suspension, a domestic ceding insurer is not allowed credit.

Credit for Reinsurance—Reinsurer Domiciled in Another State

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of a date on which statutory financial statement credit for reinsurance is claimed:

- Is domiciled in or, in the case of a U.S. branch of an alien assuming insurer, is entered through a state with credit for reinsurance standards similar to those applicable in Kansas;

- Maintains a surplus as previously described; and

- Files a properly executed form with the Commissioner as evidence of submission to this state's authority to examine its books and records.

The provisions relating to the surplus do not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system. The term "substantially similar," as referenced in this section, means credit for reinsurance standards the Commissioner determines are equal to or exceed the standards of the Kansas credit for reinsurance statute and those of this section.

Credit for Reinsurance—Reinsurers Maintaining Trust Funds

In accordance with the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and for as long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed by the Model Regulation in a qualified U.S. financial institution for the payment of the valid claims of its U.S.-domiciled ceding insurers. The assuming insurer is required to report annually to the Commissioner substantially the same information required to be reported on the NAIC annual

statement form by licensed insurers, to allow the Commissioner to determine the sufficiency of the trust fund.

The Model Regulation sets out the trust fund requirements applicable to the following categories of assuming insurers: a single assuming insurer; an assuming insurer that has permanently discontinued underwriting new business secured by the trust for at least three full years; a group including incorporated and individual unincorporated underwriters; and a group of incorporated insurers under common administration whose members possess aggregate policyholders surplus of $10.0 billion, calculated and reported as outlined in the bill, and that has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation.

The Model Regulation provides that credit for reinsurance is not to be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who has accepted responsibility for regulatory oversight of the trust. The Model Regulation requires the form of the trust and any trust amendments be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. Provisions to be included in the trust instrument are outlined.

If the trust fund is inadequate because it contains an amount less than required or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee is required to comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. Such assets are to be distributed according to claims filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. Trust assets not necessary to satisfy the claims of U.S. beneficiaries of the trust are returned to the trustee for distribution according to the trust agreement. The grantor is required to waive any right otherwise available to it under U.S. law that is consistent with this provision.

The term “liabilities” means the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S.-domiciled insurers, excluding liabilities that are otherwise secured by acceptable means. The liabilities included for business ceded by domestic insurers authorized to write accident and health and property and casualty insurance and for business ceded by domestic insurers authorized to write life, health, and annuity insurance are as listed in the Model Regulation.

The Model Regulation addresses the valuation of assets deposited in trusts established pursuant to the Kansas credit for reinsurance statute, the nature of the trust assets allowed, the limitations on foreign investments and securities denominated in foreign currencies in the trust, and restrictions on allowed trust investments. Requirements for a mortgage-related security are specified. The terms “mortgage-related security” and “promissory note” are defined.

Equity interests. The Model Regulation addresses permissible equity interests involving the following: investments in common shares or partnership interests of a solvent U.S. institution, if certain requirements are met; investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if certain requirements are met; an investment in or

loan upon any one institution's outstanding equity interest not exceeding a specified percentage of the assets of the trust; and obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated "A," or higher, or the equivalent, by a rating agency recognized by the securities valuation office of the NAIC.

Investment companies. The Model Regulation provides that securities of an investment company registered pursuant to the Investment Company Act of 1940 are permissible investments if the investment company meets certain investment requirements. The bill prohibits investments made by a trust in investment companies from exceeding certain limitations.

Letters of credit. A letter of credit qualifies as an asset of the trust only if:

- The trustee has the right and obligation pursuant to the deed of trust or some other binding agreement approved by the Commissioner to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced; and

- The trust agreement provides that the trustee is liable for its negligence, willful misconduct, or lack of good faith. The failure to draw against the letter of credit when such draw is required is deemed to be negligence or willful misconduct.

Credit for Reinsurance—Certified Insurers

Pursuant to the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in Kansas at all times for which the statutory financial statement credit for reinsurance is claimed. The credit allowed is based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified insurer by the Commissioner. The bill requires the security to be in a form consistent with requirements of the Kansas credit for reinsurance statute. The amount of security required in order for full credit to be allowed must correspond with the requirements outlined.

Certification procedure. The process for certification requires the posting of the application for certification on the Kansas Insurance Department (Department) website, including instructions on how members of the public may respond to the application, the timing of the Commissioner's final action on the application, and written notice to the assuming insurer that made the application and has been approved as a certified reinsurer that contains the rating assigned to the certified reinsurer. The Commissioner is required to publish a list of all certified reinsurers and their ratings. To be eligible for certification, the assuming insurer is required to meet certain requirements, as outlined. Each certified reinsurer is rated on a legal entity basis, with due consideration being given to the group rating where appropriate. However, an association, including incorporated and individual unincorporated underwriters, that has been approved to do business as a single certified reinsurer is permitted to be evaluated on the basis of its group rating. Multiple factors allowed to be considered as part of the evaluation process are described.

Based on the analysis of one of the factors conducted pertaining to a certified reinsurer's reputation for prompt payment of claims, the Commissioner is permitted to make appropriate adjustments to the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers. If certain conditions exist, the Commissioner is required, at a minimum, to increase the security the certified insurer is required to post by one rating level.

The assuming insurer is required to submit a specified form as evidence of its submission to the jurisdiction of the State of Kansas, appointment of the Commissioner as an agent for service of process in Kansas, and agreement to provide security for 100 percent of the assuming insurer's liabilities attributable to the reinsurance ceded by U.S ceding insurers if the assuming insurer resists enforcement of a final U.S. judgment. The Commissioner is prohibited from certifying any assuming insurer that is domiciled in a jurisdiction the Commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

The certified reinsurer is required to agree to meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application and on an ongoing basis. Information submitted by certified reinsurers that is not public information subject to disclosure is exempted from disclosure under the Kansas Open Records Act and is withheld from public disclosure. The provisions providing for the confidentiality of public records expire on July 1, 2026, unless the Legislature reviews and continues such provisions. The applicable information filing requirements are described.

Qualified jurisdictions. If the Commissioner determines, upon conducting an evaluation with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Commissioner is required to publish notice and evidence of such recognition. The Commissioner is permitted to establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

The Commissioner is required to evaluate the reinsurance supervisory system of a non-U.S. jurisdiction, both initially and on an ongoing basis, to determine whether the domiciliary jurisdiction of the non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction and to consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the United States. The Commissioner is required to determine the appropriate approach for evaluating the qualifications of such jurisdictions and create and publish a list of jurisdictions whose reinsurers the Commissioner is allowed to approve as eligible for certification. A qualified jurisdiction is required to agree to share information and cooperate with the Commissioner with respect to all certified reinsurers domiciled in that jurisdiction. A list of additional factors to be considered in determining whether to recognize a qualified jurisdiction is included.

In determining qualified jurisdictions, the Commissioner is required to consider the list of qualified jurisdictions published through the NAIC committee process. If the Commissioner approves a jurisdiction as qualified that is not on the list of qualified jurisdictions, the Commissioner is required to provide thoroughly documented justification with respect to the criteria provided in the list of other factors to be considered in making that determination. U.S. jurisdictions meeting the requirements for accreditation under the NAIC standards and accreditation program are recognized as qualified jurisdictions.

Recognition of certification issued by an NAIC-accredited jurisdiction. The Commissioner has the discretion to defer to the certification of an applicant who has been

certified as a reinsurer in an NAIC-accredited jurisdiction and to defer to the rating assigned by that jurisdiction, if the assuming insurer completes the requisite form prescribed and adopted by the NAIC and the Commissioner and provides such additional information required by the Commissioner. The assuming insurer is considered to be a certified insurer in Kansas. A change in the certified insurer's status or rating in the other jurisdiction applies automatically in Kansas as of the date it takes effect in the other jurisdiction. The requirement for notification by the certified insurer of any change in status or rating, the Commissioner's authority to withdraw recognition of the other jurisdiction's rating and certification at any time, and the good standing of the certified insurer's certification absent suspension or revocation by the Commissioner are described.

Mandatory funding clause. The bill requires reinsurance contracts entered into or renewed to include a proper funding clause that requires the certified insurer to provide and maintain security in an amount sufficient to avoid having any financial statement penalty imposed on the ceding insurer for the reinsurance ceded to the certified insurer.

The Commissioner is required to comply with all reporting and notification requirements the NAIC may establish with respect to certified insurers and qualified jurisdictions.

Credit for Reinsurance—Reciprocal Jurisdictions

In accordance with the Kansas credit for reinsurance statute, the Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and meets other requirements outlined in the Model Regulation.

"Reciprocal jurisdiction" is defined as a jurisdiction designated by the Commissioner that meets one of three requirements outlined in the bill.

The bill requires credit to be allowed when the reinsurance is ceded from an insurer domiciled in Kansas to an assuming insurer that meets the following conditions:

- Is licensed to transact reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction;
- Has and maintains on an ongoing basis minimum capital and surplus, or its equivalent, calculated in the manner described, in the requisite amounts;
- Has and maintains on an ongoing basis a minimum solvency or capital ratio, as applicable, as specified in the bill;
- Agrees to and provides assurance in the required form of its agreement to:
    - Provide prompt written notice and explanation if it falls below certain minimum requirements or if any regulatory action is taken against it for serious noncompliance with applicable law;
    - Consent in writing to the jurisdiction of the courts of Kansas and to the appointment of the Commissioner as agent for the service of process;

- Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;
- Provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded, as required by a provision in each reinsurance agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award;
- Confirm that it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers and agrees to notify the ceding insurer and the Commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, if the assuming insurer enters into such a solvent scheme of arrangement; and
- Agree in writing to meet the applicable information filing requirements;

- Provides, if requested by the Commissioner, on behalf of itself and any legal predecessors, the documentation specified to the Commissioner;

- Maintains a practice of prompt payment of claims under reinsurance agreements. The criteria that are evidence of the lack of prompt payment are enumerated;

- Complies with the requirements of having and maintaining, on an ongoing basis, minimum capital and surplus, or its equivalent, and a minimum solvency or capital ratio, as applicable, as confirmed by the assuming insurer's supervisory authority; and

- Nothing precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

The Commissioner is required to timely create and publish a list of reciprocal jurisdictions. A list of reciprocal jurisdictions is published through the NAIC's committee process. The Commissioner's list is required to include any reciprocal jurisdiction and consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner is allowed to approve a jurisdiction not included in the NAIC's list of reciprocal jurisdictions as provided by applicable law or regulation, or in accordance with criteria published through the NAIC committee process.

The Commissioner is allowed to remove a jurisdiction from the list of reciprocal jurisdictions upon determination the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law or regulation, or in accordance with a process published through the NAIC committee process, except the Commissioner is prohibited from removing from the list of reciprocal jurisdictions the following: a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and the European Union, is a member state of the European Union; and a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation

program. Upon removal of a reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction is allowed.

The Commissioner is required to timely create and publish a list of assuming insurers that have satisfied the conditions set forth and to which cessions shall be granted credit. If an NAIC-accredited jurisdiction determines the conditions for a qualified jurisdiction have been met, the Commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions are granted credit. The Commissioner is allowed to accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements for a qualified jurisdiction.

An assuming insurer is required to submit the required properly executed form and additional information as the Commissioner may require when requesting that the Commissioner defer to another NAIC-accredited jurisdiction's determination. A state that has received such a request is required to notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

If the Commissioner determines an assuming insurer no longer meets one or more of the requirements, the Commissioner is allowed to revoke or suspend the eligibility of the assuming insurer for recognition. While eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit, except to the extent the assuming insurer's obligations under the contract are secured. If eligibility is revoked, credit is not to be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions of the section on asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the necessary requirements.

Before denying statement credit or imposing a requirement to post security for an assuming insurer that no longer meets one or more of the requirements or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner is required to:

- Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the required conditions; and

- Provide the assuming insurer 30 days to submit a plan and 90 days to remedy the defect, unless a shorter period is needed for policyholder and other consumer protection. If after the 90 days, the Commissioner determines no or insufficient action was taken, the Commissioner may impose any of the requirements specified on the assuming insurer and provide a written explanation to the assuming insurer of any requirements in the bill.

If subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer is allowed to seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring the assuming insurer post security for all outstanding liabilities.

Credit for Reinsurance Required by Law

The Commissioner is required to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of the Kansas credit for reinsurance statute, but only as it relates to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction. "Jurisdiction" is defined as a state, district, or territory of the United States and any lawful national government.

Asset or Reduction from Liability for Reinsurance—Unauthorized Assuming Insurer

The Commissioner is required to allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of the Kansas credit for reinsurance statute in an amount not exceeding the liabilities carried by the ceding insurer. The calculation of the reduction, where the security is held, who may withdraw the security, and the allowed forms of security are as outlined in the Model Regulation.

An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer is allowed only when certain requirements are satisfied.

Required Conditions of Trust Agreements

This section defines "beneficiary," "grantor," and "obligations" and outlines the required conditions for the trust agreements. The trust agreement is entered into between the beneficiary, the grantor, and a trustee that shall be a qualified U.S. financial institution. The trust agreement creates a trust account into which assets are deposited. All assets in the trust account are held by the trustee at the trustee's office in the United States. The bill specifies required provisions of the trust agreement, including the responsibilities of the trustee, the laws the agreement is subject to and governed by, and the required notice prior to termination of the trust.

Notwithstanding certain provisions of the bill, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement is allowed to provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the specific purposes outlined in the bill.

Notwithstanding other provisions, when a trust agreement is established to meet the certain requirements pertaining to asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer that does not meet the credit for reinsurance requirements in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement is allowed to provide that the ceding insurer undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the purposes specified.

The bill requires the reinsurance agreement or the trust agreement to stipulate how the assets deposited in the trust are valued and what it would consist of and limitations on the types of investments. The trust agreement may further specify the types of investments to be deposited.

Permitted Conditions of a Trust Agreement

The Model Regulation outlines the permitted conditions in a trust agreement, including the terms for resignation or removal of a trustee, the grantor's rights with respect to voting any shares of stock in the trust account and receiving payment of dividends and interest from time to time, the authorities of a trustee with regard to the funds in the account, the transfer of trust assets by the beneficiary, and the delivery of assets to the grantor upon termination of the trust account.

Additional Conditions Applicable to Reinsurance Agreements

The bill authorizes certain specified provisions in a reinsurance agreement. One such provision allows the assuming insurer to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments so the ceding insurer, or the trustee upon direction of the ceding insurer, is able whenever necessary to negotiate these assets without consent or signature from the assuming insurer or any other entity.

Financial Reporting

A trust agreement is allowed to be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Department when established on or before the date of filing of the financial statement of the ceding insurer. The reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time. However, such reduction is not permitted to be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

The failure of a trust agreement to specifically identify the beneficiary is not to be construed to affect any actions or rights the Commissioner is allowed to take or possess pursuant to provisions of state law.

Letters of Credit Qualified under Certain Conditions

The Model Regulation outlines the requirements of the letter of credit pertaining to a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements of the Kansas credit for reinsurance statute.

Reinsurance Agreement Provisions

The provisions that are allowed in a reinsurance agreement with which the letter of credit is obtained include requiring the assuming insurer to provide letters of credit to the ceding insurer and specifying what they are to cover and stipulating the letter of credit may be drawn upon at any time and used by the ceding insurer for its successors in interest only for certain enumerated reasons.

However, the enumerated reasons do not preclude the ceding insurer and assuming insurer from providing for an interest payment, at a rate not exceeding the prime rate of interest

on certain amounts or the return of any amounts drawn down on the letters of credit in excess of the actual amounts required above or any amounts that are subsequently determined not to be due.

Other Security

The Model Regulation allows a ceding insurer to take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Reinsurance Contract

Under the Model Regulation, credit is not to be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting specific requirements or otherwise in compliance with Kansas credit for reinsurance statute, after the adoption of this section, unless the reinsurance agreement includes a proper insolvency clause; a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent for service of process, and has agreed to abide by the final decision of the court or panel; and a proper reinsurance intermediary clause, if applicable, that stipulates the credit risk for the intermediary is carried by the assuming insurer.

Service Contracts; Repeal of the Automobile Club Services Act

The bill amends the definition of "service contract" within the general provisions of the Insurance Code to specify the term does not include an automobile club service contract. The bill defines the term "automobile club service contract" as:

- A service contract that provides—in consideration of dues, assessments, or periodic payments of money—promises to assist in matters relating to travel and the operation, use, and maintenance of an automobile in the supply of features or services or reimbursement thereof, which may include:
    - Such services as community traffic safety services, travel and touring service, theft or reward service, map service, towing service, emergency road service, bail bond service, and legal fee reimbursement service in the defense of traffic offenses, none of which enumerated features or services, if provided by the promisor itself, shall be subject to the insurance laws of this state;
    - The purchase of accidental injury and death benefits insurance coverage issued, as provided by applicable statutes, by an insurance company authorized to do business in Kansas; or
    - Such other features or services not deemed by the Commissioner to constitute the business of insurance.

Prior law applied the exclusion to automobile club service contracts as defined in the Automobile Club Services Act. The bill repeals the Automobile Club Services Act, which required persons providing automobile club services to register with the Commissioner and pay an annual licensing fee.

Credit for Reinsurance Statute

The bill adds another condition under which a domestic ceding insurer may be permitted a credit for reinsurance, as either an asset or a reduction from liability, on account of reinsurance ceded to an assuming insurer.

Assuming Insurer Requirements

The added condition allows credit for reinsurance if the assuming insurer meets each of the following conditions:

- Has its head office, or is domiciled, in, as applicable, and is licensed in a reciprocal jurisdiction. A reciprocal jurisdiction is a jurisdiction that meets one of the following requirements:
    - Is a non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union. A covered agreement is defined as an agreement entered into pursuant to provisions of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act currently in effect or in a period of provisional application and addresses the elimination, under specific conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in Kansas or for allowing the ceding insurer to recognize credit for reinsurance;
    - Is a U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program; or
    - Is a qualified jurisdiction, as determined by the Commissioner, that is not otherwise described in the two previous options and meets certain additional requirements consistent with the terms and conditions of in-force covered agreements, as specified by the Commissioner;
- Has and maintains, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount set by the Commissioner. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it is required to have and maintain, on an ongoing basis, minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts set by the Commissioner;

- Has and maintains, on an ongoing basis, a minimum solvency or capital ratio, as applicable, as set by the Commissioner. If the assuming insurer is an association, including incorporated or individual unincorporated underwriters, it is required to have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed;

- Agrees and provides adequate assurance to the Commissioner, in a form specified by the Commissioner, as follows:

    - The assuming insurer is required to provide the Commissioner with prompt written notice and explanation if it falls below the minimum requirements set for capital and surplus or solvency or capital ratio, or if any regulatory action is taken against the assuming insurer for serious non-compliance with applicable law;

    - The assuming insurer is required to consent in writing to the jurisdiction of the Kansas courts and to the appointment of the Commissioner as the assuming insurer's agent for service of process. The Commissioner may require the consent for service of process be provided to the Commissioner and included in each reinsurance agreement. This provision does not limit or alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

    - The assuming insurer is required to consent in writing to pay all final judgments, whenever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

    - Each reinsurance agreement is required to include a provision requiring the assuming insurer to provide security equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

    - The assuming insurer is required to confirm it is not presently participating in any solvent scheme of arrangement that involves Kansas ceding insurers, agree to notify the ceding insurer and the Commissioner, and provide security equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security is required to be in a form consistent with the provisions allowing for credit when reinsurance is ceded to the Commissioner-certified assuming insurer that has secured its obligations as required and for limitation on asset or reduction from liability for reinsurance not meeting the requirements for credit for reinsurance and as specified by the Commissioner;

- If requested by the Commissioner, the assuming insurer or its legal successor provides to the Commissioner, on behalf of itself and any legal predecessors, certain documentation specified by the Commissioner;

- Maintains a practice of prompt payment of claims under reinsurance agreements; and

- The assuming insurer's supervisory authority confirms to the Commissioner on an annual basis that the assuming insurer complies with the requirements for having and maintaining minimum capital and surplus or minimum solvency or capital ratio.

The assuming insurer is not precluded from voluntarily providing information to the Commissioner.

List of Reciprocal Jurisdictions

The following criteria apply to the list of reciprocal jurisdictions created by the Commissioner:

- A list of reciprocal jurisdictions is to be published through the NAIC committee process. The Commissioner's list must include any reciprocal jurisdiction, as defined in the bill, and the Commissioner is required to consider any other reciprocal jurisdiction included in the NAIC list. The Commissioner is permitted to approve a jurisdiction that does not appear on the NAIC reciprocal jurisdictions list in accordance with criteria developed by the Commissioner; and

- The Commissioner is permitted to remove a jurisdiction from the list of reciprocal jurisdictions if the Commissioner determines, with a process set by the Commissioner, that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction. However, the Commissioner is prohibited from removing the following from the list of reciprocal jurisdictions:

    - A non-U.S. jurisdiction subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member of the European Union; and

    - A U.S. jurisdiction that meets the requirements of accreditation under the NAIC Financial Standards and Accreditation Program.

If a reciprocal jurisdiction is removed from the list, credit for reinsurance ceded to an assuming insurer that has its home office or is domiciled in that jurisdiction is permitted, if otherwise permitted in the credit for reinsurance statute.

List of Assuming Insurers

The Commissioner is required to create and publish a list of assuming insurers that have satisfied the conditions required of them and to which cessions would be required to be granted

credit. The Commissioner is permitted to add an assuming insurer to such list if an NAIC-accredited jurisdiction has added such assuming insurer to such a list or, if on initial eligibility, the assuming insurer submits the required information to the Commissioner agreeing and providing adequate assurance and complies with any other requirements the Commissioner is permitted to impose that do not conflict with an applicable covered agreement.

Revocation or Suspension of Eligibility of an Assuming Insurer

The Commissioner is permitted to revoke or suspend the eligibility for recognition of an assuming insurer determined by the Commissioner to no longer meet one or more of the requirements pertaining to assuming insurers.

While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the date of the suspension qualifies for credit, except to the extent the assuming insurer's obligations under the contract are secured in accordance with the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

If an assuming insurer's eligibility is revoked, no credit for reinsurance is to be granted after the effective date of revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions in the section on the asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer that does not meet the requirements for credit for reinsurance.

Assuming Insurer Requirement to Post Security

If subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer or its representative is permitted to seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring the assuming insurer to post security for all outstanding ceded liabilities.

Agreement on Security Requirements

The capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in the reinsurance agreement is not limited or altered, except when expressly prohibited by the credit for reinsurance statute or other applicable law or regulation.

Limitation on Credits for Reinsurance

Credit is permitted only for reinsurance agreements entered into, amended, or renewed on or after July 1, 2021, and only with respect to losses incurred and reserves reported on, or after the latter of the date on which the assuming insurer has met all eligibility requirements pursuant to the section on condition under which credit for reinsurance is permitted or the effective date of the new reinsurance agreement, amendment, or renewal.

Ceding Insurer's Right to Credit for Reinsurance

A ceding insurer's right to take credit for reinsurance is not altered or impaired, to the extent that credit is not available under the conditions to be met to qualify for credit, if the reinsurance qualifies for credit under any other applicable provision of the credit for reinsurance statute.

Limitations on an Assuming Insurer

Nothing in the reinsurer requirements to allow credit for reinsurance authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement or to limit or alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

Definitions, Surplus Lines Insurance

The bill amends definitions associated with surplus lines insurance to update provisions within the definition of "exempt commercial purchaser." Former law required the minimum requirements for net worth, annual revenue, and annual budgeted expenditures on exempt commercial purchasers to be adjusted and published by the Commissioner through rules and regulations.

The bill instead requires these adjusted amounts to be published in the *Kansas Register*.

Risk-based Capital Instructions, National Association of Insurance Commissioners

The bill amends the effective date specified in the Insurance Code for the risk-based capital (RBC) instructions promulgated by the NAIC for property and casualty companies and for life insurance companies from December 31, 2019, to December 31, 2020.

Standard Nonforfeiture Law for Individual Deferred Annuities

The bill amends the nonforfeiture rate used to calculate the minimum values of a paid-up annuity, cash surrender, or death benefit available under an annuity contract.

The interest rate used in determining the minimum nonforfeiture rate amount is specified as an annual rate determined as the lesser of 3.0 percent per annum and the interest rate calculated as shown below:

- The five-year constant maturity rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of 1.0 percent, as specified in the contract no longer than 15 months prior to the annuity contract's issue date or redetermination date (no change);

- Reduced by 125 basis points (no change);

- Where the resulting interest rate is not less than 15 basis points or 0.15 percent (1.0 percent in prior law); and

- The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, must be stated in the annuity contract (no change).

Utilization Review Organization Act

The bill makes changes to the Utilization Review Organization Act as follows.

Certification and Conduct

Under prior law, the Commissioner was required to adopt rules and regulations, with the advice of a utilization review advisory committee, establishing standards for the conduct of utilization review activities performed in Kansas or affecting residents in this state by utilization review organizations. The bill removes the requirement of using the advice of the advisory committee and adds activities affecting health care providers to the types of utilization review activities subject to the required rules and regulations establishing the standards for conduct.

Advisory Committee

The bill removes requirements establishing the Utilization Review Advisory Committee. The bill maintains the listed exceptions to the Utilization Review Organization Act (*e.g.*, utilization review of health care services, reviews conducted by insurance companies and plans, and certain medical programs).

Certification

The bill amends requirements in this act pertaining to certification of utilization review activities. The bill specifies provisions of the Utilization Review Organization Act do not apply to utilization review organizations accredited by and adhering to national utilization review standards approved by URAC, an independent, nonprofit accreditation entity, or other such utilization review organizations the Commissioner approves.

Under prior law, these provisions did not apply to the American Accreditation Health Care Commission (replaced by the URAC in the bill); the utilization review organizations were subject to the recommendations of the advisory committee (the bill removes this committee from utilization review law).

Insurance Holding Company Act

Definitions

The following definitions are added to the Insurance Holding Company Act:

- "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under KSA 40-3318 to have sufficient significant contacts with the internationally active insurance group; and

- "Internationally active insurance group" means an insurance holding company that:

  - Includes an insurer registered under KSA 40-3305; and

  - Meets the following criteria: has premiums written in at least three countries; the percentage of gross premiums written outside the United States is at least 10.0 percent of the insurance holding company system's total gross written premiums; and based on a three-year rolling average, the total assets of the insurance holding company system are at least $50.0 billion or the total gross written premiums of the insurance company system are at least $10.0 billion.

Notice of Divestiture of Controlling Interest

With regard to transactions affecting control of domestic insurers, the bill requires any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, to file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner is required to determine those instances in which each party seeking to divest or to acquire a controlling interest in an insurer is required to file for and obtain approval of the transaction. The bill requires the information regarding the proposed divestiture to remain confidential until the conclusion of the transaction, unless the Commissioner determines that confidential treatment of the information will interfere with enforcement. These requirements pertaining to the notice of proposed divestiture do not apply if a statement of intent to acquire control of a domestic insurer was filed with the Commissioner.

With respect to a transaction affecting control of a domestic insurer, the acquiring person is also required to file a preacquisition notification with the Commissioner containing the information in the form and manner prescribed by the Commissioner through rules and regulations.

Amendments or Modifications of Affiliate Agreements

Amendments or modifications of affiliate agreements are included in the material transactions involving a domestic insurer and any person in such insurer's holding company system that cannot be entered into without written notification to the Commissioner within the time requirements set out in statute and which the Commissioner has not disapproved.

Required Health Care Provider Professional Liability Insurance Coverage; HCPIAA Amendments

[*Note:* Professional liability insurance is medical malpractice or medical liability insurance and is defined in KSA 40-3401, in the Health Care Provider Insurance Availability Act (HCPIAA),

as "insurance providing coverage for legal liability arising out of the performance of professional services rendered or that should have been rendered by a health care provider."]

The bill clarifies the current levels of professional liability insurance coverage required to be maintained by a health care provider under the HCPIAA continue in effect through December 31, 2021. As a condition of active licensure or other statutory authorization to render professional service as a health care provider in Kansas on and after January 1, 2022, each resident health care provider is required to maintain a policy of professional liability insurance approved by the Commissioner and issued by an insurer duly authorized to transact business in Kansas in which the limit of the insurer's liability is no less than $500,000 per claim and subject to an annual aggregate of not less than $1.5 million for all claims during the policy period. Self-insured health care providers and those health care providers to whom the current coverage requirements do not apply are exempt from this coverage limit.

Health Care Stabilization Fund Board of Governors Membership and Health Care Stabilization Fund Liability; HCPIAA

Board Membership

The bill amends Board membership provisions to require at least two of the three members appointed by the Commissioner from a list of nominees submitted to the Commissioner by the Kansas Medical Society to be doctors of medicine who are licensed to practice medicine and surgery in Kansas.

Liability of the HCSF

The bill increases, from $300,000 to $500,000, the minimum amount of liability on the Health Care Stabilization Fund (HCSF), if the Fund is liable, for the HCSF to pay a judgment or settlement by making installment payments of $500,000 or 10.0 percent of the judgment, whichever is greater.

Coverage Options

Each health care provider subject to the HCPIAA must choose among HCSF coverage options. The three current HCSF coverage options remain available through December 31, 2021, and limit the HCSF liability with respect to judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services from July 1, 1989, and prior to January 1, 2022.

On and after January 1, 2022, every health care provider is required to choose one of two HCSF coverage options limiting the HCSF liability for judgments or settlements relating to injury or death arising from the rendering of or failure to render professional services, as follows:

- $500,000 for any one judgment or settlement against a health care provider, subject to an aggregate limit of $1,500,000 for all judgments and settlements arising from all claims made in the fiscal year against such health care provider; or

- $1.5 million for any one judgment or settlement against a health care provider, subject to an aggregate limit of $4.5 million for all judgments and settlements arising from all claims made in the fiscal year against such health care provider.

Captive insurers; qualification as a self-insurer. The bill further specifies a medical care facility or health care facility deemed as a self-insurer may opt out of the coverage requirements, as long as such facility substantially meets the minimum coverage requirements created by the bill through coverage provided by the facility's captive insurance coverage.

Excess coverage. The bill specifies the Board shall have the authority to adjust certain coverage amounts needed to effectuate provisions of the HCPIAA, provided such minimum coverage is not less than $1.0 million per claim and $3.0 million in the aggregate.

Liability of Insurer for HCSF-Covered Provider or Self-Insurer; HCPIAA

The bill updates a provision limiting liability for a claim for personal injury or death arising out of the rendering of or failure to render professional services by such health care provider. The bill provides, for such claims, the insurer of a health care provider covered by the HCSF or self-insurer shall be liable only for the amount of basic coverage in effect on the date of the incident giving rise to the claim, which is subject to an annual aggregate amount of not less than three times the primary amount for all such claims against the health care provider.

Notification Regarding Actions Filed for Personal Injury or Death Arising out of the Rendering of or Failure to Render Professional Services; HCPIAA

The bill updates language regarding a plaintiff's service of a copy of a petition upon the Board to include certified mail, priority mail, commercial delivery service, or first-class mail and require such service within 30 calendar days from the filing of such petition.

Certificate of Self-Insurance, Requirements on Certain Facilities; HCPIAA

The bill modifies provisions pertaining to requirements on medical care or health care facilities certified as self-insurers. Those modifications:

- Increase, from $100,000 to $150,000, the aggregate annual insurance premium specified (one of two options for insurance coverage required for facilities obtaining a certificate of self-insurance); and

- Update criteria specified for the determination of the Board regarding qualification for a certificate of self-insurance to include any other factors the Board deems relevant and further specify:

    - Any applicant that owns and operates more than one medical care facility or more than one health care facility shall be deemed qualified by the Board, if such applicant is insured by a captive insurance company (as defined in KSA 40-4301) or under the laws of the state of domicile of any such captive insurance company.

Claims Made for Incidents Occurring after January 1, 2022; HCPIAA

The bill updates language referencing claims made against a resident or nonresident health care provider on and after July 1, 2014, to specify the minimum professional liability coverage policy limits associated with the HCSF liability are the limits in effect on the date of the incident giving rise to a claim.

The bill also specifies for claims made for incidents occurring on or after January 1, 2022, the aggregate HCSF liability for all judgments and settlements made in any fiscal year against a resident or nonresident inactive health care provider shall not exceed three times the basic coverage limit.

Risk Retention Groups

The bill amends a requirement placed on risk retention groups chartered in states other than Kansas that are seeking to do business in Kansas. Under continuing law, a risk retention group seeking to do business in this state is required to submit, among other things, a copy of the group's financial statement submitted to its state of domicile that contains a statement of opinion on loss and loss adjustment expense reserves. The bill removes a requirement that such statement is certified by an independent public accountant.

Professional Employer Organization Registration Act

The bill amends certain requirements placed on a registrant's application by:

- Extending, from 60 to 120 days, the time frame specified for the registrant's renewal and notification of the Commissioner of any changes in the information provided in the registrant's most recent registration or renewal; and

- Extending, from 60 to 120 days, the permissible time frame for the annual filing of the most recent audit by a Professional Employer Organization group.

Proximate Result; Psychological or Psychiatric Examinations of Crime Victims; Spousal Exception to Sexual Battery; Fleeing or Attempting to Elude a Police Officer; Sexual Extortion; SB 60

SB 60 amends law in the Kansas Criminal Code (Code) related to jurisdictional application, psychological or psychiatric examinations of crime victims, the spousal exception in the crime of sexual battery, and the crime of fleeing or attempting to elude a police officer, and creates the crime of sexual extortion.

Proximate Result

The bill amends the statute governing jurisdictional application of the Code to define "proximate result" to mean any logical effect or consequence of an act regardless of whether the statute governing the charged offense considers the specific effect or consequence of such act. [*Note:* Under continuing law, a crime is considered to have been committed partly within the state if the proximate result of the person's act occurs within the state.]

Psychological or Psychiatric Examinations of Crime Victims

The bill creates a provision within the Code to prohibit a court from requiring or ordering a victim of a crime to submit to or undergo a psychiatric or psychological examination in the prosecution for such crime.

Spousal Exception to Sexual Battery

The bill amends the definition of the crime of sexual battery to remove the element requiring the crime be committed against a victim "who is not the spouse of the offender." The bill also makes a technical amendment to the definition of the crime of aggravated sexual battery in accordance with the change to the definition of sexual battery.

Fleeing or Attempting to Elude a Police Officer

The bill amends the offense of fleeing or attempting to elude a police officer to replace "willfully" with "knowingly" in reference to the mental state required for the offense, add operating a stolen motor vehicle to the list of conduct making the offense a severity level 9 person felony without prior convictions for the offense, and add the following conduct to the offense, which is classified as a level 7 person felony:

- Knowingly driving the wrong way into an opposing lane of travel on a divided highway;
- Knowingly departing the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by another driver; or
- Knowingly driving through any intersection causing an evasive maneuver by another driver or causing a collision involving another motorist.

The bill amends the penalty for the felony offense without prior convictions to require the court to impose a fine of at least $500 when the driver operates a stolen motor vehicle during the commission of the offense. The bill also clarifies that prior convictions for all versions of the offense are to be considered in determining the severity level of the current offense based on the number of prior convictions.

The bill also provides that, in a prosecution for theft of a motor vehicle, fleeing or attempting to elude a police officer is *prima facie* evidence of intent to permanently deprive the owner of the motor vehicle of the possession, use, or benefit thereof.

Sexual Extortion

The bill creates the crime of sexual extortion, which is defined as communicating by any means a threat to injure the property or reputation of a person, commit violence against a person, or distribute an image, video, or other recording of a person that is of a sexual nature or depicts such person in a state of nudity:

- With the intent to coerce such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity, or depicting such person engaging in conduct that is of a sexual nature. Such conduct is a severity level 7 person felony; or

- That causes such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature. Such conduct is a severity level 4 person felony.

The bill also amends the Kansas Offender Registration Act to add a person convicted of sexual extortion to the definition of "sex offender" and to add sexual extortion to the list of offenses for which conviction requires offender registration for 15 years when one of the parties involved is less than 18 years of age. The bill provides registration is not required for a person adjudicated as a juvenile offender for an act that if committed by an adult constitutes the commission of sexual extortion.

Kansas Power of Attorney Act; Third Persons; SB 103

SB 103 amends the Kansas Power of Attorney Act (Act) to state a power of attorney executed on or after July 1, 2021, is deemed sufficient if in substantial compliance with the form set forth by the Judicial Council, and the bill directs the Judicial Council to develop such form. The bill states the amendments made by the bill shall apply prospectively and shall not affect the validity of a power of attorney executed prior to July 1, 2021.

The bill amends the section of the Act governing liability of third persons with respect to reliance on a power of attorney to specify its provisions address reliance on powers of attorney acknowledged pursuant to the Uniform Law on Notarial Acts and adds a signature on a power of attorney is presumed to be genuine if acknowledged pursuant to the Uniform Law on Notarial Acts. This section also is amended to state nothing in its listing of determinations for which a third person is not responsible shall relieve the third person of any duty to report abuse, neglect,

or exploitation under certain mandatory reporter statutes. The bill states making such report shall relieve the third person of any liability for not accepting a power of attorney.

The bill also amends this section of the Act to allow a third person requested to engage in transactions with a principal through the principal's attorney-in-fact to:

- Request and rely upon a certification by the attorney-in-fact, provided under penalty of perjury, of any factual matter concerning the principal, attorney-in-fact, or power of attorney; and

- Request and rely upon an opinion of the third person's counsel as to any matter of law concerning the power of attorney, if the third person provides in a writing or other record the reason for the request.

The bill states an attorney-in-fact's certification shall be deemed sufficient if it is in substantial compliance with the form set forth by the Judicial Council and directs the Judicial Council to develop such form.

Finally, the bill amends this section of the Act to prohibit a third person from requiring an additional or different form of power of attorney for authority granted in the power of attorney presented and to require a third person to accept a power of attorney unless:

- The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

- Engaging in a transaction with the attorney-in-fact or principal in the same circumstances would be inconsistent with federal law;

- The person has actual knowledge of the termination of the attorney-in-fact's authority or of the power of attorney before the exercise of the power;

- A request for information, certification, or indemnification is refused;

- The person in good faith believes the power is not valid or the attorney-in-fact does not have the authority to perform the requested act, regardless of whether a certification or opinion of counsel has been requested or provided; or

- The person makes, or has actual knowledge that another person has made, a report under mandatory reporter statutes, stating a good faith belief the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the attorney-in-fact or a person acting for or with the attorney-in-fact.

A third person refusing to accept a power of attorney in violation of this section shall be subject to a court order mandating acceptance of the power of attorney. Reasonable attorney fees and costs may be awarded in any action or proceeding confirming the validity of the power of attorney or mandating acceptance of the power of attorney, if the court determines the third person did not act in good faith.

Revised Uniform Law on Notarial Acts; SB 106

SB 106 enacts the Revised Uniform Law on Notarial Acts (RULONA) and repeals the Uniform Law on Notarial Acts (ULONA), as well as other current laws regarding notaries. Throughout RULONA, some provisions from ULONA and other current law are continued, reorganized, or updated without substantive changes. The bill also updates references to ULONA in other areas of statute. This summary sets forth the RULONA structure and notes provisions containing substantive changes or additions to ULONA and other provisions.

Except as noted below, all sections of the bill will take effect January 1, 2022.

Definitions

RULONA continues definitions in law, modifying the definitions of "acknowledgment," "notarial act," and "verification on oath or affirmation."

RULONA adds definitions of "electronic," "electronic signature," "notary public," "official stamp," "person," "record," "sign," "signature," "stamping device," and "state."

Date of Applicability

RULONA states it applies to a notarial act performed on or after January 1, 2022.

Authority to Perform Notarial Act

RULONA continues most of the language of this section and adds a provision allowing a notarial officer to certify that a tangible copy of an electronic record is an accurate copy of the electronic copy.

Requirements for Certain Notarial Acts

RULONA continues these provisions from ULONA in a substantially similar form.

Personal Appearance Required

RULONA requires, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature to appear personally before the notarial officer.

Identification of Individual

RULONA continues these provisions from ULONA, adding a "dealings sufficient to provide reasonable certainty" standard to the "personally known" qualification and providing additional detail regarding the identification documents or verification or affirmation of a credible witness that may be used to identify an individual. RULONA allows a notarial officer to require an individual to provide additional information or identification credentials necessary to assure the officer of the individual's identity.

Authority to Refuse to Perform Notarial Act

RULONA allows a notarial officer to refuse to perform a notarial act if the officer is not satisfied that the individual executing the record is competent or has capacity to execute the record, or that the individual's signature is knowingly and voluntarily made. A notarial officer may refuse to perform a notarial act unless refusal is prohibited by Kansas law or federal law.

Signature if Individual is Unable to Sign

RULONA provides, if an individual is physically unable to sign a record, the individual may direct another individual, other than the notarial officer, to sign the individual's name on the record, with specified language to be added by the notarial officer in such cases.

Notarial Act in Kansas

RULONA continues these provisions from ULONA in a substantially similar form and adds a provision stating the signature and title of any of the officers specifically listed in the section shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act in Another State

RULONA continues these provisions from ULONA in a substantially similar form and adds a provision stating the signature and title of any of the officers specifically listed in the section shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act under Authority of a Federally Recognized Indian Tribe

RULONA provides that a notarial act performed by certain specified individuals, under the authority and in the jurisdiction of a federally recognized Indian tribe, has the same effect under Kansas law as if performed by a Kansas notarial officer. The signature and title of such individual shall be *prima facie* evidence that the signature is genuine and the individual holds the designated title. The signature and title of a tribal notary public, judge, clerk, or deputy clerk of a court shall conclusively establish the authority of the officer to perform the notarial act.

Notarial Act under Federal Authority

RULONA continues these provisions from ULONA in a substantially similar form, consolidating them from two ULONA sections and rewording language regarding individuals in military service and individuals designated notarizing officers by the U.S. Department of State for performing notarial acts overseas.

Foreign Notarial Act

RULONA continues this section from ULONA but reorganizes its provisions, removes a list of specific persons who could perform a notarial act in a foreign nation, and clarifies a provision regarding apostilles.

Notarial Act Performed for a Remotely Located Individual

RULONA allows a remotely located individual, defined as an individual who is not in the physical presence of the notary public who performs a notarial act, to comply with the personal appearance requirement described above by using communication technology to appear before a notary public.

A notary public in Kansas could perform a notarial act using communication technology for a remotely located individual if:

- The notary public has personal knowledge of the identity of the individual, has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public, or has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

- The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

- The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

- For a remotely located individual located outside the United States, the record has a specified connection with the United States, and the act is not prohibited by the foreign state in which the individual is located.

The bill requires the certificate for a remotely performed notarial act to indicate the act was performed using communication technology and specifies how short-form certificates may be sufficient.

The bill requires retention of an audio-visual recording created under this section for ten years, unless a different period is required by rules and regulations.

The bill provides requirements before a notary public performs an initial remote notarial act, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by the bill. If the technology and identity proofing complies with any standards established by the Secretary of State in rules and regulations, the Secretary of State must approve the technology and identity proofing. The bill requires the notary public to include a fee set by the Secretary of State, not to exceed $25, with the notification, and the bill requires the Secretary of State to remit these fees to the State Treasurer to deposit in the State Treasury to the credit of the Information and Services Fee Fund.

For purposes of this section, in addition to the definition of “remotely located individual,” the bill defines “communication technology,” “foreign state,” “identity proofing,” and “outside the United States.”

Certificate of a Notarial Act

RULONA continues provisions from ULONA and other current law regarding a certificate of a notarial act, with the following additions:

- RULONA clarifies the certificate must be executed contemporaneously with the performance of the notarial act and be signed by the notary public in the same manner as on file with the Secretary of State, makes use of the official stamp on the certificate mandatory, and provides for use of an official stamp for certification of electronic records; and

- RULONA also prohibits a notarial officer from affixing the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed, and specifies requirements for attaching, affixing, or associating a certificate with tangible and electronic records, including compliance with any rules and regulations adopted by the Secretary of State.

Short-Form Certificates

RULONA replaces ULONA's statutory short-form certificates with a provision requiring the Secretary of State to adopt rules and regulations providing short-form certificates of notarial acts that are sufficient for the purposes indicated, if completed with the information required by Section 16.

This section is effective upon publication in the statute book.

Official Stamp

RULONA continues this provision in law, modifying it to focus on stamps instead of seals and to simplify and clarify its language.

Stamping Device

RULONA states a notary public is responsible for the security of the notary public's stamping device and shall not allow another individual to use the device to perform a notarial act. This section sets forth required actions for disabling or rendering the stamping device unusable upon commission resignation, revocation, or expiration; stamp expiration; or the death or incompetency of the notary public. If the stamping device is lost or stolen, this section requires, upon discovery, the notary public or notary public's personal representative or guardian to promptly notify the Secretary of State.

Journal

RULONA requires a notary public to maintain a single journal in a tangible medium, or one or more journals in an electronic format, in which the notary public chronicles all acts the notary public performs, and requires the notary public retain this journal for ten years after the performance of the last notarial act chronicled in the journal. The bill provides additional specific

requirements for the creation and maintenance of the journal, as well as for the timing and contents of entries in the journal.

If a journal is lost or stolen, the notary public is required, upon discovery, to promptly notify the Secretary of State.

Upon resignation, revocation, or suspension of a commission, the notary public must retain the journal for the required ten-year period and inform the Secretary of State of the location of the journal. Alternatively, the notary public may transmit the journal to a repository approved by the Secretary of State.

Upon death or incompetency of a notary public, the notary public's personal representative, guardian, or any other person knowingly in possession of the journal must retain or transmit the journal and inform the Secretary of State of the journal's location.

Notarial Acts on Electronic Records

RULONA provides a notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records, and a person may not require a notary public to perform a notarial act with respect to an electronic record with a technology the notary public has not selected.

RULONA provides requirements before a notary public performs an initial notarial act with respect to an electronic record, including notification to the Secretary of State, identification of the technology to be used, and evidence of completion of the course of study and passing of the examination required by the bill. If the technology complies with standards established by the Secretary of State in rules and regulations, the Secretary of State must approve the technology. The bill requires the notary public to include a fee set by the Secretary of State, not to exceed $25, with the notification, and the Secretary of State must remit these fees to the State Treasurer to deposit in the State Treasury to the credit of the Information and Services Fee Fund.

RULONA allows a register of deeds to accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirements that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record.

Commission as Notary Public; Qualifications

RULONA continues provisions in law regarding application for and commission as a notary public, with the following modifications.

The bill adds to the required contents of the application evidence of the completion of the course of study and passing of examination regarding electronic records, if required.

The required assurance in the form of a surety bond or its functional equivalent is increased from $7,500 to $12,000. The bill clarifies this assurance would cover acts performed during the term of the notary public's commission; if the notary public violates law with respect to notaries public in Kansas, the surety or issuing entity shall be liable under the assurance; and a notary public may perform notarial acts in Kansas only during the period that a valid

assurance is on file with the Secretary of State. The bill changes the deadline for a required notice regarding cancellation of assurance from 14 days to 30 days before canceling the assurance.

The bill adds to the requirements for an applicant that the applicant be able to read and write the English language and not be disqualified to receive a commission under RULONA.

The bill clarifies a commission to act as a notary public authorizes the notary public to perform notarial acts and does not provide the notary public any immunity or benefit conferred by Kansas law on public officials or employees.

Examination Regarding Electronic Records

RULONA requires, before performing an initial notarial act with respect to an electronic record, a notary public to pass an examination administered by the Secretary of State or an entity approved by the Secretary of State. The examination must be based on a course of study offered regularly by the Secretary of State or an approved entity to Kansas notaries public covering the laws, rules, procedures, and ethics relevant to notarial acts with respect to electronic records.

Grounds to Deny or Take Other Actions Regarding a Commission

RULONA continues and expands provisions in law regarding disciplinary actions the Secretary of State may take respecting a commission as a notary public.

RULONA adds “suspend” and “impose a condition” to the disciplinary actions the Secretary of State could take; allows the Secretary of State to take disciplinary action for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public; and changes the listing of grounds for disciplinary action from an exhaustive list to an exemplary list, modifying this listing to:

- Expand grounds involving application for a commission;
- Reword grounds involving convictions of a crime, including adding entering into a diversion agreement;
- Add grounds involving findings or admissions in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit;
- Add grounds involving violation of a rule and regulation regarding a notary public;
- Add grounds involving disciplinary action regarding a notary public commission in another state; and
- Add grounds involving failure to maintain an assurance as required by RULONA.

The bill states the authority of the Secretary of State to take disciplinary action shall not prevent a person from seeking and obtaining other criminal or civil penalties provided by law.

Prohibited Acts

RULONA continues and expands provisions regarding prohibited acts for notaries.

It clarifies a commission as a notary public does not authorize an individual to:

- Assist persons in drafting legal records, give legal advice, or otherwise practice law;
- Act as an immigration consultant or an expert on immigration matters;
- Represent a person in a judicial or administrative proceeding relating to immigration to the United States, U.S. citizenship, or related matters; or
- Receive compensation for performing any of the activities listed above.

The bill continues prohibitions on performing a notarial act when the notary is a party or has a direct financial or beneficial interest and expands these to include the notary's spouse.

The bill prohibits a notary public from engaging in false or deceptive advertising and provides additional detail regarding continuing restrictions on and requirements for advertisements or representations by a notary public.

Validity of Notarial Acts

RULONA provides, except as otherwise provided in this act, that the failure of a notarial officer to perform a duty or meet a requirement specified in RULONA shall not invalidate a notarial act. The validity of a notarial act under RULONA shall not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies under state or federal law. This section specifies it shall not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

Rules and Regulations

RULONA requires the Secretary of State to adopt rules and regulations:

- To implement RULONA. Rules and regulations adopted regarding the performance of notarial acts with respect to electronic records could not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The bill provides a nonexclusive list of topics such rules and regulations may address; and
- Regarding notarial acts using communication technology for a remotely located individual, including several specified standards, requirements, and procedures.

The bill requires the Secretary of State, in adopting rules and regulations regarding notarial acts respecting electronic records, to consider certain standards, practices, and customs, to the extent they are consistent with RULONA.

This section is effective upon publication in the statute book.

Commission in Effect

RULONA provides a commission or appointment as a notary public in effect on January 1, 2022, shall continue until its date of expiration. Commission renewal for and performance of notarial acts by such notaries public on or after January 1, 2022, shall be subject to RULONA.

Savings Clause

RULONA provides it does not affect the validity or effect of a notarial act performed before January 1, 2022, and a cause of action accruing against a notary public or notary public's security before January 1, 2022, shall be governed by any statute or other rule amended or repealed by the bill as if the amendment or repeal had not occurred.

Other Provisions

Like ULONA, RULONA includes a uniformity provision. RULONA also adds a provision specifying RULONA's interaction with the Electronic Signatures in Global and National Commerce Act.

Updates to Other Areas of the Statutes

The bill amends a statute governing notarization and acknowledgment of electronic transactions to remove a provision authorizing the Secretary of State to promulgate rules and regulations establishing procedures for an electronic notarization. [*Note:* A substantially similar provision is noted above.] These provisions are effective upon publication in the statute book.

The bill updates references from ULONA to RULONA in various statutes.

The bill adds a provision to the Uniform Real Property Electronic Recording Act stating that a requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature, and a physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature.

Uniform Fiduciary Income and Principal Act; SB 107

SB 107 enacts the Uniform Fiduciary Income and Principal Act [UFIPA] and repeals the Uniform Principal and Income Act (1997) [UPIA]. Throughout the UFIPA, some provisions from UPIA are continued, reorganized, or updated without substantive changes. The bill also amends one statute within the Kansas Uniform Trust Code (UTC). This brief summarizes the UFIPA structure and notes provisions containing substantive changes or additions to UPIA provisions.

Definitions

UFIPA retains most definitions from the UPIA in substantially similar form or with slight or clarifying modifications. A definition of "asset-backed security" is moved and modified. UFIPA expands definitions of "fiduciary," "income interest," "net income," "principal," "terms of a trust," and "trustee."

UFIPA adds definitions of "court," "current income beneficiary," "distribution," "estate," "independent person," "personal representative," "record," "settlor," "special tax benefit," "successive interest," "successor beneficiary," "trust," and "will."

UFIPA removes definitions of "income beneficiary" and "remainder beneficiary" contained in the UPIA.

Throughout the bill, where UFIPA continues provisions from the UPIA, UFIPA usually uses the term "fiduciary" where the UPIA used the term "trustee."

Scope

UFIPA creates law stating the act applies to a trust or estate and a life estate or other term interest in which the interest of one or more persons will be succeeded by the interest of one or more other persons, except as otherwise provided in the terms of a trust or in UFIPA.

Governing Law

UFIPA creates law stating, except as otherwise provided in the terms of a trust or in UFIPA, UFIPA applies when Kansas is the principal place of administration of a trust or estate or the situs of property that is not held in a trust or estate and is subject to a life estate or other term interest described in provisions regarding the scope of the UFIPA. This provision states a trustee submits to the application of UFIPA to any matter within the scope of UFIPA involving the trust by accepting the trusteeship of a trust having its principal place of administration in Kansas or by moving the principal place of administration of a trust to Kansas.

Fiduciary Duties; General Principles

UFIPA continues these provisions from the UPIA. Its provisions are reorganized and several provisions from the UPIA section addressing the trustee's power to adjust are moved. Additionally, UFIPA adds a good faith requirement and references to unitrusts. In the list of factors a fiduciary must consider in exercising certain powers, UFIPA removes "purpose of the trust" and "intent of the settlor," adds "terms of the trust," and clarifies or simplifies other factors.

Judicial Review of Exercise of Discretionary Power; Request for Instruction

UFIPA creates law defining "fiduciary decision" and stating the court may not order a fiduciary to change a fiduciary decision unless the court determines the decision was an abuse of the fiduciary's discretion. If the court makes such a determination, the court may order a remedy authorized by law, including continuing statutory remedies for breach of trust. These

provisions further enumerate specific orders a court may make to place the beneficiaries in the positions they would have occupied without the fiduciary's abuse of discretion.

The bill also allows a fiduciary to petition for instruction and for the court to determine whether a proposed fiduciary decision would result in an abuse of the fiduciary's discretion. If the petition meets certain requirements, a beneficiary opposing the proposed decision has the burden to establish it would result in an abuse of the fiduciary's discretion. A fiduciary's choice to not seek court instruction under these provisions does not constitute evidence that the fiduciary's decision was an abuse of discretion.

Fiduciary's Power to Adjust

UFIPA revises and expands provisions from the UPIA regarding a fiduciary's power to adjust.

Under UFIPA, except as otherwise provided in the terms of a trust or this section, a fiduciary, in a record, without court approval, is allowed to adjust between income and principal if the fiduciary determines the exercise of the power to adjust will assist the fiduciary to administer the trust or estate impartially.

These provisions state the UFIPA does not create a duty to exercise or consider the power to adjust or to inform a beneficiary about the applicability of these provisions, and a fiduciary that in good faith exercises or fails to exercise the power to adjust is not liable to a person affected by the exercise or failure.

These provisions require a fiduciary, in deciding whether and to what extent to exercise the power to adjust, to consider all factors the fiduciary considers relevant, including specified factors and sections elsewhere in UFIPA.

The bill lists circumstances under which a fiduciary is prohibited from exercising the power to adjust or making a determination, under provisions of the bill, that an allocation is insubstantial. Under some of these circumstances, and subject to additional conditions, UFIPA allows a co-fiduciary to exercise the power to adjust. Similarly, UFIPA allows a fiduciary to release or delegate to a co-fiduciary the power to adjust if the fiduciary makes certain determinations and sets forth content and procedural requirements for such release or delegation.

This bill states that terms of a trust denying or limiting the power to adjust do not affect the application of these provisions, unless such terms expressly deny or limit the power to adjust under these provisions. The exercise of the power to adjust in any accounting period may apply to the current period, the immediately preceding period, and one or more subsequent periods. The bill requires a description of the exercise of the power to adjust to be included in any report sent to beneficiaries under the UTC or communicated at least annually to qualified beneficiaries determined under the UTC, other than the Attorney General.

Unitrusts

UFIPA expands a UPIA section regarding unitrusts into nine separate sections.

Definitions

The bill defines "unitrust" to mean a trust for which net income is a unitrust amount, including an express unitrust.

"Unitrust amount" is defined to mean an amount computed by multiplying a determined value of a trust by a determined percentage. For a unitrust administered under a unitrust policy, the term means the applicable value, multiplied by the unitrust rate.

The bill also defines "applicable value," "express unitrust," " income trust," "net fair value of a trust," "unitrust policy," and "unitrust rate."

Application; Duties and Remedies

The bill sets forth the various types of trusts and estates to which UFIPA's unitrust provisions do or do not apply. The provisions state the unitrust provisions do not create a duty to take or consider action under the provisions or to inform a beneficiary about the applicability of the provisions. A fiduciary that in good faith takes or fails to take an action under the unitrust provisions is not liable to a person affected by the action or inaction.

Authority of Fiduciary

The bill allows a fiduciary, without court approval, to:

- Convert an income trust to a unitrust if the fiduciary adopts in a record a unitrust policy for the trust containing certain provisions;

- Change the percentage or method used to calculate a unitrust amount for a unitrust if the fiduciary adopts in a record a unitrust policy, or amendment or replacement of such policy, providing changes in the percentage or method; or

- Convert a unitrust to an income trust if the fiduciary adopts in a record a determination that, in administering the trust, the net income of the trust will be net income determined without regard to the UFIPA unitrust provisions, rather than a unitrust amount.

The bill specifies determinations, considerations, and procedures required of a fiduciary in taking one of the above actions. The requirements include sending a notice in a record, describing and proposing to take the action, to certain persons. UFIPA includes provisions allowing these persons to object to a proposed action, whereupon the fiduciary or a beneficiary may request the court to have the proposed action taken as proposed, taken with modifications, or prevented.

If a fiduciary sends a notice and subsequently decides not to take the action proposed in the notice, the fiduciary is required to notify in a record the same persons of the decision and the reasons for the decision.

If a beneficiary requests in a record that a fiduciary take an action under this section and the fiduciary declines to act or does not act within 90 days of receiving the request, the beneficiary may request the court to direct the fiduciary to take the requested action.

The bill allows a fiduciary to release or delegate the powers in these provisions under certain circumstances described in provisions governing a fiduciary's power to adjust.

Notice

The bill provides additional details and requirements regarding the notice of actions described above. The bill requires notice to be sent in a manner authorized under a UTC provision regarding methods and waiver of notice. The provisions detail to whom the notice must be sent, which include qualified beneficiaries determined under the UTC, other than the Attorney General, and each person granted a power over the trust by the terms of the trust, with certain exclusions.

The bill states that representation provisions of the UTC apply to that notice and allows a person to consent in a record at any time to action proposed under the authority of the fiduciary, whereupon notice need not be sent to such person. The bill also specifies certain required contents of the notice.

Unitrust Policy

The bill requires a fiduciary administering a unitrust under the unitrust provisions to follow a unitrust policy adopted, amended, or replaced under provisions regarding the authority of the fiduciary. The bill requires such policy to provide the unitrust rate or method of determining such rate; the method for determining the applicable value; and certain rules that apply in the administration of the unitrust, whether the rules are mandatory or optional, to the extent the fiduciary elects to adopt those rules.

Unitrust Rate

The bill states, subject to certain exceptions, a unitrust rate may be fixed or determined for each period using a market index or other published data or a mathematical blend of market indices or other published data over a stated number of preceding periods. A unitrust policy also may provide for various limits on how a rate may rise and fall or increase and decrease in relation to unitrust rates for preceding periods, as well as for a mathematical blend of unitrust rates determined under the other provisions of this section.

Applicable Value

The bill requires a unitrust policy to provide the method for determining the fair market value of an asset for the purpose of determining the unitrust amount, including the frequency of valuing the asset, which need not require a valuation in every period, and the date for valuing the asset in each period in which the asset is valued. The bill lists various methods a unitrust policy may provide for determining the amount of the net fair market value of the trust to take into account in determining the applicable value.

Period

The bill requires a unitrust policy provide the period used for purposes of the unitrust rate and applicable value and sets forth the permissible options for such period. It also allows a unitrust policy to provide standards for using fewer preceding periods or prorating the unitrust amount on a daily basis, under certain circumstances.

Special Tax Benefits; Other Rules

The bill allows a unitrust policy to:

- Provide methods and standards for determining the timing of distributions, making distributions in cash or in kind or partly in cash or partly in kind, or correcting an underpayment or overpayment to a beneficiary based on the unitrust amount if there is an error in calculating the unitrust amount;

- Specify sources and the order of sources, including categories of income for federal income tax purposes, from which distributions of a unitrust amount are paid; or

- Provide other standards and rules the fiduciary determines serve the interests of the beneficiaries.

The bill also requires, if a trust qualifies for a special tax benefit or a fiduciary is not an independent person, the unitrust rate to be not less than 3.0 percent or more than 5.0 percent. Additionally, the applicability of certain provisions related to the applicable value and period is limited for such trusts.

Allocation of Receipts

Character of Receipts from Entity

UFIPA continues these provisions from the UPIA with the following modifications:

- Clarifies the definition of “entity” does not depend on whether the entity is a taxpayer for federal income tax purposes and does not include an instrument or arrangement to which the UFIPA section regarding other financial arrangements or instruments applies;

- Adds definitions of “capital distribution” and “entity distribution”;

- States an attribute or action of an entity includes an attribute or action of any other entity in which the entity owns or holds an interest, including through another entity;

- Addresses allocation of tangible personal property of nominal value;

- Clarifies allocation of money received in an entity distribution in an exchange for part or all of the fiduciary's interest in the entity, money received in an entity distribution that the fiduciary determines or estimates is a capital distribution, and money received in an entity distribution from an entity that is treated in a certain manner for federal income tax purposes;

- Modifies and clarifies the methods by which a fiduciary may determine or estimate that money received in an entity distribution is a capital distribution, as well as add specific factors a fiduciary may consider in making such determination or estimate in certain situations, and direct a fiduciary to allocate to principal any amount of the entity distribution that is in doubt after making such determination or estimate; and

- Adds provisions providing direction to a fiduciary who receives additional information about the application of this section to an entity distribution before or after paying part of the entity distribution to a beneficiary.

Distribution from Trust or Estate

UFIPA continues these UPIA provisions in a substantially similar form.

Business or Other Activity Conducted by Fiduciary

UFIPA continues these provisions from the UPIA but adds language to state the provisions apply if the fiduciary determines it is in the interests of beneficiaries to account separately for the business or other activity instead of conducting it through an entity described in provisions regarding the character of receipts from the entity. UFIPA also adds language stating a fiduciary accounting separately under these provisions may make certain determinations separately and differently from the fiduciary's decisions concerning distributions of income or principal, and adds to the list of activities for which a fiduciary may account separately "any other business conducted by the fiduciary."

Principal Receipts

UFIPA continues these UPIA provisions in a substantially similar form.

Rental Property

UFIPA continues these UPIA provisions in a substantially similar form, adding the phrase "is not allocated to income" to clarify a provision regarding an amount received as a refundable deposit.

Receipt on Obligation to be Paid in Money

UFIPA continues these UPIA provisions but rewords a provision regarding the allocation of amounts received from the sale of an obligation or the increase in value of a bond or other

obligation. The modification includes the removal of a one-year time period applicable to the determination of the allocation.

Insurance Policy or Contract

UFIPA continues these UPIA provisions in a substantially similar form.

Insubstantial Allocation Not Required

UFIPA continues these provisions from the UPIA, but requires both continuing conditions to be met before presuming an allocation is insubstantial, rather than one or the other, and adds the ability to delegate, under certain conditions, the power to make a determination under the provisions.

Deferred Compensation, Annuity, or Similar Payment

UFIPA continues these UPIA provisions with the following modifications:

- Add definitions of "internal income of separate fund" and "marital trust" and modify the definition of "payment";
- Add a provision directing a fiduciary to allocate a payment received from a separate fund during an accounting period to income, to the extent of the internal income of the separate fund during the period, and the balance to principal;
- Clarify provisions providing direction to the fiduciary of a marital trust;
- Add a provision providing direction to the fiduciary of a trust, other than a marital trust, of which one or more current income beneficiaries are entitled to a distribution of all the current net income; and
- Reorganize the section.

Liquidating Asset

UFIPA continues these provisions from the UPIA but changes the default rule for allocation from 10.0 percent to income of receipts from a liquidating asset and the balance to principal to:

- Allocation to income of a receipt produced by a liquidating asset, to the extent the receipt does not exceed 4.0 percent of the value of the asset; or
- If the fiduciary cannot determine the value of the asset, 10.0 percent of the receipt; and
- The balance of the receipt to principal.

Minerals, Water, and Other Natural Resources

UFIPA continues these provisions from the UPIA but changes the default rule for certain amounts received from 15.0 percent allocated to principal and the balance to income to allocation between income and principal equitably. UFIPA also adds a provision stating such allocation is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code of 1986 as a deduction for depletion of the interest.

Timber

UFIPA continues these provisions from the UPIA in a substantially similar form, with some changes in wording to ensure consistency in phrasing with other UFIPA sections.

Marital Deduction Property Not Productive of Income

UFIPA continues these provisions from the UPIA but removes a provision addressing cases not governed by the remainder of the section.

Derivative or Option

UFIPA continues these provisions from the UPIA, with the following changes:

- Modifies the definition of “derivative” and provides examples;

- Changes the default rule to allocate 10.0 percent of receipts from a transaction in derivatives and 10.0 percent of disbursements made in connection with the transaction to income and the balance to principal; and

- Changes the default rule for certain options transactions to allocate 10.0 percent to income and the balance to principal of amounts received for granting the option, amounts paid to acquire the option, and gain or loss realized on the exercise, exchange, settlement, offset, closing, or expiration of the option.

Asset-Backed Security

UFIPA continues these UPIA provisions with modifications to expand the definition of “asset-backed security” and moves that definition to the definitions section.

Other Financial Instrument or Arrangement

UFIPA creates law stating a fiduciary shall allocate receipts from or related to a financial instrument or arrangement not otherwise addressed by UFIPA in a manner consistent with the provisions regarding derivatives or options and asset-backed securities.

Allocation of Disbursements

Disbursement from Income

UFIPA continues these UPIA provisions but clarifies that some disbursements are to be made to the extent income is sufficient and when the balance of disbursements is to be made in certain situations.

Disbursement from Principal

UFIPA continues these UPIA provisions but clarifies language regarding the balance of disbursements and adds references to title insurance and insurance premiums for certain specified matters.

Transfer from Income to Principal for Depreciation

UFIPA continues these UPIA provisions but replaces a reference to a "fixed asset" with "tangible asset" and adds an exception for liquidating assets under provisions of the bill.

Reimbursement of Income from Principal

UFIPA creates law allowing a fiduciary to transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income, if the fiduciary makes or expects to make certain income disbursements specified in the section.

Reimbursement of Principal from Income

UFIPA continues these UPIA provisions but adds clarifying language regarding sufficiency of income and changing the term "successive income interest" to "successive interest."

Income Taxes

UFIPA continues these UPIA provisions in a substantially similar form.

Adjustment Between Income and Principal Because of Taxes

UFIPA continues these UPIA provisions but clarifies the fiduciary is to charge each beneficiary from a decrease in income tax to reimburse principal and adds that, when this occurs, the fiduciary may offset the charge by obtaining payment from the beneficiary, withholding an amount from future distributions to the beneficiary, or adopting other methods.

Death of Individual or Termination of Income Interest

UFIPA continues, in a substantially similar form, provisions from the UPIA addressing determinations and distributions upon the death of an individual creating an estate or trust or the

termination of an income interest in a trust, with some modifications to provide clarification and references to the new unitrust provisions.

Apportionment at Beginning and End of Income Interest

UFIPA continues, in a substantially similar form, provisions from the UPIA addressing apportionment at the beginning and end of the income interest in substantially similar form, with several clarifying changes regarding dates.

Other Provisions

Like UPIA, UFIPA includes uniformity, default date of applicability, and severability provisions. UFIPA also adds a provision specifying UFIPA's interaction with the Electronic Signatures in Global and National Commerce Act and specifies the act applies to a trust or estate existing or created on or after July 1, 2021, except as otherwise expressly provided in the term of the trust or in UFIPA.

Amendment to Kansas Uniform Trust Code

The bill amends the definition of "terms of a trust" in the UTC to include the trust's provisions as established, determined, or amended by a trustee or person holding a power to direct under the UTC, in accordance with applicable law, court order, or a nonjudicial settlement agreement under the UTC.

Adult Care Homes; Covered Facilities; COVID-19; Immunity from Civil Liability; HB 2126

HB 2126 amends the COVID-19 Response and Reopening for Business Liability Protection Act by replacing the definition of "adult care facility" with the following definition of "covered facility":

- An adult care home, as defined in the Adult Care Home Licensure Act, except that "covered facility" would include a center approved by the Centers for Medicare and Medicaid Services as a Program for All-inclusive Care for the Elderly (PACE) that provides services only to PACE participants;

- A community mental health center and a crisis intervention center, as defined elsewhere in statute; and

- A community service provider, a community developmental disability organization, and an institution, as defined in the Developmental Disabilities Reform Act.

The bill replaces an affirmative defense available in certain circumstances for an adult care facility in a civil action for damages, administrative fines, or penalties for a COVID-19 claim with immunity from liability for a covered facility in a civil action for damages for a COVID-19 claim if such facility was in substantial compliance with public health directives applicable to the activity giving rise to the cause of action when the cause of action accrued.

For purposes of this immunity provision, "public health directives" means any of the following required by law to be followed related to COVID-19:

- State statutes or rules and regulations; or

- Federal statutes or regulations from federal agencies, including the U.S. Centers for Disease Control and Prevention and the Occupational Safety and Health Administration of the U.S. Department of Labor.

The bill states this immunity provision shall not apply to civil liability when it is established the act, omission, or decision giving rise to the cause of action constituted gross negligence or willful, wanton, or reckless conduct. The bill states the amendments replacing the affirmative defense with an immunity provision apply retroactively to any cause of action accruing on or after March 12, 2020, and prior to termination of the state of disaster emergency related to the COVID-19 public health emergency.

Kansas Open Records Act; Exceptions; Cybersecurity; Public Employees; Home Address; Fraudulent Liens; Criminal Penalties; HB 2390

HB 2390 reviews, amends, and adds exceptions to the Kansas Opens Records Act (KORA) and creates and amends law regarding the filing of fraudulent liens.

Kansas Open Records Act Exception Review

The bill continues in law the following exceptions to KORA:

- KSA 9-513c(a), concerning money transmitter license or examination reports obtained and prepared by the State Bank Commissioner;

- KSA 9-2209(a)(19), concerning mortgage company examination action plan agreements by the State Bank Commissioner;

- KSA 12-5374(e), concerning information provided to local collection point administrators or the 911 Coordinating Council;

- KSA 16-335(a), concerning cemetery merchandise trust funds investigation by the Secretary of State;

- KSA 17-1312e(a), concerning records of cemetery corporation examination by the Secretary of State;

- KSA 22-2302(c)(4)(J), concerning affidavits supporting search warrants with information constituting a "clearly unwarranted invasion of personal privacy";

- KSA 22-2302(c)(6)(B), concerning court records containing sealed affidavits supporting search warrants;

- KSA 22-2502(e)(4)(J), concerning affidavits supporting electronic search warrants with information constituting a "clearly unwarranted invasion of personal privacy";

- KSA 22-2502(e)(6)(B), concerning court records containing sealed affidavits supporting electronic search warrants;

- KSA 25-2309(r), concerning documents submitted as evidence of citizenship for voter registration purposes;

- KSA 40-2,118(d)(2), concerning insurer antifraud plans submitted to the Commissioner of Insurance;

- KSA 40-4913(e), concerning documents provided to the Commissioner of Insurance regarding an insurer terminating an insurance agent;

- KSA 45-254(a), concerning law enforcement body or vehicle camera footage;

- KSA 65-6111(d)(4), concerning patient records contained in investigation files of the Emergency Medical Services Board;

- KSA 75-5664(f), concerning records and findings from review of incidents of trauma injury or care by the Advisory Committee on Trauma; and

- KSA 75-5665(b), concerning reports following review of incidents of trauma injury or care by a regional trauma council.

The bill also removes outdated language regarding the establishment of the Advisory Committee on Trauma.

Kansas Open Records Act Amendments

The bill amends an exception in KORA related to records of emergency or security information or procedures of a public agency to not require a public agency to disclose records of or procedures related to cybersecurity plans, assessments, and vulnerabilities if disclosure would jeopardize public safety. The bill defines "cybersecurity assessment," "cybersecurity plan," and "cybersecurity vulnerability."

The bill also amends a KORA provision requiring public agencies to restrict certain persons' identifying information from public access on a public website that is searchable by a keyword search and identifies the home address or home ownership of such persons, upon request by such persons. Specifically, the bill adds local correctional officers, local detention officers, presiding officers who conduct hearings pursuant to the Kansas Administrative Procedure Act, members of the State Board of Tax Appeals, administrative law judges who conduct hearings pursuant to the Workers' Compensation Act, administrative law judges employed by the Office of Administrative Hearings, and members of the Workers' Compensation Appeals Board to the list of persons whose identifying information may be so restricted.

Filing of Fraudulent Liens

The bill adds a provision to the Kansas Criminal Code that prohibits the filing of certain liens or claims against real or personal property and provides for criminal penalties, as follows.

The bill provides it is a severity level 8 nonperson felony for any person to present for filing in any public record:

- Any lien or claim against any real or personal property when such person knows or reasonably should know such lien or claim is false or contains any materially false, fictitious, or fraudulent statement or representation;

- Any document that purports to assert a lien against real or personal property of any person or entity that is not expressly provided for in Kansas or federal law, does not depend on the consent of the owner of the real or personal property affected, and is not an equitable or constructive lien imposed by a court with proper jurisdiction;

- Any financing statement pursuant to Article 9 of the Uniform Commercial Code, when such person knows or reasonably should know the financing statement is not based on a *bona fide* security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or the debtor's authorized representative; or

- Any document filed in an attempt to harass an entity, individual, or public official, or obstruct a governmental operation or judicial proceeding, when such person knows or reasonably should know the document contains false information.

Under the new crime, it also is unlawful for any person to violate a court order issued pursuant to the statute governing an expedited process to review and determine the validity of liens and claims against real or personal property. In the statute, the bill adds to the process a requirement that, if the court orders the lien or claim to be set aside, the court's findings of fact and conclusions of law must include:

- An order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order; and

- A provision stating a violation of the order may subject the party in violation to civil and criminal penalties.

The bill also requires any order finding a lien or claim is fraudulent to include a provision stating a violation of the order may result in civil and criminal penalties and removes a provision providing for a specific penalty of imprisonment of up to 120 days, a fine not to exceed $1,000, or both.

Sedgwick County Nuisance Abatement; SB 52

SB 52 establishes the Sedgwick County Urban Area Nuisance Abatement Act (Act).

The bill authorizes the Board of County Commissioners (Board) to order the removal or abatement of any nuisance from any property in the unincorporated area of Sedgwick County (County). All costs associated with the abatement are the responsibility of the property owner. Before the abatement process can begin, the bill requires the County to first obtain a conviction for a county code violation regarding the nuisance no more than 12 months before the issuance of the abatement order.

The bill states the Act shall not apply to any land, structures, machinery, equipment, or vehicles used for agricultural activity as defined in continuing law to include the growing or raising of horticultural and agricultural crops, hay, poultry, and livestock and the handling, storage, and transportation of agricultural commodities. The Act also excludes all real and personal property, machinery, equipment, stored grain, and agricultural input products that are owned or maintained by commercial grain elevators and agribusiness facilities.

Abatement Process

To begin the abatement process, the bill requires the Board, or an agency designated by the Board, to file a statement with the Sedgwick County Clerk describing the nuisance and declaring it a menace and health risk to county residents. The bill authorizes the Board to issue an order requiring the nuisance to be removed or abated. The bill requires the order to provide a minimum of ten days (as specified in the order) for the owner to remove and abate the nuisance; the Board is empowered to grant extensions to the time period in question. The property owner is also provided the right to request a hearing before the Board if the request is made prior to the end of the waiting period or any extension. The bill subjects any decision made by the Board or its designated representative on this matter to review under the Kansas Judicial Review Act (KSA 77-601 *et seq.*).

The abatement order is to be sent to the owner of record by personal service. [*Note:* Methods of service of process are provided in KSA 2020 Supp. 60-303.] The bill, if the owner fails to accept delivery or effectuate receipt during a preceding 24-month period, authorizes the Board to use alternative notification methods such as, but not limited to, door hangers, telephone communications, or first-class mail. Telephone communication or first-class mail is required if the property is unoccupied and the owner is a nonresident.

If the owner of the property fails to abate the nuisance before the time limit stated in the abatement order, the Board is authorized to order the repair or demolition of any structure, have items described in the order removed, and provide notice to the owner by certified mail, with return receipt requested, that the abatement has occurred and include the total cost of the abatement incurred by the County. The bill requires the notice to state payment for the abatement to the County would be due and payable no later than 60 days after the mailing of the notice. If payment is not made within the 60-day period, the County is authorized to assess the cost of the abatement to the lot or parcel of land on which the nuisance was located. The bill requires the county clerk to certify the costs and extend the cost on the tax roll against the lot or parcel of land.

The bill requires all orders and notices to be served on the owner of record for the property. In the event of more than one owner of record, the County is required to notify at least one of the owners of record.

County Abatement Costs

The bill states, when assessing the cost of removal or abatement of a nuisance, the County shall subtract the value of the property that was removed or abated from the total cost of the abatement or removal. If the value of the property removed or abated is greater than the total cost of the removal or abatement, the bill requires the County to pay the property owner the difference.

A property owner who contests the value of the property is allowed to request a hearing before the Board or its designated representative prior to the deadline for payment of removal or abatement costs to the County.

Motor Vehicles

The bill states the County is authorized to remove a motor vehicle determined to be a nuisance, except when the vehicle is on public property or property open to the public. The County is authorized to impound and auction vehicles removed by this process following provisions of continuing law applicable to removing a vehicle from public property or property open to the public. The bill states an individual who purchases a vehicle in this manner may file proof of purchase with the Division of Vehicles (Division) in order to receive the title to the vehicle purchased. If no responsible bid is received during the auction, the County is authorized to file proof with the Division and be issued the title in the County's name.

Any individual whose vehicle is sold *via* this process is eligible for a refund of motor vehicle tax imposed, and the amount of the refund will be determined as provided in continuing law.

Policies and Procedures

The Board may adopt a resolution to establish policies, procedures, a designated body, or other matters for hearings that property owners or their agents may request pursuant to the Act.

Sunset

The Act expires on July 1, 2024.

City or County Assumption of Special District Duties; SB 118

SB 118 establishes a procedure by which a city or county may assume the powers, responsibilities, and duties of a special district within the city's corporate boundary or the county's boundaries.

Definition

The bill defines a "special district" to include airport authorities, cemetery districts, drainage districts, fire districts, industrial districts, library districts, port authorities, rural water districts, sewer districts, and rural watershed districts.

Procedure

The bill requires the city or county and the special district to reach an agreement regarding the city or county assuming the powers, responsibilities, and duties of the special district and to pass a joint resolution stating their intent to dissolve the special district into the city or county. The joint resolution must also contain the time and location for a joint public hearing on the issue of dissolution.

Upon both the special district and the city or county governing body passing the joint resolution, the special district is prohibited from issuing new debt without notifying and receiving approval from the city or county governing body.

The joint resolution must be published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the city or county and special district are located.

The bill requires that, after the public hearing has been held, the governing bodies of the city or county and the special district decide whether to proceed with consolidation or abandon the proposed dissolution. If both agree to proceed, the governing body of the city or county adopt a city ordinance or county resolution stating the special district is dissolved and the city or county is assuming all powers, responsibilities, and duties of the special district.

The special district is considered dissolved on the effective date of the ordinance or resolution.

Results of Consolidation

Upon the dissolution of the special district, the city or county is the successor to all powers, duties, and responsibilities of the special district. The city or county would:

- Acquire the property of the special district subject to any lease or agreement;
- Pay or retire district debts or obligations;
- Be vested with all property, funds, and assets of the district; and
- Have legal custody of records, memoranda, writings, entries, prints, representations, and electronic data of the special district.

References to the special district in a contract or other document that are in regard to any of the powers, duties, and functions transferred to the city or county would be deemed to apply to the city or county as the context requires.

All legal action, judicial or administrative, pending against the special district or an officer of the special district would abate by reason of this governmental reorganization, but the court would be authorized to allow any such suit, action, or other proceeding to be maintained by or against the successor.

Vacating Lots in the City of Americus; Vacation of City Streets; HB 2178

HB 2178 vacates lots in the City of Americus from a dedication and amends law regarding the vacation of streets.

City of Americus

The bill vacates lots dedicated for a college and a park in the original town plat of the City of Americus from that dedication. The bill also confers fee simple title to the lots to the City of Americus, which the city's governing body can dispose of at its discretion.

Vacation of City Streets

Time Limit for Challenge of an Ordinance Vacating Property

The bill allows any landowner aggrieved by the decision of a city governing body to vacate certain property to bring action in a district court challenging the reasonableness of such decision within 30 days following publication of the vacation ordinance.

Authorization

The bill amends a statute to remove redundancy with continuing law and makes conforming changes. Continuing laws (KSA 13-334, 14-423, and 15-427) provide processes for local governments to request street vacations based on a city's classification.

The bill authorizes cities to utilize the process of the bill by following the notice and public hearing requirements established in the bill.

Public Hearing

The bill clarifies that, when a resident petitions a city to vacate a street, the governing body must give public notice of the request and, in the notice, specify whether the hearing on the petition will be conducted by the governing body or the planning commission. The bill requires all interested persons to be given an opportunity to be heard on the petition.

If a city chooses to use the same process to deannex land or vacate any public reservation, the bill requires the hearing to be held before the city governing body.

The bill requires the city governing body to enact an ordinance containing an order to vacate if, at the hearing, it is determined the request of the petitioner should be granted.

Transferring Department of Corrections Land to the City of Beloit; HB 2214

HB 2214 authorizes the Secretary of Administration, on behalf of the Department of Corrections, to convey real estate adjacent to the site of the former Beloit Juvenile Correctional Facility to the City of Beloit. This 6.38-acre tract of land was inadvertently omitted when the former juvenile correctional facility was transferred to the City of Beloit in 2010 (KSA 76-2221). All costs related to the conveyance will be paid by the City of Beloit.

Donation Limit to Benefit Libraries; HB 2238

HB 2238 removes the $500,000 limit on gifts school districts, governing bodies of cities, or both are jointly able to accept for the express purpose of the construction or furnishing of a library.

Attorney General Coordination of Training Regarding Missing and Murdered Indigenous Persons; HB 2008

HB 2008 authorizes the Attorney General to coordinate training regarding missing and murdered indigenous persons for law enforcement agencies throughout Kansas, in consultation with Native American Indian tribes, the Kansas Bureau of Investigation, the Kansas Law Enforcement Training Center, and other appropriate state agencies.

Conveyance of Certain Property in Doniphan County to the Iowa Tribe of Kansas and Nebraska; State Historical Society; HB 2408

HB 2408 authorizes and directs the Executive Director of the Kansas Historical Society (KSHS), on behalf of the KSHS, to convey by quitclaim deed a 9.86 acre parcel of land in Doniphan County to the Iowa Tribe of Kansas and Nebraska.

The legal description of the parcel is provided in the bill, which also states the property is listed in the National Register of Historic Places (National Register) as the "Iowa, Sac and Fox Presbyterian Mission." The bill provides the conveyance does not require appraisal, bid, or publication, and the conveyance is not subject to appraisal requirements in continuing law. The Attorney General is also required to review and approve the deeds and conveyances.

The bill provides the Iowa Tribe of Kansas and Nebraska agrees to pay all costs related to the conveyance and grants the State a historic preservation easement that reflects current federal preservation laws regarding properties listed in the National Register.

Private and Out-of-State Postsecondary Education; SB 64

SB 64 amends the Kansas Private and Out-of-State Postsecondary Education Institution Act (Act) to clarify the State Board of Regents' (Board) authority over private and out-of-state institutions.

Certificate of Approval Application

The bill allows an institution exempt from the Act to apply to the Board for a certificate of approval if it is required for the institution to be eligible to receive student financial aid under Title IV of the federal Higher Education Act of 1965. Any institution that applies for and receives a certificate of approval is subject to the jurisdiction of the Board. The institution can return to exempt status by not renewing the certificate of approval. The bill requires a certificate of approval to be issued to the owner of an institution, and such a certificate is not transferable. If the institution has a change of ownership due to the death of the owner, a court order, or the operation of law, the new owner is required to immediately apply for a new certificate of approval. If a change of ownership occurs for any other reason, the new owner is required to apply for a new certificate of approval 60 days prior to the change of ownership. The bill authorizes the Board to adopt rules and regulations to ensure an orderly transition to a new owner, including requirements regarding the maintenance of all student records.

The bill requires a court-appointed receiver of an institution with a certificate of approval to provide the Board with notice of appointment and copies of all documents required from the receiver by the court. The receiver must comply with the provisions of the Act. The bill allows the Board to assess a civil fine against an institution for violations of the Act. For the first violation, the fine is limited to up to 1.0 percent of the institution's tuition revenue, with a minimum fine of $125 and a maximum fine of $15,000. For subsequent violations, the fine is limited to up to 2.0 percent of the institution's tuition revenue, with a minimum fine of $250 and a maximum fine of $20,000. These fines are subject to judicial review.

Definitions

The bill amends the definitions of "distance education," "out-of-state postsecondary educational institution," "owner of an institution," "physical presence," and "private postsecondary educational institution." The bill also adds a definition for "provisional certificate," which means a certificate of approval that can be granted to a degree-granting institution that is not yet accredited but is seeking to establish a physical presence in Kansas.

Exempt Courses and Institutions

The bill amends law exempting certain types of education and certain institutions from the provisions of the Act. The bill exempts education offered as a review course designed solely to prepare students for graduate or professional school entrance exams or professional licensure exams. Institutions actively regulated by another agency under another statute are also exempt and receive an affirmative approval to operate in Kansas.

The bill also lists the institutions exempted from the Act:

- Baker University, Baldwin City;
- Barclay College, Haviland;
- Benedictine College, Atchison;
- Bethany College, Lindsborg;
- Bethel College, North Newton;
- Central Baptist Theological Seminary, Kansas City;
- Central Christian College of Kansas, McPherson;
- Cleveland University–Kansas City, Overland Park;
- Donnelly College, Kansas City;
- Friends University, Wichita;
- Hesston College, Hesston;
- Kansas Christian College, Overland Park;
- Kansas Wesleyan University, Salina;
- Manhattan Christian College, Manhattan;
- McPherson College, McPherson;
- MidAmerica Nazarene University, Olathe;
- Newman University, Wichita;
- Ottawa University, Ottawa;
- Southwestern College, Winfield;
- Sterling College, Sterling;
- Tabor College, Hillsboro; and
- University of Saint Mary, Leavenworth.

Rules and Regulations, Standards

The bill requires the Board to adopt rules and regulations governing the closure of any institution subject to the provisions of the Act. These may include notice requirements, teach-out plans, maintenance of academic records, refund requirements, and transcript requests. Additionally, the bill requires degree-granting institutions that are not yet accredited to make progress toward accreditation. Once accreditation is achieved, an institution is required to maintain accreditation. The bill allows the Board to set additional standards for institutions that receive federal Title IV student financial aid, including requiring audited financial statements.

Physical Presence of Institution in Kansas

The bill prohibits an institution from establishing a physical presence in Kansas without obtaining a certificate of approval from the Board.

Notification Requirement and Provisional Certificate of Approval

The bill requires any institution planning on opening a branch campus in Kansas to notify the Board of its intent at least 60 days prior to the opening of the branch campus.

The bill allows the Board to issue a provisional certificate to a degree-granting institution that is not yet accredited and wishes to establish a physical presence in Kansas. The provisional certificate can be renewed annually as long as the institution continues to progress toward accreditation. The bill requires an institution with a provisional certificate to submit to the Board a plan for achieving accreditation and quarterly updates on the institution's progress toward accreditation.

The bill also allows the Board to adopt rules and regulations imposing additional surety bond requirements for the indemnification of any student for any loss suffered as a result of a failure to achieve full accreditation.

Certificate of Approval Minimum Standards

The bill adds the following to the list of minimum standards an institution must meet to be awarded a certificate of approval:

- An institution is not allowed to award a certificate or degree based solely on the payment of tuition or fees, credit earned at another institution, credit for life experience, testing out, or research and writing;

- An institution is not allowed to award an honorary degree if it does not award that same degree and is not allowed to charge a fee for an honorary degree;

- An institution must maintain adequate financial records, which include financial aid information and loan default rates for institutions receiving federal Title IV student financial aid;

- An institution must protect students' personally identifiable information and promptly address any breach of that information; and

- An institution must publish graduation rates, placement rates, and loan default rates as required by the Board.

Certificate of Approval Renewal

The bill states an application for the renewal of a certificate of approval will be deemed late if it is not submitted at least 60 days prior to the expiration of the institution's certificate. When an application for renewal is deemed late, the Board may require the institution to begin the closure procedure. The bill also requires any institution that is closing, either voluntarily or involuntarily, to follow the closure requirements until notified by the Board that all requirements are satisfied.

Board Refusal to Issue Certificate of Approval and Appeal Process

The bill updates and clarifies language regarding refusals by the Board to issue a certificate of approval and the process to request a hearing to contest such a refusal.

Conditional Certificate of Approval

The bill allows the Board to condition a certificate of approval if the Board has reasonable cause to believe additional information is necessary, a violation of the Act occurred, or it is in the students' best interests for the institution to continue operating while completing closure requirements. The conditions imposed by the Board may include reporting requirements, performance standard requirements, securing new or additional bonds, and limiting the period of time to operate during change or ownership, or be for the purpose of teaching out students. The Board may require an institution with a conditional certificate of approval to suspend or cease institutional activities, including enrolling students and advertising or delivering certain classes or programs. The Board-imposed conditions remain in effect until all the circumstances causing the conditional status are corrected and the Board has completed all reviews related to the institution's conditional status.

Revocation of Certificate of Approval

The bill amends language related to the revocation of certificates of approval. The bill prohibits any institution that has had a certificate of approval revoked from applying for a new certificate for 12 months after the final order of revocation. After that 12-month period, an institution may apply for a certificate of approval only if the Board agrees the institution has cured all deficiencies. Prior to revoking an institution's certificate of approval, the Board is required to give written notice to the holder of the certificate. Such written notice must include the grounds for the revocation and notification that the institution may request a hearing on the revocation of the certificate of approval. If a hearing is requested, it must be conducted within 30 days after the written notice was sent.

Requirements of Institution and Employees

The bill requires an institution, including its officers, agents, representatives, and employees, to comply with the provisions of the Act and any rules and regulations adopted by the Board, including, but not limited to, the protection of students' personally identifiable information.

Prohibited Actions under the Act

The bill prohibits the use of fraud or misrepresentation to obtain a certificate of approval. The Board can revoke or condition a certificate of approval for any violation of the Act.

Civil Fines

The bill increases the maximum civil penalty for an intentional violation from $5,000 to $20,000.

Statewide Data Collection

The bill specifies an institution is in violation of the Act for failure to submit complete and accurate data on a timely basis when requested by the Board.

Permitting Credit Card Surcharges for Private Not-for-Profit Postsecondary Institutions; HB 2070

HB 2070 allows private, not-for-profit postsecondary educational institutions in Kansas to collect a surcharge on credit card payments. The Kansas Uniform Consumer Credit Code does not allow sellers to collect a surcharge on credit card payments, with certain exceptions that also include Kansas public institutions, municipal universities, community colleges, technical colleges, and vocational schools.

University Engineering Initiative Act; HB 2101

HB 2101 extends the transfer of the first $10.5 million credited to the Expanded Lottery Act Revenues Fund (ELARF) from ELARF to the Kan-grow Engineering Fund – KU, the Kan-grow Engineering Fund – KSU, and the Kan-grow Engineering Fund – WSU with each fund receiving equal amounts of $3.5 million in each fiscal year, for FY 2023 through FY 2032. The transfer first occurred in FY 2013 and had been scheduled to end with the transfer in FY 2022.

The bill amends the goal of the University Engineering Initiative Act (Act) to continue to generate the same number of engineering graduates per year as is currently set for 2021—1,365 graduates—to meet the needs of the engineering workforce for as long as the Act is financed with annual transfers from the ELARF.

The bill adds requirements for the educational institutions, the State Board of Regents, and the Secretary of Commerce to report to the House Committee on Appropriations and Senate Committee on Ways and Means. The reports will include how many engineering graduates remain in the state over the previous three years, what efforts are taken to increase

retention of graduates and opportunities for graduates in the state, and information regarding the number of engineering graduates from each state educational institution that were initially enrolled as in-state or out-of-state students.

Healing Arts School Clinics; HB 2124

HB 2124 clarifies the authority of healing arts school clinics to provide healing arts services. The bill allows schools statutorily exempted from State Board of Regents (Board) approval requirements to be exempted from the prohibition on the corporate practice of medicine. Prior law required that for a school clinic to be exempted from the prohibition on the corporate practice of medicine, the school must be approved by the Board.

The bill allows off-site clinics owned or operated by a school in partnership with other providers to engage in the practice of healing arts.

Personal Flotation Devices; Fish Value Guidelines; SB 142

SB 142 requires an operator of any watercraft vessel to require every person on such vessel age 12 or younger to wear a U.S. Coast Guard-approved personal flotation device while aboard or being towed by a vessel unless the person is below decks or in an enclosed cabin. The bill requires the Secretary of Wildlife, Parks and Tourism to promulgate rules and regulations regarding required personal flotation devices. Regulation of personal flotation devices had been set in statute. The bill also updates the reference in current law, regarding commercialization of wildlife, to the guidelines of the American Fisheries Society special publication number 30 (first published in 2003) to special publication number 35 (published in 2017).

Criminal Justice Commissions, Task Forces, and Boards; HB 2077

HB 2077 amends law related to the Kansas Criminal Justice Reform Commission, Kansas Closed Case Task Force, and the Kansas Crime Victims Compensation Board.

Kansas Criminal Justice Reform Commission

Study Topics

The bill amends some statutorily required study topics of the Kansas Criminal Justice Reform Commission (Commission) and creates new topics.

Diversion programs. The bill amends the requirement related to analysis of diversion programs to require the Commission to analyze diversion programs utilized throughout the state and make recommendations for legislation that:

- Requires pre-filing and post-filing diversion to be an option in all counties;
- Establishes minimum statewide standards for diversion; and
- Provides a method for sealing or otherwise removing diversion records from criminal records.

Supervision. The bill amends the requirement related to review of supervision levels and programming for offenders on community supervision for felony offenses by requiring the Commission to:

- Review the supervision practices for offenders who serve sentences for felony offenses on supervision, to include:
  - Supervision by court services;
  - Community corrections; and
  - Parole; and

- Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
    - Provide for incentives for compliant offenders to earn early discharge from supervision;
    - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
    - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
    - Provide for a means to consolidate concurrent supervision into one supervision agency.

Monitor implementation of recommendations. The bill requires the Commission to monitor the implementation of previously endorsed Commission recommendations, including those developed through justice reinvestment, and receive updates, review data, and identify opportunities for coordination, collaboration, or legislation as needed.

Removed study topics. The bill removes statutory study requirements relating to specialty courts, evidence-based programming, specialty correctional facilities, and information management data systems. The bill also removes the requirement that the Commission study other matters it determines to be necessary.

Commission Membership

The bill adds a public defender member to the Commission, to be appointed by the State Director of the Board of Indigents' Defense Services.

Final Report

The bill extends the final report and recommendation submission deadline from December 1, 2020, to December 1, 2021.

Kansas Closed Case Task Force

The bill modifies law concerning the Kansas Closed Case Task Force (Task Force) by renaming it the Alvin Sykes Cold Case DNA Task Force. The bill extends the deadline, from October 1, 2020, to October 1, 2021, for completion of the protocol implementation plan relating to closed cases. Similarly, the bill extends the deadline, from December 1, 2020, to December 1, 2021, for the Task Force's report containing a plan for uniform implementation of the protocol. The bill extends the sunset date for the Task Force from December 30, 2020, to December 30, 2021. The bill also requires the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Division of Legislative Administrative Services to aid the Task Force as requested by the co-chairpersons.

The bill amends the membership of the Task Force to allow a designee to serve in place of the state combined DNA index system (CODIS) administrator, but otherwise continues the

Task Force as it existed on December 29, 2020, with all other members appointed prior to that date continuing as members of the Task Force.

Kansas Crime Victims Compensation Board

The bill amends the definition of "victim" for purposes of the Kansas Crime Victims Compensation Board (Board) compensation award process to include a person who suffers personal injury or death as a result of witnessing a violent crime when the person was 16 years of age or younger at the time the crime was committed.

Under continuing law, the general rule is a claim for compensation must be filed within two years after the injury or death upon which the claim is based.

Continuing law provides an extended deadline for filing an application for compensation by persons under the age of 16 who are victims of certain crimes. The bill expands the listing of these crimes by adding a reference to a separate listing of "sexually violent crimes" in continuing law. The bill accordingly removes references to specific crimes already incorporated in the listing of sexually violent crimes.

The bill also provides an extended deadline for compensation for mental health counseling to be awarded under certain circumstances.

Prior law allowed mental health counseling compensation to be awarded if a claim is filed within two years of:

- Testimony, to a claimant who is or will be required to testify in a sexually violent predator commitment of an offender who victimized the claimant or the victim on whose behalf the claim is made; or

- Notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later.

The bill replaces these specific exceptions with a provision allowing the Board to award compensation for mental health counseling to:

- A victim, under the bill's amended definition pertaining to witnesses of violent crimes, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed before the victim turns 19 years of age; or

- A victim of a sexually violent crime, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed within 10 years of the date such crime was committed, or, if the victim was less than 18 years of age at the time such crime was committed, the claim is filed within 10 years of the date the victim turns 18 years of age.

Fire Insurance Premium Levy Distribution; HB 2270

HB 2270 places a limit of $100,000 on deposits into the State General Fund (SGF) each fiscal year from moneys from a levy placed on each fire insurance company doing business in Kansas for the purpose of maintaining the Office of State Fire Marshal. Continuing law requires the State Treasurer to credit 10.0 percent of moneys from the levy to the SGF.

The bill directs the remainder of this levy to be distributed as specified in the bill: 64.0 percent to a fee fund of the Office of State Fire Marshal, 20.0 percent to the Emergency Medical Services Operating Fund, and 16.0 percent to Fire Service Training Program Fund of the University of Kansas Fire and Rescue Training Institute.

Public-Private Partnerships at Correctional Institutions; HB 2401

HB 2401 authorizes the Secretary of Corrections (Secretary) to enter into agreements for public-private partnerships for projects for new or renovated buildings at correctional institutions.

Legislative Findings

The bill includes whereas clauses setting forth legislative findings regarding education and skills-building programming in correctional facilities, public-private partnerships, and addressing the spiritual needs of incarcerated persons.

Definitions

The bill defines the terms “faith-based organization,” “public-private partnership,” “public-private project,” “private entity,” “secretary,” and “spiritual needs.”

The bill also defines the term “correctional institution” to mean the El Dorado, Ellsworth, Hutchinson, Lansing, Norton, Osawatomie, Stockton, Topeka, and Winfield correctional facilities; Larned Correctional Mental Health Facility; Toronto Correctional Work Facility; Wichita Work Release Facility; any juvenile correctional facility or institution defined in continuing law; and any other correctional institution established by the State for the confinement of adult or juvenile offenders under control of the Secretary.

Secretary Authorization

The bill authorizes the Secretary to enter into agreements for public-private partnerships for projects for the purpose of funding new or renovated buildings at correctional institutions for education, skills-building, and spiritual needs programs.

The bill requires the Secretary to determine project suitability by conducting an analysis of the feasibility, desirability, and the convenience to the public of the project, and whether the project furthers the public policy goals of the Department of Corrections (Department).

The bill requires the Secretary to consult with the Secretary of Administration for input from the Office of Facilities and Property Management when conducting the analysis. The bill

requires the Secretary to advise and consult the Joint Committee on State Building Construction prior to start of the project.

The bill clarifies that public-private partnerships are not to be established for privately operated correctional institutions.

The bill allows the Secretary to request approval to issue bonds for the public-private project.

The bill requires the Secretary, at the beginning of the 2022 Legislative Session and each year thereafter, to submit to the House Committee on Corrections and Juvenile Justice and the Senate Committee on Judiciary an annual report on the following:

- Status of active public-private partnership projects, including funds raised for education, skills-building, and spiritual needs programs and services;
- Buildings renovated or constructed for such programs and services;
- Names of all program and service providers and descriptions of services offered; and
- Number of inmates enrolled in education or skills-building programs and the graduation or completion outcomes of such programs.

Project Budget and Nonprofit Corporation Establishment

The bill requires the Secretary to prepare a budget for any proposed project. The bill requires the budget to reflect the source of the funds and set out with particularity the full cost of construction and acquisition of such project and state the budget could include operational costs of such project.

Further, the bill requires the budget to include any Department costs for such projects in annual budget estimates pursuant to continuing law and clearly indicate the portion to be paid by the State and the portion to be paid by private funds.

The bill also allows the Secretary to establish a nonprofit 501(c)(3) corporation to receive gifts, donations, grants, and other moneys and engage in fundraising projects to fund these public-private partnership projects.

The bill specifies the board of directors of the corporation will consist of representatives of the Department and the Department of Administration.

Private Entity Qualification and Party Responsibilities

The bill requires the Secretary to ensure a private entity is qualified to carry out the public-private partnership project, including ensuring the entity:

- Has lawful sources of funding, capital, securities, or other financial resources necessary to carry out the project available;

- Possesses the managerial, organizational, technical capacity and experience in the specific type of project undertaken either through staff, subcontractors, a consortium, or joint venture agreement;

- Is qualified to lawfully conduct business in Kansas;

- Certifies that no director, officer, partner, owner, or other individual with direct and significant control over the policy of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States;

- Maintains a policy of public liability insurance, a copy of which is provided to the Secretary; and

- Agrees to abide by all relevant local, state, and federal laws, rules, and regulations.

The bill requires the Secretary to enter an agreement that reflects the roles, duties, responsibilities, and commitments of all parties and includes:

- A clear statement:
    - Of the purpose and scope of the project;
    - Of the roles and responsibilities of each party;
    - That the private entity does not gain sovereign immunity by the agreement; and
    - That each party bears liability and responsibility for the actions of such party's agents and employees;

- Procedures that govern the rights and responsibilities of the public and private entities during the construction of the building and in the event of the termination of the agreement or a material default;

- A description of how the project will be carried out consistent with all standards binding on the State, Department, and correctional institution where construction or renovations would occur;

- A budget for the project that reflects the source of funding and costs;

- A statement that, upon completion, the buildings will be owned by the State; and

- A statement reflecting that maintenance and operations costs shall be the responsibility of the State after the building is completed.

Sovereign Immunity

The bill provides the Act does not waive the sovereign immunity of the State of Kansas and does not create sovereign immunity for any private entity entering a public-private partnership.

Amendments to Contract Requirements

The bill amends law concerning competitive bids to provide, if public funds do not exceed 25 percent of the total cost of the public-private project, the contract would not be subject to the competitive bid requirements in continuing law. The bill further clarifies the provisions will not apply to the procurement process in continuing law for engineering services.

The bill requires the Director of Purchases to include public-private project contracts over $5,000 in the quarterly report made available to the Legislature.

KP&F Service-connected Benefits; Michael Wells Memorial Act; HB 2063

HB 2063 revises the benefits for members of the Kansas Police and Firemen's Retirement System (KP&F) who are Tier II members, meaning those employees hired since July 1, 1989, who are disabled and ultimately die due to a "service-connected" condition, as that term is defined by law. The bill will apply to deaths that occurred on and after January 1, 2017, and designates these amendments to law as the Michael Wells Memorial Act.

Assuming no death benefits are payable, the new benefit will be the greater of:

- A monthly benefit equal to 50.0 percent of the member's final average salary at the time of the disability, plus 10.0 percent for each dependent child who is under the age of either 18 years or 23 years, if a full-time student; or

- The retirement benefit the deceased member would have received if the member had been able to retire, if there are no dependent children.

The total amount of benefits payable can not exceed 75.0 percent of the member's final average salary.

Under the former benefit structure, when a Tier II KP&F member became disabled and later died due to a service-connected condition before reaching eligibility, the spouse received both a one-time, lump-sum payment equal to 50.0 percent of the member's final average salary, which is the average of the three highest of the previous five years of employment, and a monthly benefit equal to 50.0 percent of the member's disability benefit. If there was no spouse, dependent children received the benefit in equal shares.

Retirement System—KPERS Board Study; Death and Disability Payments Moratorium; DROP; Guidepost Section Technical Updates; HB 2243

HB 2243 makes several changes to law governing the Kansas Public Employees Retirement System (KPERS or the Retirement System) pertaining to a study performed by the KPERS Board of Trustees, authorization of the allotment for the KPERS Death and Disability Program and a moratorium on payments in FY 2021 by all employers, provisions in the Kansas Deferred Retirement Option Program (DROP) Act relating to participating members' election and extension of their DROP periods, and administration of certain KPERS benefits and the application of certain federal Internal Revenue Code provisions on the Retirement System ("guidepost" section).

Actuarial Experience Study

The bill changes the frequency of the actuarial experience and cost study performed by the KPERS Board of Trustees (Board) from once every three years to once every four years. This change would begin with the latest study completed prior to July 1, 2021. In its fiduciary duty to act in the best interests of the Retirement System, the Board will have the discretion to adjust the frequency of the study from the four years specified in the bill to not any more frequent than once every three years and not any less frequent than once every five years.

Death and Disability Payment Moratorium

The bill authorizes the Governor's allotment for the KPERS Death and Disability Program and institutes a moratorium on all payments made by KPERS employers for FY 2021.

Kansas Deferred Retirement Option Program Act—DROP Period Changes

The bill amends provisions in the DROP Act relating to participating members' election and extension of their DROP periods.

Under prior law, a member made a one-time, irrevocable election upon entering the DROP period to continue working for three, four, or five years, a term known as the DROP period. The bill removes the requirement that makes a member's election choice irrevocable.

The bill allows an enrolled member who previously elected a DROP period of less than five years to revoke such election, with the employer's authorization, and extend their DROP period to an aggregate maximum of five years upon making an application to the system. The bill provides the aggregate total DROP period must be consecutive.

Technical Updates—KPERS Guidepost Section

The bill amends provisions in the law governing KPERS benefits and the application of certain federal Internal Revenue Code provisions on the Retirement System ("guidepost" section). [*Note:* To maintain compliance with federal law, the guidepost section is updated to match the new minimum distribution levels established in the federal Setting Every Community Up for Retirement Enhancement (SECURE) Act and the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, as provided in this bill.]

The bill amends a provision pertaining to the deferred compensation plan's distribution of benefits to require a member receive such benefits from retirement accounts beginning at the age of 72. The bill would also maintain the age for required minimum distributions at 70½ for members born before July 1, 1949.

[*Note:* Under prior law, this required distribution of benefits to members occurred at the later of April 1 of the calendar year following the calendar year in which the member reaches the age of 70½ or April 1 of the calendar year following the calendar year in which the member terminates employment.]

Authorization for the Issuance of $500.0 Million in Bonds; KPERS; HB 2405

HB 2405 authorizes the Kansas Development Finance Authority (KDFA) to issue bonds, in one or more series, in an amount not to exceed $500.0 million, plus all amounts required to pay the costs of issuance.

Proceeds from those bonds must be applied to the unfunded actuarial pension liability (UAL) of the Kansas Public Employees Retirement System (KPERS). The interest rate of those bonds may not exceed 4.3 percent. Bonds may not be issued without approval of the State Finance Council, which may give approval while the Legislature is in session.

The bonds issued and interest owed would be an obligation of KDFA and not KPERS. The bonds issued would not be considered a debt or obligation of the State for purposes of the *Kansas Constitution*. The Department of Administration and the KDFA would be permitted to enter into contracts to implement the payment arrangements after the bonds are issued.

The addition of $500.0 million toward the UAL is estimated to decrease the employer contribution rate, including KPERS Death and Disability Program contributions, from 14.69 percent to 13.36 percent in FY 2024.

State Budget—Appropriations; SB 159

SB 159, the Omnibus Appropriations Bill, includes various mid-year expenditure adjustments as well as funding for bills enacted by the 2021 Legislature. The bill also includes various claims against the State. [*Note:* The bill does not include funding for K-12 education, which is contained in HB 2134.]

FY 2021 Adjustments

The bill adds $13.0 million, including $4.4 million from the State General Fund (SGF), to the Governor's FY 2021 recommendation. Information is provided on major adjustments by category and major adjustments within the category.

Human Services

Add $12.6 million, including $4.4 million SGF, for the Human Services function for FY 2021 and adopt Governor's Budget Amendment (GBA) No. 3, Item 1, to delete $353.7 million, including $189.5 million SGF, to adopt the Spring 2021 Human Services Caseloads. Major adjustments include:

- *Kansas Department for Aging and Disability Services:* Add $12.6 million, including $4.4 million SGF, to provide a temporary $15 increase to the daily Medicaid reimbursement rate for nursing facilities from May 1, 2021, through June 30, 2021, and authorize the payment.

General Government

Add $414,120, all from special revenue funds, for the General Government function of government for FY 2021. Major adjustments include:

- *Office of the Attorney General:* Add $400,000, all from the Scrap Metal Theft Reduction Fee Fund, in FY 2021 to reimburse scrap metal dealers $1,000 for each year such scrap metal dealer paid fees under the Scrap Metal Theft Reduction Act and the act was not operative and for fingerprinting costs prior to July 1, 2020 [*Note:* The funding for this expenditure was included as a transfer in HB 2007.];

- *Department of Revenue:* Add language directing all driver's license office locations that were open to the public and closed as a result of the COVID-19 public health emergency to reopen on or before June 1, 2021, with the same services as prior to the public health emergency, in FY 2021;

- *Department of Administration:* Add $6.0 million, all SGF, in FY 2021 for costs related to a Securities Act Fee Fund lawsuit, subject to the resolution and settlement agreement reached between parties;

- *Insurance Department:* Cease transfers from the Securities Act Fee Fund to the SGF in FY 2021, subject to the resolution and settlement agreement reached between parties; and

- *Judicial Branch* : Add $7.4 million, all SGF, and delete $7.4 million, all from the Docket Fee Fund, for FY 2022 to replace lost revenue and add language to lapse $7.4 million from the SGF if federal funds are available and allocated for this purpose.

FY 2022 Adjustments

The bill adds $83.2 million, including $70.7 million SGF, to the Governor's FY 2022 recommendation.

Education

Delete $254,657, all SGF, for the Education function for FY 2022. Major adjustments include:

- **Higher Education:** Delete $53.0 million, all SGF, from the Board of Regents maintenance of effort requirements for FY 2022 and instead:
  - Add $15.0 million, all SGF, in the Post Secondary Education Operating Grant, with language that the funding is to be used by the universities as reimbursement for 2021 utility payments, staff buy-outs, retention and recruitment (University of Kansas Medical Center), economic development, and scholarships for FY 2022;
  - Add $10.0 million, all SGF, and reappropriation language for the Kansas Promise Scholarship Act, for FY 2022;
  - Add $10.0 million, all SGF, to the Board of Regents new Need-based Aid Scholarship and Recruitment account to be distributed to state universities and Washburn University if the universities provide in-person classes that were previously in-person and refund Fall 2020 and Spring 2021 funds to applicable students in the form of direct reimbursements, and the state universities follow Board policies for deferred maintenance. The universities are directed to use the funds for need-based scholarships and student recruitment per Board policies for FY 2022;
  - Add $8.0 million, all SGF, for the Comprehensive Grant program for FY 2022;
  - Add $5.0 million, all SGF, for the Community College Maintenance of Effort account for expenditures that meet the federal maintenance of effort requirements for FY 2022; and
  - Add $4.3 million, all SGF, for capital outlay within the technical colleges to be disbursed equally to be used for equipment only and not requiring a match for FY 2022.

General Government and Other

Add $50.4 million, including $49.8 million SGF, for the General Government and Other functions. Major adjustments include:

- *Board of Indigents' Defense Services:* Add $3.6 million, all SGF, to fund the assigned counsel rate increase up to $100 per hour for FY 2022;

- *Judicial Branch:* Add $17.0 million, all SGF, for the following adjustments:

  - Add $1.9 million, all SGF, for a 5.0 percent salary increase for judges and justices for FY 2022. The addition includes a two-year salary increase of 5.0 percent each year for FY 2022 and FY 2023;

  - Add $10.8 million, all SGF, for salary increases for non-judge employees for FY 2022; and

  - Add $4.3 million, all SGF, and 70.0 full-time equivalent (FTE) positions for the agency's enhancement request for additional court services officer personnel for FY 2022;

- *Strengthening People and Revitalizing Kansas (SPARK) Executive Committee:* Add language directing the SPARK Executive Committee to be composed of three members appointed by the Governor with one serving as chairperson, two appointed by the Speaker of the House, and two appointed by the President of the Senate . The bill directs that no expenditures authorized by the State Finance Council shall be made by any agency from coronavirus relief funds without prior review and recommendation by the SPARK Executive Committee for FY 2022;

- *Kansas Public Employees Retirement System (KPERS) Policy Change:* Add $28.8 million, all SGF, for debt service payments on pension obligation bonds issued pursuant to HB 2405 for FY 2022, and adjust KPERS employer contribution rates at 13.33 percent in calendar year (CY) 2021 and 13.11 percent for CY 2022;

- *Department of Revenue:* Direct that all driver's license office locations that were open to the public and closed as a result of the COVID-19 public health emergency to reopen on or before June 1, 2021, with the same services as prior to the public health emergency in FY 2022; and

- *Department of Administration:* Authorize the agency to issue up to $120.0 million in bonds for the renovation of Docking State Office Building for FY 2022, subject to approval from the State Finance Council.

Human Services

Add $31.1 million, including $20.6 million SGF, for the Human Services function and delete $268.8 million, including $141.6 million SGF, to implement the Spring 2021 Human Services Consensus Caseloads. Other major adjustments include:

- *Department of Labor:* Add $9.6 million, all SGF, to update the unemployment insurance benefit system and require the agency to use up to $250,000 to conduct an outside audit in compliance with Senate Sub. for Sub. for HB 2196 for FY 2022. This includes requiring the use of federal funds if the funds are available for this purpose;

- *Kansas Department for Aging and Disability Services (KDADS):*

    - Add $2.7 million, including $1.2 million SGF, for certified community behavioral health clinic (CCBHC) funding, and 10.0 FTE positions for CCBHC certification for FY 2022;

    - Add $5.6 million, including $2.0 million SGF, for the Medicaid Home and Community Based Services (HCBS) Technology Assisted waiver for FY 2022;

    - Add $3.0 million, all SGF, for costs associated with the 988 Crisis Hotline, and lapse SGF funds associated with the 988 Crisis Hotline implementation, if federal funds are available for this purpose in FY 2022; and

    - Add $9.6 million, including $4.3 million SGF, and raise the protected income level for HCBS Waivers and the Program of All-Inclusive Care for the Elderly (PACE) from 150.0 percent to 300.0 percent of federal supplemental security income for FY 2022.

Agriculture and Natural Resources

Add $623,000, and delete $500,000 SGF, for FY 2022. Major adjustments include:

- *Department of Agriculture:* Delete $500,000, all SGF; and do not establish the Animal Facilities Inspection Program as an independent division within the Department of Agriculture for FY 2022; and

- *Department of Health and Environment – Division of Environment:* Require the agency to issue a request for proposal to construct or renovate and equip a laboratory within 8.0 miles of the Capitol Complex in Topeka for FY 2022. The agency will present all proposals to the Joint Committee on State Building Construction, which will make a recommendation to the State Finance Council. The agency will provide for the issuance of up to $65.0 million in bonds by the Kansas Development Finance Authority for the purpose of constructing a laboratory.

FTE Positions Adjustment

The bill adds 70.0 FTE positions for additional court services officer personnel in the Judicial Branch, 10.0 FTE positions for CCBHC certification in KDADS, and 3.0 FTE positions to establish and assess technology-enabled fiduciary financial institutions in the Office of the State Bank Commissioner for FY 2022.

Status of the State General Fund

The HB 2007–approved budget resulted in an ending balance of $648.5 million in FY 2021 and $10.2 million in FY 2022. Change in economic conditions and federal stimulus substantially changed that outlook in addition to legislative adjustments. Major adjustments include:

- Revised consensus revenue estimates adding $319.8 million in FY 2021 and $41.2 million in FY 2022;
- Reducing estimated revenue by $108.5 million in FY 2022 under provisions of SB 47, SB 50, and HB 2143;
- Spring Human Services Caseloads reducing SGF expenditures by $189.5 million in FY 2021 and $141.6 million in FY 2022; and
- SB 159 adding $4.4 million in FY 2021 and $70.5 million for FY 2022 in expenditures above the Governor's recommendation.

The effect of these various adjustments results in a projected ending balance of $1.1 billion in FY 2021 and $542.1 million in FY 2022.

The following summary table reflects all changes to SGF receipts and SGF expenditures contained in SB 159. [*Note:* FY 2021 and FY 2022 totals exclude K-12 Education funding contained in HB 2134.]

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES

SB 159 as Passed
(Dollars in Millions)

	Actual FY 2020	SB 159 FY 2021	SB 159 FY 2022
Beginning Balance	$ 1,105.1	$ 495.0	$ 1,154.4
Receipts (April 2020 Consensus)	6,912.4	8,027.5	7,524.8
Governor's Revenue Adjustments	0.0	(13.5)	(12.7)
SB 50, SB 47, HB 2143	0.0	0.0	(108.5)
Legislative Receipt Adjustments	0.0	86.0	157.9
Adjusted Receipts	6,912.4	8,100.0	7,561.5
Total Available	$ 8,137.9	$ 8,595.0	$ 8,715.9
Less Expenditures	7,522.5	7,440.7	3,951.9
Ending Balance	**$ 495.0**	**$ 1,154.4**	**$ 4,763.9**
Ending Balance as a % of Expenditures	6.6 %	15.5 %	120.5 %

State Budget—Appropriations; HB 2007

HB 2007 includes adjusted funding for FY 2021 and FY 2022 for state agencies and FY 2021 and FY 2022 capital improvement expenditures for a number of state agencies.

Summary of Changes to Approved FY 2021 Expenditures

The FY 2021 revised budget totals $21.4 billion, including $7.7 billion from the State General Fund (SGF).

This approved budget includes $351.0 million of expenditure authority carried forward from FY 2020 and decreased by the lapse of $374.5 million SGF due to the Governor's July 2020 allotment.

The approved budget includes 40,836.3 full-time equivalent (FTE) positions. Major adjustments to the FY 2021 approved budget include the following:

- **Public Safety**:
  - Delete $21.1 million from the Evidence-Based Juvenile Programs Account of the Department of Corrections;
  - Swap SGF salary expenditures for federal funds, predominantly in the Department of Corrections and its facilities and the Adjutant General's Department, to reduce expenditures by $25.0 million;

- Reduce expenditures in the Department of Corrections by $9.1 million SGF to reflect savings from the return of out-of-state inmates; and
- Add $2.95 million, from special revenue funds, for the Kansas Highway Patrol to purchase a Cessna 206 aircraft ($2.25 million) and $700,000 for an upgrade to the Forward-looking Infrared Radar on the agency's 2012 Cessna 206 aircraft in FY 2021.

- **General Government**:
  - Delete $1.3 million, all from the Kansas Bioscience Authority (KBA) Grant Commitments account of the SGF, in FY 2021. This deletion will leave $100,000 in the account to settle the ongoing obligations of the KBA.

- **Education**:
  - Add $30.1 million, all SGF, to reflect the deletion of the Department of Education budget from HB 2007 and the insertion of the Department of Education budget into SB 175, which did not pass both chambers; and
  - Add $2.1 million, all SGF, for the Excel in Career Technical Education Tuition Fund (SB 155).

- **Human Services**:
  - Reduce Human Services Caseloads expenditures by $166.5 million to reflect the revised Federal Medical Assistance Percentage match rate contained in the federal Families First Coronavirus Response Act;
  - Add $37.4 million, including $13.1 million SGF, to provide a $15 increase for the daily reimbursement rate for nursing facilities for 178 days in FY 2021. This recommendation is to continue the daily rate increase provided due to the COVID-19 pandemic for the remainder of calendar year 2020;
  - Add $37.8 million, including $13.2 million SGF, to provide a $15 increase for the daily reimbursement rate for nursing facilities for 120 days, starting January 1, 2021, in FY 2021 and add language making this increase subject to review and approval of the Legislative Coordinating Council at the end of the 120 days, or May 1, 2021, for continuation through June 30, 2021. This recommendation is to continue the daily rate increase provided due to the COVID-19 pandemic for the remainder of FY 2021; and
  - Add $5.5 million, including $2.0 million SGF, to provide a 5.0 percent increase in the provider reimbursement rates for the Medicaid Home and Community Based Services (HCBS) Intellectual/Developmental Disability (I/DD) waiver for the last three months of FY 2021.

Summary of Approved FY 2022 Expenditures

The FY 2022 budget totals $15.4 billion, including $4.0 billion SGF. The approved budget includes 40,302.3 FTE positions.

[*Note:* The FY 2022 budget does not include expenditures for the Department of Education or aid to school districts, which totals $5.8 billion, including $4.2 billion SGF, and 261.9 FTE positions. The provisions for the Department of Education were inserted into HB 2134.]

Major adjustments include:

- **Board of Regents and Institutions** – Reduce from all funding sources $11.7 million, for a partial implementation of the reduced resources budget, partially offset by the addition of $8.3 million, all SGF, for the Excel in Career Technical Education Tuition Fund (SB 155) for FY 2022 and $1.4 million, all SGF, for the National Guard Scholarship Program for FY 2022;

- **Corrections and Correctional Facilities** – Decrease of $12.2 million, from all funding sources, including an SGF increase of $10.8 million, to fully fund the medical services contract ($9.6 million SGF) and house inmates with mental health needs ($1.3 million SGF);

- **Human Services**

  - Add $31.0 million, including $12.4 million SGF, to continue the 5.0 percent increase in the provider reimbursement rates for the HCBS I/DD waiver from FY 2021 and provide an additional 2.0 percent increase for FY 2022;

  - Add $20.5 million, including $8.2 million SGF, to provide a 3.0 percent increase in the Medicaid reimbursement rate for nursing facilities;

  - Add $10.5 million, including $4.2 million SGF, for the HCBS Technology Assisted waiver and directing the funding to be used to increase the provider reimbursement rates for the Specialized Medical Care (T1000) services code from the current rate of $31.55 per hour to $39.00 per hour for in-home Medicaid Care Registered Nurse/Licensed Practical Nurse nursing services for this waiver;

  - Add $3.0 million, all SGF, for Senior Care Act services;

  - Add $2.0 million, all SGF, for additional funding for Community Mental Health Center grants; and

  - Add $1.0 million, all SGF, for a psychiatric residential treatment facilities pilot program at Ember Hope in Newton, Kansas.

- **Agriculture and Natural Resources**:

  - Transfer $1.2 million from the Economic Development Initiatives Fund to the State Water Plan Fund for FY 2022;

  - Add $250,000, all from the State Water Plan Fund, for aid to conservation districts for FY 2022. This program provides matching funds to county conservation districts to deliver and promote natural resources programs;

  - Add $850,000, all State Water Plan Fund, for FY 2022 for water injection dredging at Tuttle Creek Lake;

- Delete $310,000, all from the State Water Plan Fund, for FY 2022 for watershed conservation practices. This program provides financial assistance to producers in targeted areas for sediment-reducing practices such as cover crops, grassed waterways, and buffer strips; and
- Delete $100,000, all from the State Water Plan Fund, for FY 2022 for water technology farms.

Summary of Approved FY 2021 and FY 2022 Revenue Adjustments

The FY 2021 budget adds $86.8 million in revenue adjustments from the FY 2021 previously approved budget; major adjustments include:

- **Pooled Money Investment Board (PMIB) Bridge Loan Transfer** – Transfer $66.1 million in FY 2021 to pay one-half of the remaining 2017 bridge loan;
- **State Finance Council Coronavirus Prevention Fund** – Delete the transfer of $17.5 million from the SGF to the Coronavirus Prevention Fund in FY 2021;
- **Economic Development Initiatives Fund and State Water Plan Fund** – Reduce the transfer from the Economic Development Initiatives Fund to the SGF by $1.3 million and deposit the moneys in the State Water Plan Fund for FY 2022; and
- **Attorney General** – Transfer $400,000 from the SGF to the Scrap Metal Theft Reduction Fund of the Attorney General in FY 2021.

The FY 2022 budget adds $157.9 million in revenue adjustments to the fall consensus revenue estimate for FY 2022; major adjustments include:

- **PMIB Bridge Loan Transfer** – Transfer $66.1 million in FY 2022 to make the final payment on the 2017 bridge loan;
- **Budget Stabilization Fund** – Transfer $81.9 million from the budget stabilization fund to the SGF;
- **State Highway Fund** – Transfer $67.1 million from the State Highway Fund to the SGF;
- **Local *Ad Valorem* Tax Reduction (LAVTR) Fund** – Delete the transfer of $54.0 million from the SGF to the LAVTR Fund;
- **Economic Development Initiatives Fund** – Transfer $15.1 million from the Economic Development Initiatives Fund to the SGF; and
- **Secretary of State** – Add language to reimburse the Secretary of State from the SGF for costs incurred for the publication of a constitutional amendment during the August 2022 election for FY 2023.

The following is a summary table that reflects all changes to both SGF receipts and SGF expenditures from various bills transmitted to the Governor and the absence of approved funding for the Department of Education, including aid to school districts.

STATE GENERAL FUND RECEIPTS, EXPENDITURES, AND BALANCES

HB 2007 – Profile
(Dollars in Millions)

	Actual FY 2020	HB 2007 FY 2021	HB 2007 FY 2022
Beginning Balance	$ 1,105.1	$ 495.0	$ 648.5
Receipts (November 2020 Consensus)	6,912.4	7,707.7	7,483.6
Governor's Revenue Adjustments	-	152.5	224.4
Legislative Tax Adjustments	-	-	(119.6)
Legislative Receipt Adjustments	-	(66.5)	(66.5)
Adjusted Receipts	6,912.4	7,793.7	7,521.9
Total Available	$ 8,017.5	$ 8,288.7	$ 8,170.5
Less Expenditures	7,522.5	7,670.3	3,968.6
HB 2134 – Education Bill	-	(30.1)	4,191.7
Ending Balance	**$ 495.0**	**$ 648.5**	**$ 10.2**
Ending Balance as a % of Expenditures	6.6 %	8.1 %	105.1 %

[*Note:* Profile includes FY 2022 expenditures for the Department of Education and aid to school districts contained in HB 2134.]

Division of Tourism; ERO 48

ERO 48 Executive Reorganization Order (ERO) No. 48 establishes the Division of Tourism (Division) within the Department of Commerce, effective July 1, 2021, rather than continue it within the Kansas Department of Wildlife, Parks and Tourism (KDWPT). The ERO states the head of the Division shall be the Director of Tourism (Director) and is to be appointed by the Secretary of Commerce. The position of Director will be an unclassified position and will receive an annual salary set by the Secretary of Commerce.

The ERO states the Director will appoint employees as necessary to carry out the powers and duties of the Division. Such employees will act for and exercise the powers of the Director if the Director delegates such powers. The Director may organize the Division in the most efficient manner.

Changes to the Department of Wildlife, Parks and Tourism

The ERO abolishes the Division of Tourism and the Office of the Director of Tourism within the KDWPT.

The ERO states all KDWPT powers, duties, and functions related to the Division are transferred to and imposed upon the Division and the Director within the Department of Commerce.

The ERO renames the KDWPT as the Kansas Department of Wildlife and Parks and the Secretary of Wildlife, Parks and Tourism (Secretary) as the Secretary of Wildlife and Parks. The ERO states the Kansas Department of Wildlife and Parks and the Secretary of Wildlife and Parks will be the successor in every way to the powers, duties, and functions of the KDWPT and of the Secretary granted prior to the effective date of the ERO. Every act performed under the powers, duties, and functions by or under the authority of the Kansas Department of Wildlife and Parks or the Secretary of Wildlife and Parks will have the same force and effect as if performed by the KDWPT or the Secretary.

The ERO states that whenever the KDWPT is referred to or designated by a statute, contract, or other document regarding the KDWPT's powers, duties, or functions related to the KDWPT, such reference shall apply to the Kansas Department of Wildlife and Parks. The ERO states that whenever the Secretary is referred to or designated by a statute, contract, or other document regarding the Secretary's powers, duties, or functions related to the Secretary, such reference shall apply to the Secretary of Wildlife and Parks. All rules, regulations, orders, and directives of the Secretary that are in effect on July 1, 2021, shall continue to be effective and shall be deemed the rules, regulations, orders, and directives of the Secretary of Wildlife and Parks until revised, amended, revoked, or nullified by law.

The ERO states the Secretary of Wildlife and Parks will appoint an assistant secretary for operations. The position of assistant secretary for operations will be an unclassified position with a salary set by the Secretary of Wildlife and Parks. The Secretary of Wildlife and Parks will assign powers, duties, and functions to the assistant secretary for operations. The assistant secretary for operations will act for and exercise the powers of the Secretary of Wildlife and Parks, if the Secretary delegates such powers.

The ERO abolishes the positions of assistant secretary for parks and tourism and the assistant secretary of wildlife, fisheries, and boating within the KDWPT.

Division of Tourism within the Department of Commerce

The ERO states the Division and the Director will be the successor in every way to the powers, duties, and functions of the Division of Tourism and the Director of Tourism of KDWPT granted prior to the effective date of this ERO and transferred as part of this ERO. Every act performed under the powers, duties, and functions by or under the authority of the Division and Director will have the same force and effect as if performed by the Division of Tourism or the Director of Tourism of KDWPT.

The ERO states that whenever the Division of Tourism of the KDWPT is referred to or designated by a statute, contract, or other document regarding the Division of Tourism of the KDWPT and such document is related to the Division of Tourism of the KDWPT, such reference shall apply to the Division.

The ERO states that whenever the Director of Tourism of KDWPT is referred to or designated by a statute, contract, or other document regarding the Director of Tourism of KDWPT's powers, duties, or functions and such document is related to the Director of Tourism of the KDWPT, such reference shall apply to the Director.

All rules, regulations, orders, and directives of the Secretary that are in effect on July 1, 2021, and that relate to the functions, powers, or duties of the Director of Tourism of the KDWPT shall continue to be effective and shall be deemed the rules, regulations, orders, and directives of the Secretary of Commerce until revised, amended, revoked, or nullified by law.

All orders or directives of the Division of Tourism or the Director of Tourism of the KDWPT that are in effect on July 1, 2021, and that relate to any function, power, or duty of the Division of Tourism or the Director of Tourism of the KDWPT shall continue to be effective and shall be deemed the orders and directives of the Division and Director until revised, amended, revoked, or nullified by law.

Transfers of Funds, Accounts, Liability, Property, and Records

The ERO transfers the balances of all funds and accounts appropriated or reappropriated to the KDWPT for activities related to the Division from the KDWPT to the Department of Commerce.

The ERO states liability for all accrued compensation or salaries of officers and employees who are transferred to the Division shall be paid by the Department of Commerce.

The ERO transfers all property, property rights, and records relating to the powers, duties, or functions transferred to the Division to the Department of Commerce. Any conflict that arises regarding the transfers described above will be resolved by the Governor, whose decision will be final.

The ERO states lawsuits, criminal actions, or other proceedings by or against any state agency or program or by or against any officer of the State in such officer's official duties will not be affected by reason of governmental reorganization.

Transfer of Employees

The ERO states officers and employees that are engaged in duties relating to the Division and are necessary to perform those duties, in the opinion of the Secretary of Commerce, are transferred to the Division. All classified employees will retain their status as classified employees.

The ERO states all retirement benefits and leave balances and rights that are accrued or granted prior to the date of transfer of such officers and employees transferred by this order shall be retained. The service of each transferred officer or employee will be declared continuous. The ERO will not affect the classified status of any transferred person employed by KDWPT prior to the date of transfer. The ERO states any subsequent transfer, layoff, or abolition of classified service positions will be made in accordance with the civil service laws and any related rules and regulations. The date of transfer of each transferred officer or employee shall commence at the start of a payroll period.

COVID-19; Extension of State of Disaster Emergency; Extension of Related Provisions; Closure or Cessation of Business Activity; SB 14

SB 14 amends law regarding the governmental response to the COVID-19 pandemic in Kansas. The bill became effective upon publication in Issue 3A of the *Kansas Register* on January 25, 2021.

Ratification and Extension of State of Disaster Emergency

The bill amends the statute ratifying and continuing the COVID-19-related state of disaster emergency declared by the Governor on March 12, 2020, to reflect the September 15, 2020, ratification and continuation of the state of disaster emergency by 2020 Special Session HB 2016 and subsequent extensions and continuations by the State Finance Council, and ratifies and continues in existence the state of disaster emergency through March 31, 2021. The bill also amends this statute to extend from 2020 through 2021 a provision prohibiting the Governor from proclaiming any new state of disaster emergency related to the COVID-19 health emergency without approval by at least six legislative members of the State Finance Council.

Extension of Provisions

The bill amends statutory provisions regarding the following to extend their expiration from January 26, 2021, until March 31, 2021:

- Removal of alcohol from premises of a licensed club or drinking establishment;

- In the section of the Kansas Emergency Management Act (KEMA) governing declaration of a state of disaster emergency, provisions regarding extension of the COVID-19 state of disaster emergency when the Legislature is not in session by application of the Governor to the State Finance Council. This section is also amended to permit this procedure when the Legislature is adjourned during session for three or more days;

- In the section of KEMA governing powers of the Governor during a state of disaster emergency, extending provisions regarding the powers of the Governor and boards of county commissioners enacted in 2020 Special Session HB 2016. [*Note:* This section appears to make substantive amendments to the statute. However, these apparent substantive amendments reflect current statutory language as of the date of enactment of SB 14 and appear as amendments only to continue the then-effective language beyond the original January 26, 2021, expiration date.] Effective March 31, 2021, the bill returns this section to the version effective before enactment of 2020 Special Session HB 2016, removing the amendments made by 2020 Special Session HB 2016 and this bill;

- Telemedicine;

- Temporary emergency licensure by the State Board of Healing Arts;

- Temporary licensure measures for additional health care providers and provision of certain health care services; and

- Business immunity from liability for a COVID-19 claim.

Closure or Cessation of Business Activity

The bill amends the KEMA statute limiting the Governor's closure or cessation of business activity.

Under previous law, this statute prohibited the Governor from ordering, during any state of disaster emergency, the closure or cessation of any for-profit or nonprofit business or commercial activity for more than 15 days, required the Governor to consult with the State Finance Council prior to issuing such an order, and required approval of six legislative members of the State Finance Council for additional closure or cessation beyond 15 days.

The bill amends these provisions to instead prohibit the Governor, during any state of disaster emergency related to COVID-19, from issuing an order that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business, or commercial activity, whether for-profit or not-for-profit.

The expiration date of this statute is also extended from January 26, 2021, until March 31, 2021.

Reports to Legislative Division of Post Audit; SB 16

SB 16 amends statutes to remove requirements that the following reports and certifications be provided to the Legislative Division of Post Audit, the Post Auditor, or the Legislative Post Audit Committee:

- An audited statement of actual expenditures incurred by a Kansas nonprofit corporation providing legal services to indigent inmates of Kansas correctional institutions;

- A certified summary of the write-off of any accounts receivable or taxes receivable by the Director of Account and Reports;

- An annual audit of corporations who contract with the Board of Regents (Board) or any state educational institution and are substantially controlled by the Board or such institution; and

- An annual report by the Secretary of Revenue regarding tax abatements that reduce final tax liability by $5,000 or more.

[*Note:* These provisions are also enacted in HB 2050.]

COVID-19; Kansas Emergency Management Act; State of Disaster Emergencies; Legislative Coordinating Council; SB 40

SB 40 creates and amends law regarding the Kansas Emergency Management Act (KEMA), state of disaster emergencies, the Legislative Coordinating Council, and the COVID-19 health emergency. The bill became effective March 25, 2021.

Local School Board Actions during COVID-19 State of Disaster Emergency

The bill creates a section of law providing that, during the COVID-19 state of disaster emergency, only the board of education responsible for the maintenance, development, and operation of a school district (local school board) shall have the authority to take any action, issue any order, or adopt any policy made or taken in response to such disaster emergency that affects the operation of any school or attendance center of the school district, including, but not limited to, any action, order, or policy that:

- Closes or has the effect of closing any school or attendance center of such school district;

- Authorizes or requires any form of attendance other than full-time, in-person attendance at a school in the school district, including, but not limited to, hybrid or remote learning; or

- Mandates any action by any students or employees of a school district while on school district property.

Any such action, order, or policy shall only affect the operations of schools under the jurisdiction of the local school board and shall not affect the operation of nonpublic schools.

During any such disaster emergency, the State Board of Education, the Governor, the Department of Health and Environment, a local health officer, a city health officer, or any other state or local unit of government may provide guidance, consultation, or other assistance to the

local school board but may not take any action related to such disaster emergency that affects the operation of any school or attendance center of the school district.

Any meeting or hearing of a local school board discussing an action taken, order issued, or policy adopted shall be open to the public and may be conducted by electronic audio-visual communication when necessary to secure the health and safety of the public, the board, and employees.

Grievance Process for Actions Taken by School Boards; Request for Hearing

The bill provides that an employee, a student, or the parent or guardian of a student aggrieved by an action taken, order issued, or policy adopted by a local school board under the above provisions or by an action of any employee of a school district violating any such action, order, or policy may request a hearing by such board to contest the action within 30 days of the action, and such request shall not stay or enjoin the action, order, or policy.

Upon receipt of a request for a hearing, the local school board must conduct a hearing within 72 hours of receiving such request for the purposes of reviewing, amending, or revoking such action, order, or policy. The board must issue a decision within seven days after the hearing is conducted. The board may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under these provisions, including, but not limited to, rules for consolidation of similar hearings.

The bill allows any party aggrieved by such decision of the local school board to file a civil action, within 30 days after the issuance of the decision, in the district court of the county where the party resides or in Shawnee County District Court.

Notwithstanding any order issued by the Chief Justice regarding deadlines or time limitations during a state of disaster emergency, the bill requires the court to conduct a hearing within 72 hours of receiving a petition in such action. The court must grant the request for relief unless the court finds the action, order, or policy is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to do so.

The bill requires the court to issue an order on such petition within seven days after the hearing. If the court does not do so, the relief requested in the petition shall be granted. Relief under these provisions may not include a stay or injunction concerning the contested action, order, or policy that applies beyond the county in which the petition was filed, and the Supreme Court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing under these provisions, including rules for consolidation of similar hearings.

Community College and Technical College Actions during COVID-19 State of Disaster Emergency

The bill creates a section of law, in substantially similar form to the section on local school boards, regarding the authority of and actions taken by the governing body of a community college or technical college during the COVID-19 state of disaster emergency, with the following adjustments:

- Provisions regarding schools affected by local school board actions and nonpublic schools are not included;

- Some of the entities and officials who may offer guidance, consultation, or other assistance are changed; and

- Parents are not included in those who may request a hearing.

Legislative Coordinating Council Membership

The bill amends the statute establishing the Legislative Coordinating Council (LCC) to add the Vice President of the Senate as a member, increasing the total number of LCC members to eight.

Amendments to KEMA

Responsibilities during State of Disaster Emergency

The bill provides the LCC, instead of the State Finance Council, has the authority to extend a state of disaster emergency beyond the initial 15-day state of disaster emergency period, for specified periods not to exceed 30 days each. The bill requires an affirmative vote of five LCC members for such extension and removes a limit of one such extension.

The bill similarly replaces the State Finance Council with the LCC in extension provisions for a state of disaster emergency regarding domestic animals, plants, raw agricultural commodities, animal feed, or processed food, and changes the vote required from a unanimous vote to an affirmative vote of five LCC members.

The bill amends a specific provision regarding the COVID-19 state of disaster emergency to reflect an extension of the state of disaster emergency in Section 3, to reflect the replacement of the State Finance Council with the LCC in the extension procedure, and to remove a prohibition on such extensions past March 31, 2021.

Ratification and Extension of COVID-19 State of Disaster Emergency; Executive Orders

The bill ratified and continued in existence the COVID-19 state of disaster emergency originally declared by the Governor on March 12, 2020, through May 28, 2021.

The bill amends a prohibition on proclamation of new state of disaster emergencies related to the COVID-19 health emergency during 2020 or 2021 to specify the prohibition includes state of disaster emergencies related in whole or in part to the COVID-19 health emergency, including, but not limited to, any economic, financial, or other crisis caused by such emergency, and to reflect the replacement of the State Finance Council with the LCC in the extension procedure.

The bill states, notwithstanding any other provision of law to the contrary, all executive orders (EOs) issued during the COVID-19 state of disaster emergency would be revoked on

March 31, 2021, and shall be null and void. The bill provides that any new EOs issued during the COVID-19 state of disaster emergency or during a new state of disaster emergency related to the COVID-19 health emergency are subject to revocation by the Legislature or by the LCC, pursuant to procedures provided in the bill.

Powers During State of Disaster Emergency

The bill adds the term "executive" to those orders issued by the Governor under its provisions and replaces the State Finance Council with the LCC in provisions regarding review and revocation of EOs related to state of disaster emergency. The bill requires the chairperson of the LCC to call a meeting of the LCC to occur within 24 hours of the issuance of such EO for purposes of reviewing the order, and allows the LCC, when the Legislature is not in session or is adjourned during session for three or more days, to revoke such EOs with the affirmative vote of five members. This section is amended to reflect the specific limitations placed on EOs related to the COVID-19 state of disaster emergency by the bill.

The bill amends a provision restricting the Governor's power or authority to take certain actions regarding firearms or ammunition during a state of disaster emergency to state the Governor shall not have the power or authority to limit or otherwise restrict the sale, purchase, transfer, ownership, storage, carrying, or transporting of firearms or ammunition, or any component or combination thereof, including any components or combination thereof used in the manufacture of firearms or ammunition, or seize or authorize the seizure of any firearms or ammunition, or any component or combination thereof, except as otherwise permitted by state or federal law.

The bill removes an expired provision regarding restrictions on business operations and movement or gathering of individuals.

The bill allows any party aggrieved by an EO issued under these provisions that has the effect of substantially burdening or inhibiting the gathering or movement of individuals or the operation of any religious, civic, business, or commercial activity (whether for-profit or not-for-profit) to file a civil action, within 30 days after the issuance of the EO, in the district court of the county where the party resides or in Shawnee County District Court. Notwithstanding any order issued by the Chief Justice regarding deadlines or time limitations during a state of disaster emergency, the bill requires the court to conduct a hearing within 72 hours of receiving a petition in such action. The court must grant the request for relief unless the court finds the EO is narrowly tailored to respond to the state of disaster emergency and uses the least restrictive means to do so. The bill requires the court to issue an order on such petition within seven days after the hearing. If the court does not do so, the relief requested in the petition shall be granted. Relief under these provisions may not include a stay or injunction concerning the contested EO that applies beyond the county in which the petition was filed, and the Supreme Court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing under these provisions, including rules for consolidation of similar hearings.

The bill amends provisions regarding the powers of a board of county commissioners to issue an order relating to public health that includes provisions less stringent than a statewide EO to state that such orders shall operate in the county in lieu of the Governor's EO.

Business Activity; Gathering or Movement of Individuals

The bill amends the KEMA section prohibiting the issuance of an order during a COVID-19 state of disaster emergency that substantially burdens or inhibits the gathering or movement of individuals or operation of any religious, civic, business, or commercial activity, to remove the section's expiration date of March 31, 2021, allowing the section to remain effective past that date.

State of Local Disaster Emergency

The bill amends the KEMA section governing states of local disaster emergency to add provisions allowing a party aggrieved by specified actions taken by a local unit of government pursuant to the section to file a civil action in the district court of the county where the action was taken. The parameters and procedures for such action are otherwise be substantially similar to those provided by the bill regarding EOs.

Violations

The bill provides an exception to continuing civil penalties for violations of KEMA or related rules and regulations or lawful orders or proclamations. The exception makes a knowing violation of an executive order issued pursuant to Section 5 that mandates a curfew or prohibits public entry into an area affected by a disaster a class A nonperson misdemeanor.

Kansas Intrastate Emergency Mutual Aid Act

The bill amends the definition of "emergency responder" in the Kansas Intrastate Emergency Mutual Aid Act to include 911 call center public safety telecommunicators and physician assistants.

Revocation of Orders of the Secretary of Health and Environment

The bill amends a statute governing the powers of the Secretary of Health and Environment (Secretary) to provide that, in the event of a state of disaster emergency declared by the Governor or a state of local disaster emergency, the Legislature may revoke, by concurrent resolution, an order issued by the Secretary to take action related to such disaster emergency.

The bill allows the LCC, when the Legislature is not in session or is adjourned during session for three or more days, to revoke such orders with the affirmative vote of five members.

Authority of County Health Board and Local Health Officers

The bill amends a statute governing the powers of the board of county commissioners acting as the county board of health (board) and local health officers (officers) to provide, if an officer determines it is necessary to issue an order mandating the wearing of face masks, limiting the size of gatherings of individuals, curtailing the operation of business, controlling the movement of the population of the county, or limiting religious gatherings, the officer must

propose such order to the board. At the next regularly scheduled meeting of the board or at a special meeting of the board, the board must review the proposed order and may take any action related to the proposed order the board determines is necessary.

The proposed order shall become effective if approved by the board or, if the board is unable to meet, if approved by the chairperson of the board or the vice chairperson of the board in the chairperson's absence or disability.

The bill allows any party aggrieved by an order issued under the above provisions to file a civil action in the district court of the county in which the order was issued. The procedures for such action are substantially similar to those provided elsewhere in the bill regarding EOs and states of local disaster emergency.

Amendment and Repeal of Additional Statutes

The bill amends a statute regarding the State Finance Council to remove a reference to the KEMA statute regarding responsibilities during a state of disaster emergency to reflect the other amendments made by the bill.

The bill repeals a version of the KEMA statute regarding the powers of the Governor during a state of disaster emergency that would have gone into effect on March 31, 2021, and a KEMA section prohibiting closure of schools without the approval of the State Board of Education.

Severability Clause (New Section 14)

The bill provides the provisions of this act are severable and, if any portion of the act or application to any person or circumstance is held unconstitutional or invalid, the invalidity shall not affect other portions of the act that can be given effect without the invalid portion or application, and the applicability of such other portions of the act to any person or circumstance shall remain valid and enforceable.

Public Agency Fee Prohibition; Legislative Division of Post Audit; Sub. for HB 2049

Sub. for HB 2049 amends a statute authorizing the Legislative Post Audit Committee to direct the Post Auditor and Legislative Division of Post Audit (LPA) to audit state agencies and other entities specified in the Legislative Post Audit Act. Specifically, the bill adds a provision prohibiting a public agency that is the subject of an audit pursuant to the statute or any other law from charging a fee for copies of or access to certain records described in the statute.

Legislative Division of Post Audit; State Agency Reports; HB 2050

HB 2050 amends statutes to remove requirements that the following reports and certifications be provided to the Legislative Division of Post Audit, the Post Auditor, or the Legislative Post Audit Committee:

- An audited statement of actual expenditures incurred by a Kansas nonprofit corporation providing legal services to indigent inmates of Kansas correctional institutions;

- A certified summary of the write-off of any accounts receivable or taxes receivable by the Director of Account and Reports;

- An annual audit of corporations that contract with the Board of Regents (Board) or any state educational institution and are substantially controlled by the Board or such institution; and

- An annual report by the Secretary of Revenue regarding tax abatements that reduce final tax liability by $5,000 or more.

[*Note:* These provisions are also enacted in 2021 SB 16.]

Kansas Fights Addiction Act; Safe At Home Program; Charitable Organizations and Solicitation Act; Human Trafficking Notices; HB 2079

HB 2079 creates the Kansas Fights Addiction Act, which addresses the use of funds received from opioid litigation and establishes limits on future opioid litigation by municipalities, amends law to transfer certain duties from the Secretary of State to the Attorney General, and amends law related to notices offering help to victims of human trafficking.

Kansas Fights Addiction Act

New Funds for Abatement of Substance Abuse or Addiction

The bill establishes in the State Treasury the Kansas Fights Addiction Fund (KFA Fund) and the Municipalities Fight Addiction Fund (MFA Fund), administered by the Attorney General. The bill requires the Attorney General to remit to the State Treasurer all moneys received by the State pursuant to opioid litigation in which the Attorney General is involved that is dedicated by the terms of such litigation for the abatement or remediation of substance abuse or addiction.

The bill requires 75 percent of these moneys to be credited to the KFA Fund and 25 percent to be credited to the MFA Fund and specifies how expenditures are to be made from each fund.

The bill also establishes in the State Treasury the Prescription Monitoring Program Fund (PMP Fund), administered by the President of the State Board of Pharmacy (President) or the President's designee.

Kansas Fights Addiction Fund. The bill requires moneys in the KFA Fund to be expended for grants approved by the Kansas Fights Addiction Grant Review Board (Board), as created by the bill, to qualified applicants for projects and activities that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction.

Such grants may not supplant any other source of funding and no moneys from the KFA Fund may be used for litigation costs, expenses, or attorney fees related to opioid litigation. [*Note:* See the section titled "Prescription Monitoring Program Fund" for provisions related to the transfer of moneys from the KFA Fund to the PMP Fund.]

Municipalities Fight Addiction Fund. The bill requires moneys in the MFA Fund to be expended subject to an agreement among the Attorney General, the Kansas Association of Counties (KAC), and the League of Kansas Municipalities (LKM), for projects and activities that prevent, reduce, treat, or mitigate the effects of substance abuse and addiction, or to reimburse a municipality for expenses related to previous substance abuse mitigation or arising from covered conduct, which is defined to include any conduct covered by opioid litigation that resulted in payment of moneys into the KFA Fund. Moneys in the MFA Fund may also be used to reimburse municipalities for payment of litigation costs, expenses, or attorney fees related to opioid litigation, after the municipality has first sought payment from applicable outside settlement sources or settlement fee funds. The bill requires an agreement among the Attorney General, KAC, and LKM to determine the method for disbursing moneys from the MFA Fund. The bill requires that moneys be disbursed to municipalities that have not filed opioid litigation and municipalities that have filed opioid litigation but have entered into an agreement with the Attorney General prior to January 1, 2022, to release the municipality's legal claims arising from covered conduct to the Attorney General and assign any future legal claims arising from covered conduct to the Attorney General.

Prescription Monitoring Program Fund. The bill creates law in the Prescription Monitoring Program Act to establish the PMP Fund and requires all expenditures made from the PMP Fund to be approved by the President or the President's designee and for the purpose of operating the Prescription Monitoring Program (K-TRACS).

Expenditures from the PMP Fund are to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the President or the President's designee. The bill requires, on July 1 of each year or as soon as moneys are available, the Director of Accounts and Reports to transfer $200,000 from the KFA Fund to the PMP Fund, except no transfer is made for any fiscal year if there are insufficient unencumbered moneys in the KFA Fund.

Kansas Fights Addiction Grant Review Board

The bill establishes the Board under the jurisdiction of the Attorney General.

Membership. The bill requires at least one member of the Board to reside in each of Kansas' congressional districts. The Board consists of 11 members with expertise in the prevention, reduction, treatment, or mitigation of the effects of substance abuse and addiction, as follows:

- Two members appointed by the Attorney General, one of whom is designated as chairperson and at least one of whom is appointed by the Behavioral Sciences Regulatory Board;

- One member appointed by the Governor;

- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the Senate;
- One member appointed by the Minority Leader of the House of Representatives;
- One member appointed by LKM;
- One member appointed by KAC;
- One member appointed by the Kansas County and District Attorneys Association; and
- One member appointed by the Association of Community Mental Health Centers of Kansas.

Each member serves at the pleasure of the appointing authority.

Duties and operation. The bill requires the Board to receive and consider applications for grants of money from the KFA Fund and provides a list of five mandatory and three permissive factors to be considered or applied in awarding grants.

The affirmative vote of six members is required to approve a grant. The Board may adopt rules and procedures for its operation, conduct hearings, receive testimony, and gather information to assist in its powers, duties, and functions. Members do not receive compensation or expenses for serving on the Board, are required to file a statement of substantial interest, and are prohibited from participating in the consideration of any grant application for which such member has a conflict of interest.

The bill requires the Attorney General to provide administrative support for the Board and to administer, monitor, and assure compliance with grant conditions, and allows the Attorney General to enter into an agreement with the Sunflower Foundation to provide such support and administration. The bill establishes provisions regarding transfer of moneys, fees, and earnings on moneys that may be included in such agreement. The bill states the Attorney General may take any action necessary to ensure the greatest possible recovery from opioid litigation and to seek funds for the KFA Fund and the MFA Fund.

The bill requires, not later than March 1 of each year, the Board to submit to the Speaker of the House of Representatives, the President of the Senate, the Governor, and the Attorney General a report of the Board's activities during the prior calendar year, including:

- An accounting of moneys deposited into and expended from the KFA Fund;
- A summary of each approved grant, including certain specified details;

- An explanation of how the Board's actions during the year have complied with the bill's requirements; and

- Any other relevant information the Board deems appropriate.

Responsibility for Costs

The bill provides the Attorney General and each municipality is solely responsible for paying all costs, expenses, and attorney fees arising from opioid litigation brought under their respective authorities, including any attorney fees owed to private legal counsel, and may seek payment or reimbursement of such costs, expenses, and attorney fees from moneys not deposited in the KFA Fund.

Limitation on Municipal Litigation

The bill prohibits municipalities, on and after January 1, 2021, from filing or becoming a party to opioid litigation in any court without the prior approval of the Attorney General. The bill requires any municipality that filed opioid litigation on or after January 1, 2021, through the effective date of the Act to withdraw from such litigation, unless the municipality receives approval from the Attorney General to maintain such litigation. The bill specifies these provisions do not apply to or affect any municipality that filed or became a party to opioid litigation in court prior to January 1, 2021.

Definitions

In addition to "covered conduct," the bill defines other relevant terms, including "moneys that are received," "opioid litigation," and "qualified applicant."

Transfer of Duties from the Secretary of State to the Attorney General

Charitable Organizations and Solicitations Act

The bill amends the Charitable Organizations and Solicitations Act (Act) to transfer responsibilities related to registration under the Act from the Secretary of State to the Attorney General. The authority to adopt rules and regulations necessary for administration of the Act is transferred from the Secretary of State to the Attorney General, and all rules and regulations, orders, directives, and standards of the Secretary of State relating to the Act in effect on June 30, 2021, are deemed to be those of the Attorney General and continue to be effective until amended, revoked, or nullified pursuant to law. Similarly, all reciprocal agreements entered into by the Secretary of State relating to the Act in effect on June 30, 2021, are deemed to be entered into by the Attorney General and continue to be effective until amended, revoked, or nullified pursuant to law. The bill creates a new section in the Act transferring legal custody of all records, memoranda, writings, entries, prints, representations, or combinations thereof, of any act, transaction, occurrence, or event relating to the Act from the Secretary of State to the Attorney General.

The bill prohibits a state agency or state official from imposing annual filing or reporting requirements on a private foundation or charitable trust that are more stringent, restrictive, or expansive than the requirements outlined in state and federal law.

The bill increases the charitable organization registration fee from $20 to $25 and adds a registration or renewal fee of $25 for every professional fundraiser and professional solicitor required to register with the Attorney General under the Act. The bill creates in the State Treasury the Charitable Organizations Fee Fund (Fund), to which the Attorney General remits all moneys received pursuant to the Act. The bill states moneys in the Fund are to be used by the Attorney General to carry out the provisions and purposes of the Act, and the bill specifies how moneys are to be credited to the Fund and how expenditures are to be made from the Fund.

The bill amends the State Governmental Ethics Law, in a provision regarding solicitation, to reflect the transfer of duties under the Act.

Safe at Home Program

The bill amends statutes regarding a substitute mailing address program ("Safe at Home" program) for certain victims of domestic violence, sexual assault, human trafficking, or stalking, to transfer responsibility for administering the Safe at Home program from the Secretary of State to the Attorney General. Related rules and regulations authority (except that relating to voting procedures) is transferred, and the bill deems all rules and regulations, orders, directives, and standards of the Secretary of State relating to the Safe at Home program (except for those prescribing voting procedures) in effect on June 30, 2021, to be those of the Attorney General, and they continue to be effective until amended, revoked, or nullified pursuant to law.

Similarly, the bill transfers legal custody of all records, memoranda, writings, entries, prints, representations, or combinations thereof of any act, transaction, occurrence, or event relating to the Safe at Home program (except for those relating to voting procedures) to the Attorney General. The bill adds an exception to the provision prohibiting the making of any records in a Safe at Home program participant's file available for inspection or copying; this exception allows disclosure to the Secretary of State if requested by the Secretary of State for election purposes, in accordance with procedures prescribed by rules and regulations.

Human Trafficking Assistance Notices

The bill amends law related to notices offering help to victims of human trafficking to require a prominent notice of such help be posted in any place required to post notices pursuant to:

- The Kansas Act Against Discrimination;
- The Kansas Age Discrimination in Employment Act;
- Kansas child labor law;
- Employment security law, rules, and regulations; or

- The Workers Compensation Act and adopted rules and regulations related to that Act.

Additionally, the bill requires the notice to be posted in a location visible to members of the public in the following public places:

- Sexually oriented businesses, as defined in continuing law as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center;

- Massage parlors;

- Health care facilities;

- Convenience stores and truck stops; and

- Rest areas and visitors centers under supervision or control of the State.

The bill requires the Attorney General to adopt rules and regulations prescribing the content, size, and other characteristics of such notice. The bill also removes from the notice requirement specific content regarding the required National Human Trafficking Hotline information.

State Employees Health Care Commission—Membership, Role, and Reporting Changes; HB 2218

HB 2218 amends law governing the implementation and administration of the State Health Care Benefits Program (State Employee Health Plan [SEHP]) by adding provisions regarding the role of the State Employees Health Care Commission (Commission), modifying the membership requirements of the Commission, and specifying additional reporting information to be provided by the Commission to the Legislature.

Role of Commission

The bill adds to language directing the Commission to develop and provide for the implementation and administration of the SEHP, stating the Commission shall balance meeting the health care needs of state employees at an affordable cost to the employees with the final impact on the State.

Commission Membership Changes

The bill changes the requirements of two of the members appointed by the Governor to the Commission in the following manner:

- One member is a state employee who is currently enrolled in the SEHP group health insurance medical plan;
    - Under prior law, this member was a state employee in the classified service under the Kansas Civil Service Act. There is no requirement regarding health plan participation; and
- One member is a retired state employee who is currently enrolled in the SEHP group health insurance medical plan;
    - Under prior law, this member was a person who retired from a position in the classified service under the Kansas Civil Service Act. There is no requirement regarding health plan participation.

Additional Members

The bill expands the Commission from five to seven members, by adding:

- One member of the Senate Committee on Ways and Means, appointed by, and to serve at the pleasure of, the President of the Senate; and
- One member of the House Committee on Appropriations, appointed by, and to serve at the pleasure of, the Speaker of the House.

Under the bill, the Commission is composed of seven members; its other members, under continuing law, are the state employee and the retiree described above, the Commissioner of Insurance, the Secretary of Administration, and a representative of the general public who is appointed by the Governor.

Reporting by the Commission to the Legislature

The bill amends the statutory reporting requirements for the Commission to include a report on the current and projected reserve balance. For any reserve balance over 10.0 percent of average plan expenses for the three immediately preceding plan years, the Commission is required to provide recommendations for reducing reserves by minimizing increases to employee contributions or cost-sharing requirements.

Service of Process; Secretary of State; HB 2298

HB 2298 amends law related to the Secretary of State (Secretary) and service of process, as follows.

Service of Process against Nonresidents in Cases Arising from Motor Vehicle Accidents or Collisions

The bill clarifies the requirements for service of process on nonresident drivers or their representatives through the Secretary. Prior law provided that nonresident drivers or their representatives are deemed to accept the Secretary as their agent for service of process arising

from any accident or collision that occurs while operating a vehicle in Kansas and requires a notice to be delivered to the defendant by registered mail or personally outside of the state by a sheriff or deputy sheriff in such state.

The bill provides that a plaintiff may serve a defendant by paying a fee to the Secretary and providing to the Secretary a copy of the summons, petition, and order, and the last known address, residence, or place of abode for each defendant. The Secretary is directed to immediately mail a notice of service and copy of the summons, petition, and order to each defendant by return receipt delivery. The bill requires the notice of service to be signed, dated, and using language substantially in the form specified by the bill.

The bill allows a plaintiff, upon written notification to the Secretary, to personally serve a defendant in a foreign state by an adult person not party to the suit or an officer duly qualified to serve legal process in the state or jurisdiction where the defendant is found, by delivering the appropriate documents, or offering to make such delivery, in the case of refused delivery, on a defendant. The plaintiff is required to provide the Secretary with a copy of the notice of service, summons, petition, and order provided to the defendant. The process server is required to file an affidavit, declaration, or any other competent proof, stating the time, manner, and place of service on or before the return day of process or within a further time the court may allow.

The Secretary is required to keep a record of all process served upon the office pursuant to the bill, showing the day of service of each process.

Compliance with these provisions constitutes sufficient service on the defendant.

Service of Process on Limited Liability Partnerships

The bill clarifies a domestic limited liability partnership or foreign limited liability partnership authorizes the Secretary, as each entity's agent, to accept service of process on the entity's behalf.

Office of the Secretary of State Business Filings and Publication Requirements; HB 2391

HB 2391 amends law related to the Office of the Secretary of State.

The bill revises and updates certain provisions pertaining to business and other related filings and repeals obsolete laws.

The bill also amends publication requirements for the Office of the Secretary of State. Specifically, the bill amends or removes provisions concerning publication requirements for the *Session Laws of Kansas* (*Session Laws*), *Kansas Administrative Regulations*, *Kansas Register*, and *Kansas Statutes Annotated*. The bill also permits the Secretary of State (Secretary) in fulfilling public printing requirements to utilize the Division of Printing or to contract for outside services in accordance with applicable laws for state agencies and removes the current requirement for cost-recovery fees associated with the distribution of printed materials to be set by adoption of rules and regulations.

Business Filings

Beginning in 2023, the bill will require each business entity to file a biennial business entity information report, instead of an annual report, with the Secretary. The current annual report fee of $40 will be replaced by a fee of $80 for each biennial report.

Business entities formed in even-numbered years will be required to file reports in even-numbered years, and business entities formed in odd-numbered years will be required to file reports in odd-numbered years, except the bill will allow reports for multiple limited liability entities, regardless of when the entities were formed, to be filed at one time, as long as each report is filed in the first year the biennial report is due and in odd-numbered years thereafter.

The bill allows for business filings with the Secretary to be signed *via* electronic signature.

The bill eliminates various obsolete references to previously repealed statutes related to business filings.

Blanket Music Licenses

The bill repeals statutes requiring blanket music licenses and related documents to be filed with the Secretary and providing for service of process upon the Secretary in any legal action related to blanket music licenses.

Street Address Definition

The bill defines “street address” within the Kansas Uniform Partnership Act to be the location including the number, street, city, and postal code.

Social Security Number Redaction

The bill provides an exception to law requiring social security numbers to be redacted from certain filed documents if the social security number was improperly placed on a form or included in an attachment to the form by the individual filing the document. Continuing law requires the Secretary to use the administrative rule and regulation process to set the costs of the *Session Laws*. Prior law specified such costs are to be set to recover the costs of printing, binding, and storing the volumes; the bill provides such costs are to recover the costs of publishing and storing the volumes.

Office of the Secretary of State Publications

Kansas Session Laws

Continuing law requires printed copies of the *Session Laws* to be distributed to certain Kansas officials. The bill modifies this requirement to be only upon request.

The bill requires the Secretary to fix the per volume price for copies of the *Session Laws* to recover the costs of publishing and storing such volumes, whether published in print or electronic form.

Continuing law requires the Secretary to use the administrative rule and regulation process to set the costs of the *Session Laws*; former law specified such costs are to be set to recover the costs of printing, binding, and storing the volumes (rather than publishing and storing as provided in this bill).

The bill requires that, after the *sine die* adjournment of each legislative session, the State Printer and the Secretary complete preparation and printing for at least a limited number of each volume of the *Session Laws*. Prior law required the Secretary to furnish a copy of all acts, resolutions, and other matters, except the index, required to be published and bound in the *Session Laws* within a certain time after the *sine die* adjournment of the Legislature (20 days in odd-numbered years, 40 days in even-numbered years).

Kansas Administrative Regulations

The bill removes the requirement that the Secretary include the time of filing as part of the agency's endorsement of each rule and regulation filed with the agency as part of the process of approving administrative rules and regulations. A requirement that the date of filing be noted as part of the Secretary's endorsement of such rules and regulations remains in continuing law.

The bill requires the Secretary to fix the per volume price for copies, replacement volumes, and annual supplements of the *Kansas Administrative Regulations* to recover the costs of publishing and storing such volumes, whether published in print or electronic form. Prior law required the Secretary to use the administrative rule and regulation process to set the costs of *Kansas Administrative Regulations* and specified such costs were to be set to recover the costs of publishing the volumes (rather than publishing and storing as provided in this bill).

Kansas Register

The bill specifies that, in reference to the publication of all acts of the Legislature that take effect upon publication of the *Kansas Register*, publication of the *Kansas Register* could be in print or electronic format. In reference to publication requirements for legislative resolutions making propositions to amend the *Kansas Constitution*, the bill requires the Secretary to publish such resolutions in one newspaper in each county of the state where a newspaper is published, or, if no newspaper is published in a county, then in a Kansas-published newspaper of general circulation in each county once a week for three consecutive weeks immediately preceding the election.

Prior law required such resolutions be published in one newspaper in each county of the state where a newspaper is published once a week for three weeks immediately preceding the election.

The bill also requires that after such publication, the Secretary certify the amount of moneys expended on the publications described above and transmit a copy of such certification to the Director of Accounts and Reports. Upon receiving this certification, the Director of Accounts and Reports must transfer an amount of moneys equal to the certification from the

State General Fund to the Information Services Fee Fund of the Secretary, and send notification of such transfer to the Director of Legislative Research and the Director of the Budget.

The bill also removes requirements that the *Kansas Register* include descriptions of all prefiled bills and resolutions, as well as the hearings docket of the Kansas Supreme Court and Court of Appeals.

The bill allows the Secretary to sell annual subscriptions to the *Kansas Register* and fix, charge, and collect subscription fees from subscribers. Prior law required the Secretary to offer such subscriptions and required the Secretary to fix, charge, and collect such subscription fees.

The bill also replaces references to "issues of the *Kansas Register*" with the term "publication of the *Kansas Register*." Similarly, references to "copies of the *Kansas Register*" (including paper copies) would be replaced by the term "subscriptions to the *Kansas Register*" throughout statute.

Concerning requirements that each state agency must maintain and publish an index of currently effective guidance documents, the bill removes a requirement that agencies must file such index in a manner prescribed by the Secretary.

Kansas Statutes Annotated

Prior law required two complete sets of the *Kansas Statutes Annotated* to be distributed to each member of the Legislature at each legislative session, with the name of the member printed on one of the copies. The bill modifies this to require that only new members receive one complete set, with their name printed on it only if requested.

Disapproval of ERO 47, Merging Certain Agencies; HR 6009

HR 6009 disapproves Executive Reorganization Order (ERO) No. 47, which was issued by the Governor on January 26, 2021. The *Kansas Constitution* provides a disapproved ERO will not take effect.

ERO 47 would have renamed the Department for Children and Families (DCF) as the Kansas Department of Human Services (DHS) and transferred all jurisdiction, powers, functions, and duties for the Kansas Department for Aging and Disability Services (KDADS) to DHS, effective July 1, 2021. Under this merger, all jurisdiction, powers, functions, and duties from DCF and KDADS, as well as all the jurisdiction, powers, functions, and duties for which these agencies are serving as the operating agency or grants manager for another agency, would have been imposed upon DHS and the Secretary of Human Services.

The ERO stated whenever the secretaries of, or names of, these agencies, or predecessor agencies—the Department of Social and Rehabilitation Services or the Department of Aging—are referred to or designated by any statute, rule and regulation, contract, or other document, such reference should be deemed to apply to DHS.

The ERO further stated DHS would be the successor to the powers, duties, and functions of these agencies, and any potential remaining rights, titles, or interest belonging to the Department of Social and Rehabilitation Services or Department of Aging in real property. Actions performed by DHS would have had the same force and effect as if performed by the

above entities, in which the same powers, duties, and functions were vested prior to July 1, 2021.

Under this merger, the rule and regulation authority, fees, funds, grant funds, advisory group funds, loan repayment funds, account balances, property and property rights, liability, and liability for accrued compensation of salaries of personnel, including officers and employees of both DCF and KDADS, would have been located within DHS.

Property Tax; SB 13

SB 13 repeals the property tax lid law applicable to cities and counties and certain budget requirements applicable to other municipalities, establishes notice and public hearing requirements for certain taxing subdivisions seeking to collect property taxes in excess of the subdivision's revenue-neutral rate, prohibits valuation increases resulting solely from normal maintenance of existing structures, and expands the allowed acceptance of partial payments or payment plans for property taxes.

Tax Lid Repeal

The bill eliminates, effective January 1, 2021, the property tax lid that had required a public vote for certain property tax increases by cities and counties. The bill also eliminates a requirement that municipalities, other than cities and counties, that levy at least $1,000 in property taxes not approve any budget that includes revenue produced by property taxes in excess of the amount produced the preceding year without first publishing notice in the official county newspaper where the municipality is located of the budget and the scheduled vote thereon.

Notice and Public Hearing Requirements

The bill establishes new notification and public hearing requirements for all taxing subdivisions seeking to increase property taxes above those provided for by their "revenue-neutral rate." A taxing subdivision is prohibited from levying taxes exceeding its revenue-neutral rate without first approving a resolution or ordinance in accordance with the procedure provided by the bill.

The bill requires county clerks to notify taxing subdivisions of their revenue-neutral rate by June 15. "Revenue-neutral rate" means the tax rate for the current tax year that would generate the same amount of property tax revenue as levied the previous tax year, using the current tax year's total assessed valuation.

Governing bodies of taxing subdivisions are required to publish notice of their intent to exceed the revenue-neutral rate. The bill requires the notice to include the date, time, and location of a public hearing on the resolution or ordinance providing for the levy. The bill requires publication on such governing body's website at least ten days in advance of the hearing and in a weekly or daily newspaper that has general circulation within the county. Taxing subdivisions are required to notify county clerks by July 15 of their intent to exceed the revenue-neutral rate, including information concerning the hearing.

Beginning in tax year 2022, county clerks are required to mail notification of the intent of the taxing subdivision to each taxpayer with property within the taxing subdivision at least ten days in advance of the public hearing. County clerks are required to consolidate the information for all taxing subdivisions relevant to each piece of property on one notice. Notifications may be sent by electronic means with the consent of the taxpayer.

The bill creates the Taxpayer Notification Costs Fund in the State Treasury and provides, for calendar years 2022 and 2023, for any printing and postage costs incurred by county clerks

to be reimbursed by that fund. County clerks are required to notify the Secretary of Revenue of such costs, and the Secretary will certify such amounts to the Director of Accounts and Reports, who will then be required to transfer an equal amount of money from the State General Fund to the Taxpayer Notification Costs Fund.

Any printing and postage costs incurred by county clerks for required notices that are not reimbursed from the Taxpayer Notification Costs Fund will be borne by the taxing subdivisions proposing to exceed their revenue-neutral rates in proportion to the total property tax levied by the subdivisions.

The bill requires the notifications to contain:

- The revenue-neutral rate for each relevant taxing subdivision;
- The proposed tax rate and amount of tax revenue to be levied by each taxing subdivision seeking to exceed its revenue-neutral rate;
- The tax rate and amount of tax from each taxing subdivision for the property from the previous year's tax statement;
- The appraised value and assessed value for the taxpayer's property for the current year;
- The estimated amount of tax for the current year for each subdivision based on the revenue-neutral rate and any tax rate in excess of the revenue-neutral rate and the difference between such amounts for any taxing subdivision seeking to exceed its revenue-neutral rate;
- The date, time, and location of the public hearing for each taxing subdivision seeking to exceed its revenue-neutral rate; and
- Information concerning statutory mill levies imposed by the State of Kansas.

The bill requires the hearing on the resolution or ordinance providing for a taxing subdivision to exceed its revenue-neutral rate to be held by September 10 and to include an opportunity for interested taxpayers to present testimony within reasonable limits and without unreasonable restrictions on the number of individuals allowed to comment. The governing body of each taxing subdivision is required to approve exceeding the revenue-neutral rate by a majority vote at the public hearing. [*Note:* Senate Sub. for HB 2104 modifies certain dates related to these notice and hearing provisions.]

Taxing subdivisions failing to comply with the notice and hearing procedures are required to refund any property taxes collected in excess of the revenue-neutral rate.

The bill requires information regarding the revenue-neutral rate and taxing subdivision's decision to levy taxes in excess of the rate to be published in the taxing subdivision's annual budget form prescribed by the Division of Accounts and Reports.

Prohibited Valuation Increases

The bill prohibits an increase in the appraised value of real property solely as a result of normal repair, replacement, or maintenance of existing structures, equipment, or other improvements on the property.

Partial Payments and Payment Plans

The bill authorizes county treasurers to accept partial payments and establish payment plans for all property taxes. Former law allowed county treasurers to accept partial payments for delinquent property taxes.

Cherokee County Sales Tax Authority; SB 21

SB 21 retroactively ratifies the results of a November 2020 election in Cherokee County that would impose a 0.5 percent retail sales tax for the purpose of financing ambulance services, renovation and maintenance of county buildings and facilities, or other projects within the county approved by the governing body of Cherokee County. The bill provides that the entire proceeds of the tax will be retained by the county and will not be subject to apportionment to other municipalities. The bill requires the tax to terminate prior to January 1, 2033.

Income Tax Modifications; Taxpayer Protection Act; Income Tax Credits; Rural Opportunity Zones; SB 47

SB 47 creates and modifies law related to income tax.

Kansas Taxpayer Protection Act

The bill enacts the Kansas Taxpayer Protection Act (Act), requiring on and after January 1, 2022, paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so subjects the preparer to a civil penalty of $50 per return with a maximum of $25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected are to be deposited in the State General Fund.

The bill authorizes the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has:

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;

- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;

- Failed to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;

- Negotiated a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;

- Engaged in any conduct subject to any criminal penalty provided for in Chapter 79 of the *Kansas Statutes Annotated* [Taxation] or amendments thereto;

- Misrepresented the preparer's education, experience, or eligibility to practice tax preparation;

- Guaranteed the payment of any tax refund or the allowance of any tax credit; or

- Engaged in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill allows the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing the injunctions, and the Secretary is required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

Further, the bill provides that any person, whether or not a resident of Kansas, who engages in any conduct that could give rise to a cause of action under the Act, submits to the jurisdiction of the courts of the State of Kansas for purposes of the injunctions.

The bill requires legal actions under the Act to be brought in the district court of Shawnee County. The Secretary is permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

The bill authorizes the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Act.

The Taxpayer Protection Act takes effect January 1, 2022.

Tax Credits for Contributions to the Eisenhower Foundation and the Friends of Cedar Crest Association

The bill authorizes, for tax years 2021 to 2025, nonrefundable income or financial institutions privilege tax credits equivalent to 50.0 percent of certain contributions to the Eisenhower Foundation. Credits are capped at $25,000 for any individual income taxpayer and at $50,000 for any corporation income or privilege taxpayer. The total amount of credits claimed in any fiscal year is limited to $350,000.

The bill authorizes an identical credit for contributions to the Friends of Cedar Crest Association, with identical conditions, limits, and total annual credit amounts.

Single City Port Authority Tax Credit

The bill extends the sunset on the single city port authority tax credit from the end of tax year 2021 to the end of tax year 2024 and expands the credit to be available to all income taxpayers. Former law limited the credit to corporation income taxpayers.

Fraudulent Compensation

The bill clarifies that victims of identify theft do not owe Kansas individual income tax on any compensation that was fraudulently obtained by another individual. It requires the Kansas Department of Revenue to provide a method for any taxpayer to report whether the taxpayer was a victim of fraud and the amount of fraudulent income for the taxpayer reported to the Internal Revenue Service.

Income Tax Returns

The bill extends the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill also provides that no late-filing penalty will be assessed on taxpayers filing state corporation income tax returns when the return is filed within 30 days after having received extensions to file federal returns by the Internal Revenue Service.

For all taxpayer returns other than corporate returns, the bill provides for filing deadlines to be the due date established by the federal Internal Revenue Code, including any applicable extensions granted by the Internal Revenue Service.

The provisions of the bill are applicable to returns for tax year 2020 and all future years.

Income Tax Withholding

The bill provides that, for calendar years 2021 and 2022, for wages paid to employees temporarily teleworking in a state other than their primary work location, employers have the option to withhold income taxes based on the state of each employee's primary work location instead of the state in which the employee is teleworking.

Rural Opportunity Zones Modifications

The bill extends the sunset on the Rural Opportunity Zone (ROZ) Student Loan Repayment Program from July 1, 2021, to July 1, 2023. The bill also extends the sunset on the income tax credit two years through tax year 2023 and also extends reporting requirements for the Secretary of Commerce from January 1, 2022, to January 1, 2024.

The bill changes the definition of "rural opportunity zone" from any of 77 listed counties to any county with a population less than or equal to 40,000.

Marketplace Facilitators and Income Tax Deductions and Exemptions; SB 50

SB 50 requires the collection and remittance of certain taxes by marketplace facilitators. The bill also amends income tax law regarding fraudulent unemployment benefits, itemized and standard deductions, business income related to 2017 federal legislation, corporation return filing, net operating losses, and the business expensing deduction.

Marketplace Facilitators Tax Collection and Remittance

The bill requires the collection and remittance of sales and compensating use tax by most marketplace facilitators beginning July 1, 2021. Such entities with annual gross receipts from sales sourced into Kansas in excess of $100,000 are subject to the requirement, which also applies to out-of-state retailers with annual receipts from sales sourced into Kansas exceeding $100,000.

The bill requires marketplace facilitators that reach the $100,000 threshold for the first time in the current calendar year to collect and remit the tax on cumulative gross receipts from sales into the state in excess of $100,000 during the current calendar year.

The bill defines “marketplace facilitators” to include entities that contract with sellers to facilitate the sale of products or lodgings through a physical or electronic marketplace operated, owned, or otherwise controlled by the entity and either directly or indirectly collect the payment from the purchaser and transmit all or part of the payment to the seller. The definition excludes platforms that exclusively provide advertising services, principally provide payment processing, or are a certain type of commodity futures trading organization.

The bill authorizes the Department of Revenue (KDOR) to waive the obligation of a marketplace facilitator to collect and remit taxes upon a showing by the marketplace facilitator that substantially all of its marketplace sellers are already collecting and remitting all applicable taxes. The bill also allows marketplace facilitators to contract with marketplace sellers with at least $1.0 billion of annual gross sales in the United States to require the marketplace seller to collect and remit all applicable taxes and fees.

The bill further clarifies that, in addition to state and local sales and use tax, marketplace facilitators also are responsible for collecting and remitting local transient guest taxes beginning July 1, 2021, and certain prepaid wireless 911 fees beginning April 1, 2022.

KDOR is authorized to require marketplace facilitators to provide any information necessary to assure implementation of the bill’s provisions, including the documentation of sales.

The Director of Taxation, KDOR, is required to remove the line for reporting compensating use tax from individual income tax returns beginning January 1, 2022.

The Secretary of Revenue is required to adopt any rules and regulations for purposes outlined in the bill.

The bill repeals the “click-through” nexus provisions for affiliated persons related to sales and use tax collections.

Fraudulent Unemployment Benefits

The bill clarifies that victims of identify theft do not owe Kansas individual income tax on unemployment compensation that was fraudulently obtained by another individual.

Itemized Deductions

Beginning in tax year 2021, the bill provides individual income taxpayers the option to take Kansas itemized deductions regardless of whether deductions are itemized or the standard deduction is claimed for federal income tax purposes.

Standard Deductions

The bill, beginning in tax year 2021, increases the standard deduction amounts to $3,500 for single filers, $6,000 for single head-of-household filers, and $8,000 for married filers filing jointly. These amounts had been set at $3,000, $5,500, and $7,500, respectively.

Business Income

Global Intangible Low Tax Income (GILTI)

The bill provides, beginning in tax year 2021, a subtraction modification exempting GILTI, as defined in section 951A of the federal Internal Revenue Code (IRC), before any deductions allowed under section 250(a)(1)(B) of the IRC.

Business Interest

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain business interest, to the extent such business interest is currently disallowed as a deduction pursuant to the IRC but was deductible under the IRC as in effect on December 31, 2017.

Capital Contributions

The bill, beginning in tax year 2021, specifies for Kansas corporation income tax purposes that the exemption from federal taxable income for capital contributions shall be the exemption as it existed in section 118 of the IRC as in effect on December 31, 2017.

Federal Deposit Insurance Corporation Premiums

The bill provides, beginning in tax year 2021, a subtraction modification for the amount disallowed as a deduction by section 162(r) of the IRC, as in effect on January 1, 2018, for Federal Deposit Insurance Corporation (FDIC) premiums paid by the taxpayer.

Business Meal Expenses

The bill provides, beginning in tax year 2021, a subtraction modification exempting certain meal expenditures, to the extent such expenditures are currently disallowed as a deduction pursuant to the IRC but were deductible under the IRC as in effect on December 31, 2017.

Expensing Deduction

The bill allows individual income taxpayers to claim the expensing deduction (provided by KSA 79-32,143(a)) for the costs of placing certain tangible property and computer software into service in the state beginning in tax year 2021. A second change, also effective with tax year 2021, requires all taxpayers claiming the Kansas expensing deduction to offset the amount of federal expensing deduction claimed pursuant to Section 179 of the IRC.

Corporation Income Tax Return Filing Deadline

The bill extends the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill also provides that no late-filing penalty will be assessed on taxpayers filing state corporation income tax returns when the return is filed within one month after the taxpayer has received an extension to file a federal return by the Internal Revenue Service.

The provisions of this section are applicable to returns for tax year 2020 and all future years.

Net Operating Loss Carry Forward Extension

The bill allows Kansas income taxpayers to carry forward net operating losses indefinitely, beginning with such losses incurred in tax year 2018. Former law provided for net operating losses to be carried forward for ten years.

Property Tax Administration; Senate Sub. for HB 2104

Senate Sub. for HB 2104 amends law related to the list of eligible county appraisers, the qualifications of county and district appraisers, appraisal standards, Board of Tax Appeals (BOTA) administration and membership, property valuation appeals, judicial review of property tax disputes, and school district budget certification.

List of Eligible County Appraisers

The bill requires the Department of Revenue's Director of Property Valuation (Director) to provide notice to certain persons and provide an opportunity for a hearing under the Kansas Administrative Procedure Act (KAPA) prior to removing their names from the eligibility list for the office of county appraiser for certain acts or omissions.

The bill also requires county commissions to notify the Director when persons no longer hold the office of county appraiser, except upon expiration of a four-year term, and include the

reason for separation from employment unless otherwise precluded by law from doing so. The Director subsequently is required to make notations on eligibility list records of such persons.

Appraisal Standards

The bill removes the authority of the Director to adopt rules and regulations concerning appropriate standards for the performance of appraisals for property taxation. [*Note:* Continuing law requires the Director to adopt appraiser directives on the same topic.]

The bill requires appraisals to be performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). The Director is permitted to require compliance with additional standards only to the extent these standards do not conflict with USPAP.

BOTA Administration

The bill changes the time in which aggrieved parties may request a full and complete opinion from BOTA from 14 days following the receipt of a summary decision from BOTA to 21 days following service of a summary decision from BOTA. "Service" is defined according to KAPA.

The bill requires BOTA to serve orders and notices *via* electronic means to parties and their attorneys who have requested and consented to electronic service. Any service by electronic means is deemed complete upon transmission.

Property Valuation Appeals

The bill prohibits BOTA or a county appraiser from increasing the appraised valuation of property as a result of an appeal of the valuation of the property or an informal meeting concerning the property in question.

Judicial Review

Continuing law allows, at the election of a taxpayer, any summary decision or full and complete opinion of BOTA issued after June 30, 2014, to be appealed by filing a petition for review in district court. Any appeal to the district court must be a trial *de novo* that includes an evidentiary hearing where issues of law and fact are determined anew.

The bill provides, with regard to any BOTA decision or opinion properly submitted to the district court relating to the determination of valuation of residential or commercial and industrial real property or the classification of property for assessment purposes, county appraisers have the duty to initiate the production of evidence to demonstrate by a preponderance of evidence the validity and correctness of such determination.

BOTA Membership

The bill extends the time beyond which a member of BOTA may continue to serve after the expiration of the member's term, absent the appointment and confirmation of a successor, from 90 to 180 days.

The bill also provides, when more than one vacancy on BOTA exists, the Governor may appoint a former member of BOTA who remains in good standing to serve as a member *pro tempore* of BOTA for a period of up to one year. The member *pro tempore* is permitted to exercise any power, duty, or function of a member of BOTA; serves at the pleasure of the Governor; and receives prorated compensation of the annual salary of members of BOTA. The bill sunsets the *pro tempore* membership provisions on June 30, 2023.

Appraiser and BOTA Member Qualifications

The bill eliminates a provision providing that a person may be qualified for the position of county or district appraiser by holding a valid residential evaluation specialist or certified assessment evaluation designation from the International Association of Assessing Officers.

The bill requires any continuing education courses required of appraisers for retaining their status on the list of eligible appraisers that are not offered by the Property Valuation Division, Department of Revenue, to be courses approved by the Real Estate Appraisal Board.

On and after July 1, 2022, the bill requires courses necessary to qualify for a registered mass appraiser designation and subsequent continuing education courses to be approved by the Real Estate Appraisal Board.

The bill requires mandatory courses for members of BOTA that are not otherwise state-certified general real property appraisers to be approved by the Real Estate Appraisal Board.

Revenue-neutral Rate Notice and Hearing Date Changes

The bill modifies several dates enacted in 2021 SB 13. The bill changes the earliest possible date for a taxing subdivision to consider exceeding the revenue-neutral rate from August 10 to August 20 and the latest possible date for such hearing from September 10 to September 20. The bill changes the date by which taxing subdivisions required to conduct a public hearing to exceed the revenue-neutral rate must certify the amount of property tax to be levied from September 20 to October 1.

School District Budget Certification

The bill allows school districts required to hold a hearing for exceeding the district's revenue-neutral rate pursuant to the provisions of 2021 SB 13 to certify their budgets to the State Board of Education as late as September 20. Former law required all school districts to certify their budgets to the State Board of Education by August 25, which remains the applicable certification date for school districts not required to hold a hearing for exceeding the district's revenue-neutral rate.

Sales Tax—Motor Vehicle Rebates, Exemptions for Community Care Organizations, and Retailers Sales Tax Returns and Payment; HB 2143

HB 2143 modifies law related to sales tax.

Motor Vehicle Rebate Sales Price Exclusion Sunset Extension

The bill extends the sunset on an exclusion from sales tax of cash rebates granted by manufacturers to purchasers or lessees of new motor vehicles if such rebates are paid directly to retailers, from June 30, 2021, to June 30, 2024.

Sales Tax Exemptions

The bill exempts the Cerebral Palsy Research Foundation of Kansas and Multi Community Diversified Services from paying sales tax on purchases related to the building, maintenance, and enlargement of facilities used to house non-students of the institutions.

The bill provides a sales tax exemption for purchases made by nonprofit integrated community care organizations, as defined by the bill. "Nonprofit integrated community care organization" is defined as any entity that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, certified to participate in the Medicare program as a hospice focused on providing care to the aging and indigent population across multiple counties, and approved by the Kansas Department for Aging and Disability Services to provide services under the Program of All-Inclusive Care for the Elderly.

The bill also provides a sales tax exemption for the Friends of Hospice of Jefferson County for purchases made for the purposes of providing end-of-life hospice care and on all sales of entry or participation fees, charges, or tickets for the fundraising event of the organization.

Retailers Sales Tax Returns and Payment

The bill increases, as of January 1, 2024, the threshold filing amounts for retailers to submit sales taxes to the Kansas Department of Revenue. The bill increases the threshold amount from $400 to $1,000 for annual filings and from $4,000 to $5,000 for quarterly filings. Retailers with annual liability exceeding $5,000 are required to file and remit sales tax on a monthly basis. The liability threshold for retailers required to pay the sales tax liability for the first 15 days of each month on the 25th day of that month is increased from $40,000 to $50,000.

The provisions relating to sales tax returns and payments are effective beginning January 1, 2024.

Property Tax—Various Provisions; Senate Sub. for HB 2313

Senate Sub. for HB 2313 provides for property tax reimbursements in the event of shutdowns or restrictions due to disaster emergency declarations, extends the 20-mill statewide school finance levy, expands the motor vehicle property tax exemption for National Guard members, modifies *pro tempore* membership provisions for the State Board of Tax Appeals (BOTA), and requires the Legislative Division of Post Audit to study the impact of governmental and nonprofit organizations competing with for-profit businesses.

Disaster Emergency Declarations Property Tax Reimbursements

Beginning January 1, 2022, the bill provides for reimbursements from the county general fund to the owner of any building maintaining a business on the property that is shut down or limited in any capacity pursuant to a declared disaster emergency. The reimbursement is to be 1/365 of the amount of taxes levied for every day the business is shut down and 1/365 the amount of taxes levied multiplied by the percentage restricted for every day the business is required to restrict operations. "Restricted" means any occupancy limitation, limitation on periods of operation, or the exertion by any governmental entity of other significant control on business resources or functionality.

If the State or any political subdivision of the State, other than the county, issued the order shutting down or restricting the business, such governmental entity is required to reimburse the county for the cost of the reimbursement. If the business on the property is not operated by the owner of the property, the property owner and the business operator are each entitled to 50 percent of the reimbursement. The business operator is permitted to assign the operator's share to the property owner as credit against any delinquent rent owed to the property owner.

Statewide School Finance Tax Levy

The bill re-authorizes the 20-mill property tax levy for school years 2021-2022 and 2022-2023. The bill continues the exemption of residential property up to $20,000 of its appraised valuation from the 20-mill property tax levy for taxable years 2021 and 2022.

National Guard Motor Vehicle Property Tax Exemption

The bill extends a vehicle property tax exemption for up to two motor vehicles to all current members in good standing of the Kansas Army National Guard, Kansas Air National Guard, or U.S. military reserve forces stationed in Kansas, beginning in tax year 2022. Under the law, members of the Kansas Army National Guard, Kansas Air National Guard, or Kansas reserve forces of the U.S. military receive the exemption only when stationed or assigned in Kansas under authority of Title 10 or 32 of the U.S. Code.

Board of Tax Appeals Pro Tempore *Membership*

The bill provides a *pro tempore* member of BOTA may be appointed when there is any vacancy on the Board, rather than two vacancies prior to the appointment of a *pro tempore* member.

Legislative Division of Post Audit Study

The bill requires the Legislative Post Audit Committee to direct the Legislative Division of Post Audit to conduct a study of the impact of nonprofit organizations and governmental entities competing against for-profit businesses during calendar year 2021 and submit a final study report to the Legislature on or before January 15, 2022.

Updating Kansas Corporation Commission Motor Carrier Regulation; House Sub. for SB 26

House Sub. for SB 26 updates statutes related to the regulatory authority of the Kansas Corporation Commission (KCC) with regard to motor carriers.

The bill updates provisions related to procedures to be used by the KCC in the following ways:

- Authorizes orders and decisions of the KCC to be served on motor carriers by electronic mail (email) if authorized by the motor carrier or by first class mail, rather than only by first class mail, except certain orders related to show-cause proceedings (which, under continuing law, must be served by certified mail). A motor carrier could revoke the authorization to receive orders and decisions *via* email; the bill then requires the KCC to serve any subsequent orders or decisions by mail;

- Removes requirements for the KCC to prescribe a uniform system and class of accounts and to require certain reports;

- Removes requirements for the KCC to require annual and other reports from private motor carriers of property;

- Removes requirements for a hearing upon the filing of an application for a certificate of convenience and necessity;

- Removes references to a 30-day interim certificate of public service (no longer in current use) and a protest procedure related to a certificate of public service;

- Provides an opportunity for a hearing upon denial of a certificate to be conducted in accordance with the Kansas Administrative Procedure Act;

- Removes references to requirements for cargo insurance no longer required by the KCC; and

- Removes authority related to certain vehicles used by motor carriers temporarily within the state.

The bill clarifies motor carriers are subject to state regulation to the extent not preempted by federal law.

The bill clarifies the KCC shall establish rate-making procedures for all holders of a certificate of convenience and necessity, rather than for all motor common carriers.

The bill removes terms not in current use in the statutes, such as “local cartage carrier,” “State Property Valuation Department,” “Port of Entry Board,” and “state police regulations.” It

also removes a definition for "ground water well drilling rigs," which is defined in KAR 82-4-1, and a reference to a statute repealed by the bill.

The bill removes requirements related to types of regulation no longer allowable under federal law, including rate-making for changes in commodity classifications, consent of the KCC for a motor carrier to change or discontinue any service or operations, assignment or transfer of certain types of certificates, operating territories, and contract carriers.

Permit for a Motor Vehicle Display Show; SB 33

SB 33 authorizes the Director of Vehicles (Director), Kansas Department of Revenue, to issue a temporary display show license to a sponsor of a motor vehicle display show. A display show sponsor, which the bill requires to be a licensed new vehicle dealer, will be responsible for organizing and operating the display show under such terms and conditions as the Director may reasonably require. The sponsor will pay a fee of $100 upon application, and each show participant displaying vehicles will pay $35 to the sponsor. All fees will be remitted to the Director.

The bill authorizes new vehicle dealers, first stage manufacturers, second stage manufacturers, first stage converters, second stage converters, and distributors (manufacturers and distributors) to attend and participate in the display of new motor vehicles at a temporary display show without regard to geographical territorial assignment or relevant market area. The bill requires participating new vehicle dealers to be licensed motor vehicle dealers, but manufacturers and distributors will not be required to be licensed to participate. The bill authorizes participation by new motor vehicle dealers without the approval of any manufacturer or distributor, and it prohibits a manufacturer or distributor from barring or treating a new vehicle dealer adversely for participating in a display show.

The bill prohibits sales or lease transactions at a display show but authorizes test drives for purposes other than sale or lease, to demonstrate the vehicle and its features.

The bill also adds leases and test drives to sales transactions as activities that can not occur at the temporary location of a new vehicle dealer that is not a display show. [*Note:* These provisions also were enacted in House Sub. for SB 99.]

VIN Inspection Requirements for Salvage Vehicle Pools; SB 36

SB 36 amends procedures related to certain vehicle identification number (VIN) checks and transfer of ownership of certain salvage vehicles; prohibits a motor vehicle from being towed out of Kansas without the consent of the driver or owner of the vehicle; and makes technical changes, including changes to remove outdated language.

VIN Inspections

The bill states an employee of a salvage vehicle pool will have VIN checks performed by the Kansas Highway Patrol (KHP) on vehicles at a salvage vehicle pool facility within five business days of the date the application was submitted if:

- An employee of a salvage vehicle pool has submitted an application for six or more vehicles to be checked; and

- The salvage vehicle pool submitting the application sells at least 2,000 vehicles combined per year from the salvage vehicle pool's licensed locations in Kansas, as reported to the Kansas Department of Revenue.

The bill requires the KHP to notify the salvage vehicle pool if it cannot complete the checks within five business days, the reasons for the delay, and the date (within ten business days from the date of application) that the checks will begin.

The salvage vehicle pool is required to provide the KHP with:

- The address of the salvage vehicle pool facility;

- The approximate location within the facility of the vehicles to be checked; and

- Enclosed office space for use by the KHP during such checks.

The bill requires the salvage vehicle pool to clearly mark the vehicles that are to be checked, but states the salvage vehicle pool is not required to move the vehicles within the facility for purposes of the checks.

The bill authorizes the Superintendent of the KHP to promulgate rules and regulations regarding VIN inspection training for employees of new vehicle dealers. [*Note:* Under continuing law, trained and certified employees of a new vehicle dealer may perform VIN inspections on motor vehicles the new vehicle dealer purchases.]

Continuing law states a salvage vehicle pool, as an agent for a third party, is primarily engaged in the business of storing, displaying, and offering for sale salvage vehicles. A salvage vehicle is defined as one that cannot be registered because it has been wrecked or damaged to the extent that it cannot meet safety requirements, for which the cost of repairs is 75 percent or more of fair market value for the vehicle, or which the insurer has declared a total loss and the insurer has taken title.

Ownership Documents

The bill authorizes a salvage vehicle pool or a salvage vehicle dealer to apply for an ownership document for a vehicle without forwarding a certificate of title for the vehicle to the Division of Vehicles (Division), Kansas Department of Revenue, under certain circumstances. A salvage vehicle pool is defined in continuing law as "any person who as an agent for a third party is primarily engaged in the business of storing, displaying and offering for sale salvage vehicles." Continuing law defines a salvage vehicle dealer as "any person engaged in the business of buying, selling, or exchanging used vehicles and primarily engaged in the business of the distribution at wholesale or retail of used motor vehicle parts and includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts."

The bill authorizes a salvage vehicle pool or a salvage vehicle dealer to apply for an ownership document for a vehicle if the following conditions are met:

- The salvage vehicle pool or salvage vehicle dealer has possession of the vehicle at the request of an insurance company;

- The insurance claim for the vehicle has been closed without payment or denied by the insurance company; and

- The vehicle has remained unclaimed at the salvage vehicle pool or salvage vehicle dealer facility for more than 30 days.

The bill requires an application for an ownership document provide sufficient evidence that at least two written notices were delivered by certified mail to the address provided by the Division's ownership verification, or through another courier service that provides proof of delivery, to the owner and any lienholder of the vehicle identified in Division records requesting the vehicle be removed from the salvage vehicle pool or salvage vehicle dealer facility.

The bill requires a salvage vehicle dealer to also provide sufficient evidence to the Division of the request by the insurance company to obtain possession of the vehicle. The bill requires the notice to specify the vehicle owner and any lienholder identified in Division records have at least 30 days from the receipt of the notice to remove the vehicle. If the salvage vehicle pool or salvage vehicle dealer does not receive proof of delivery of the notices, the bill requires the salvage vehicle pool or salvage vehicle dealer to publish a notice of the application for an ownership document in a newspaper of general circulation in the county where the vehicle is located.

If the most recent ownership document for the vehicle was not issued by the State of Kansas, the bill requires the application for an ownership document to include evidence of a VIN inspection of the vehicle by the KHP and, when applicable, of part numbers to verify the foreign title is genuine and matches such numbers. The bill also requires the application to indicate whether a salvage title or a nonrepairable vehicle certificate is requested. The bill requires the Division to issue to the salvage vehicle pool a salvage title or a nonrepairable vehicle certificate free and clear of all liens, security interests, and encumbrances upon receipt of the application and all required information.

Towing and Towed Vehicle Sales

The bill prohibits a person providing towing services from towing a vehicle to a location outside of Kansas without the consent of the driver or owner of the vehicle, a motor club of which the driver or owner of the vehicle is a member, or the insurance company processing a claim with respect to the vehicle or an agent of such insurance company.

The bill amends a statute regarding the sale of a vehicle that has been abandoned after it has been towed to require every person intending to sell a vehicle pursuant to this statute for which the last registered owner and any lienholders cannot be verified by the Division to obtain an interstate search of registered owners and lienholders unless the vehicle is 15 years of age or older or the Division has determined the vehicle is a nonrepairable vehicle.

The bill requires notice of an auction of a towed and abandoned vehicle, authorized in continuing law after certain notices have been sent by certified mail to any registered owner and lienholders and the total amount due has not been paid, to be published at least seven days prior to the scheduled auction in a newspaper published in the county or city where the sale is to

take place or, if no newspaper is published in the county, in a newspaper of general circulation in the county. Former law did not specify time between public notice and auction.

Definitions

The bill specifies as applicable a definition of "wrecker or towing service" in motor carrier statutes: the act of transporting, towing, or recovering with a wrecker, tow truck, or car carrier, any vehicle not owned by the operator of the wrecker, tow truck, or car carrier for which the operator receives compensation or other personal gain, either directly or indirectly, unless the vehicle being towed is owned by the operator of the wrecker, tow truck, or car carrier. It also defines "person" in statutes regarding abandoned and disabled vehicles as every natural person, firm, association, partnership, or corporation, as in the Uniform Act Regulating Traffic on Highways. A "nonrepairable vehicle" is defined in continuing law as a vehicle that has been damaged to the extent it is incapable of safe operation on highways and has no value except as a source of parts or scrap.

Right of Way for Funeral Processions; Move Over for Utility Vehicles; SB 67

SB 67 creates law regarding the right-of-way for funeral processions and for certain vehicles involved in utility repairs.

Funeral Escorts and Processions

The bill defines "funeral procession," "funeral lead vehicle," and "funeral escort."

The bill authorizes funeral escorts to reasonably direct vehicle and pedestrian traffic to allow funeral processions to pass through intersections and disregard traffic control devices, notwithstanding any state law, city ordinance, or county resolution relating to traffic control devices or right-of-way provisions.

The bill permits vehicles in a funeral procession to follow a funeral lead vehicle through an intersection regardless of traffic control devices or any right-of-way provision in state law, city ordinance, or county resolution if the funeral lead vehicle lawfully entered the intersection through a traffic control device when directed by a funeral escort.

The bill states funeral processions have the right-of-way at intersections regardless of traffic control devices if operators of vehicles in the funeral procession:

- Yield the right-of-way to approaching authorized emergency vehicles;
- Yield the right-of-way when directed by a police officer; and
- Exercise due care when participating in the funeral procession to avoid colliding with any other vehicle or pedestrian.

The bill states the operator of a vehicle in a funeral procession will not have the right-of-way if such vehicle is more than 300 feet behind the immediately preceding vehicle in such procession.

The bill requires all vehicles in a funeral procession to follow the preceding vehicle in the procession as closely as is safe and practical. The bill exempts vehicles in a funeral procession from any state law, city ordinance, or county resolution prohibiting a vehicle from following another vehicle too closely.

The bill requires each vehicle in a funeral procession to have lighted the vehicle's headlights (high beam or low beam) and taillights and permits flashing hazard lights.

The bill states a city or county could require a law enforcement or non-law enforcement funeral lead vehicle or funeral escort for a funeral procession. The bill allows cities or counties to require prior notice of any planned funeral procession to be given to the city police department or county sheriff. The bill further states none of its provisions prohibit cities or counties from requiring compliance with any city ordinance or county resolution not in conflict with provisions of the bill.

"Move Over" Law for Authorized Utility Vehicles

The bill creates a "move over" requirement for drivers related to a stationary authorized utility or telecommunications vehicle (authorized utility vehicle) under certain circumstances. The bill prohibits a driver from overtaking or passing another vehicle when within 100 feet of a stationary authorized utility vehicle. The bill requires a driver to yield the right-of-way to any authorized utility vehicle or pedestrian engaged in work on the highway when the vehicle displays flashing lights meeting requirements of the Uniform Act Regulating Traffic on Highways (Uniform Act).

Upon approaching the authorized utility vehicle that is obviously and actually engaged in work on a highway and displaying required flashing lights, the driver of a motor vehicle will be required to do one of the following:

- Change into a lane nonadjacent to the authorized vehicle, if on a highway with at least two lanes carrying traffic the same direction and if road conditions permit; or

- In all other circumstances, proceed with due caution, reduce the speed of the motor vehicle, and maintain a safe speed for the road, weather, and traffic conditions.

The bill does not relieve the driver of an authorized utility vehicle from the duty to drive with safe regard for the safety of all using the highway.

The bill defines an authorized utility vehicle to mean a vehicle displaying flashing lights meeting certain requirements that is:

- Being operated by authorized personnel (as defined in public utility law) for an electric or natural gas public utility or municipal-owned utility and being used for repairs needed to restore necessary services or ensure public safety; or

- Being operated by a local exchange carrier, telecommunications carrier, video service provider, or wireless infrastructure or service provider, and being used for repairs.

The bill creates a $105 fine for the traffic violation of unlawful passing of an authorized utility vehicle.

The provisions creating this "move over" requirement will be part of and supplemental to the Uniform Act.

Exemption to Requirements for Hauling Agricultural Forage Commodities; SB 89

SB 89 amends law on securing loads on vehicles to create an exemption for trucks, trailers, or semitrailers when hauling agricultural forage commodities intrastate from the place of production to a market or place of storage or from a place of storage to a place of use. The bill states this exemption does not apply to trucks, trailers, or semitrailers hauling hay bales or other packaged or bundled forage commodities. Continuing law requires securing a load on a vehicle so as to prevent any of the load from dropping, sifting, leaking, or otherwise escaping.

Motor Vehicle Odometer Reading Recording Exemptions; Defining Recreational Vehicles; SB 95

SB 95 amends a requirement regarding odometer readings upon assignment of a vehicle title and amends the definitions for "all-terrain vehicle" (ATV) and "recreational off-highway vehicle" (ROV).

Odometer Reading Disclosure

The bill replaces an exemption from acknowledgment of mileage for vehicles ten model years and older and for trucks with a gross vehicle weight of more than 16,000 pounds with an exemption for any vehicle exempt from odometer requirements pursuant to federal law.

[*Note:* National Highway Traffic Safety Administration regulation 49 CFR 580.17 regarding exemptions from requirements to disclose a vehicle's odometer reading was amended in 2019, effective January 1, 2021 (84 FR 65017; November 26, 2019). The federal regulation states a transferor need not disclose a vehicle's odometer mileage for a vehicle manufactured in or before the 2010 model year after calendar year 2020. The transferor of a vehicle manufactured in or after the 2011 model year must disclose the odometer mileage for 20 years after January 1 of the calendar year corresponding to its designated model year (*e.g.*, for vehicle transfers occurring during calendar year 2031, model year 2011 or older vehicles would be exempt). The federal regulation continues exemptions for a vehicle having a gross vehicle weight rating of more than 16,000 pounds, a vehicle that is not self-propelled, a vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications, and a transferor of a new vehicle prior to its first transfer for purposes other than resale.]

The odometer disclosure provisions become effective from and after January 1.

ATV and ROV Definition Amendments

In the definitions of ATV in statutes regarding vehicle registration and in the Uniform Act Regulating Traffic on Highways, the bill increases the maximum width of such a vehicle from 50 inches to 55 inches and specifies the measurement is taken from the outside of one tire rim to

the outside of the other tire rim. In continuing law, an ATV has a maximum weight of 1,500 pounds and travels on 3 or more nonhighway tires. [*Note:* KSA 2020 Supp. 8-128 specifies an ATV need not be registered.]

In the definition of ROV in a statute regarding vehicle registration, the bill increases the maximum width from 64 inches to 75 inches and specifies the measurement is taken from the outside of one tire rim to the outside of the other tire rim. It also increases the maximum weight of an ROV from 2,000 pounds to 3,500 pounds. In continuing law, an ROV travels on three or more nonhighway tires. [*Note:* An ROV is included in the definition of a nonhighway vehicle in KSA 2020 Supp. 8-197 and, per KSA 2020 Supp. 8-198, is not required to be registered.]

Vehicle Dealer Bonding; Permit for Motor Vehicle Display Show; House Sub. for SB 99

House Sub. for SB 99 amends law regarding vehicle dealer license requirements and vehicle display shows.

Dealer License Requirements

The bill increases the bond required for licensure as a dealer of used or new vehicles from $30,000 to $50,000, on and after January 1, 2022.

Vehicle Display Show

The bill authorizes the Director of Vehicles (Director), Kansas Department of Revenue, to issue a temporary display show license to a sponsor of a motor vehicle display show. A display show sponsor, which the bill requires to be a licensed new vehicle dealer, will be responsible for organizing and operating the display show under such terms and conditions as the Director may reasonably require. The sponsor will pay a fee of $100 upon application, and each show participant displaying vehicles will pay $35 to the sponsor. All fees will be remitted to the Director.

The bill authorizes new vehicle dealers, first stage manufacturers, second stage manufacturers, first stage converters, second stage converters, and distributors (manufacturers and distributors) to attend and participate in the display of new motor vehicles at a temporary display show without regard to geographical territorial assignment or relevant market area. The bill requires participating new vehicle dealers to be licensed motor vehicle dealers, but manufacturers and distributors will not be required to be licensed to participate. The bill authorizes participation by new motor vehicle dealers without the approval of any manufacturer or distributor, and it prohibits a manufacturer or distributor from barring or treating a new vehicle dealer adversely for participating in a display show.

The bill prohibits sales or lease transactions at a display show, but authorizes test drives for purposes other than sale or lease to demonstrate the vehicle and its features.

The bill also adds leases and test drives to sales transactions as activities that can not occur at the temporary location of a new vehicle dealer that is not a display show.

[*Note:* Provisions regarding vehicle display shows are the same of those of SB 33 except that they become effective upon publication in the *Kansas Register*.]

Driver's License Changes; SB 127

SB 127 amends laws related to renewal of driver's licenses and certain provisions applicable when a driver's license has been suspended for failure to comply with a traffic citation.

Driver's License Renewal

Online renewal. The bill adds a commercial driver's license (CDL) to the driver's licenses that could be renewed online, except if the CDL has a hazardous materials endorsement. The bill requires any person seeking to renew a CDL to provide the Division of Vehicles (Division), Kansas Department of Revenue, with a valid medical examiner's certificate and proof of the completion of the truckers against trafficking training (training in human trafficking identification and prevention, required by KSA 2020 Supp. 8-2,157) prior to the Division renewing the CDL.

The bill extends the maximum age for online application for renewal of a driver's license from less than age 50 to less than age 65.

Electronic notification. The bill authorizes the Division to send a notice of driver's license expiration or renewal application electronically if authorized by the person at an email address provided to the Division.

Extended renewal period. The bill states a licensee whose driver's license or nondriver's identification card expired after March 12, 2020, and before March 31, 2021, has until June 30, 2021, to renew such license or identification card.

Provisions Related to Driving Privileges after Failure to Comply with a Traffic Citation

License suspension time period. The bill amends, in a statute requiring suspension of a driver's license for driving when the person's driving privileges are canceled, suspended, or revoked, a provision requiring the Division to extend a period of suspension or revocation an additional 90 days, to state the suspension or revocation shall not be extended for any additional time if the person's license was suspended for failure to comply with a traffic citation.

Eligibility and application for restricted driving privileges. Concerning eligibility for restricted driving privileges for a person whose driver's license expired while the license was suspended for failure to pay fines for traffic citations, the bill removes the requirement that the person has not previously received a stayed suspension as a result of a driving while suspended conviction.

The bill removes a nonrefundable $25 fee that law had required to be submitted to the Division by an applicant for restricted driving privileges in lieu of suspension of driving privileges for failure to comply with a traffic citation.

Reinstatement fee. The bill makes a technical amendment to the period during which the Supreme Court is authorized to impose an additional charge per reinstatement fee. Continuing law requires a court to assess a $100 reinstatement fee when the court notifies the Division of failure to comply with a traffic citation.

Waiving a fine or court costs. The bill allows a person assessed a fine or court costs for a traffic citation to petition the court to waive all or a portion of the costs. The bill authorizes the court to waive or modify payments upon determining that paying the amount due would impose manifest hardship on the person or their immediate family.

Military Surplus Vehicles; HB 2014

HB 2014 defines "military surplus vehicle" in the Uniform Act Regulating Traffic on Highways and in law regarding vehicle registration.

The bill defines such a vehicle as one that meets the following requirements:

- Has three or fewer axles;
- Meets size and weight limits in continuing law;
- Is less than 35 years old; and
- Was manufactured for use in the U.S. military forces or the military force of any country that was a member of the North Atlantic Treaty Organization at the time the vehicle was manufactured and that is subsequently authorized for sale to civilians.

The definition excludes a tracked vehicle. The bill adds references to military surplus vehicles in definitions of "collector" and "parts car."

The bill authorizes the owner of a military surplus vehicle to register it upon payment of an annual fee of $26. A special interest vehicle license plate will be furnished upon payment of a one-time fee of $20; the bill requires a decal to be displayed on the license plate to identify the vehicle as a military surplus vehicle.

The bill authorizes a military surplus vehicle to be used as are other vehicles of the same type, but prohibits the use of a military surplus vehicle to transport passengers for hire. The bill specifies special interest vehicles, including street rod vehicles, are prohibited from hauling material weighing more than 500 pounds.

The bill prohibits a military surplus vehicle from being registered until a vehicle identification number inspection has been completed by the Kansas Highway Patrol.

Definition of an Antique Vehicle; HB 2165

HB 2165 amends the definition of an antique vehicle for purposes of vehicle registration. An antique vehicle is defined as a vehicle, including an antique military vehicle, that is more than 35 years old and is propelled by a motor that uses petroleum fuel, steam, electricity, or any combination of those. The bill adds that the age of the vehicle is determined regardless of the age or type of the components or equipment installed on the vehicle.

Personalized License Plates, Firefighter Training Fee; Sub. for HB 2166

Sub. for HB 2166 adds several types of license plates; adds reporting requirements for organizations sponsoring distinctive license plates; amends requirements for distinctive license plate development, continuing distinctive license plates, and personalized license plate backgrounds; and requires an annual payment of a $10 firefighters training fee for each new or renewed firefighter license plate starting January 1, 2022.

The new distinctive license plates to be issued on and after January 1, 2022, are military branch license plates and five license plates for which royalty fees will be paid: Braden's Hope for Childhood Cancer, proud educator, Alpha Kappa Alpha (AKA), Delta Sigma Theta (DST), and the Love, Chloe Foundation (Foundation) license plates. The bill also authorizes Gadsden flag license plates, for which a fee applies.

Royalty Fee License Plates

The bill authorizes Braden's Hope for Childhood Cancer, proud educator, AKA, DST, Gadsden flag, and Foundation license plates. The Braden's Hope for Childhood Cancer, proud educator, AKA, DST, and Foundation license plates are authorized for passenger vehicles or trucks registered for a gross weight of 20,000 pounds or less; Gadsden flag license plates are authorized for passenger vehicles, trucks with a gross weight of 20,000 pounds or less, motorcycles, and travel trailers.

Under provisions of the bill, Braden's Hope for Childhood Cancer authorizes the use of its logo to be affixed on the Braden's Hope for Childhood Cancer license plates. The Kansas Educators Support Foundation authorizes the use of its proud educator logo to be affixed on the proud educator license plates. AKA authorizes the use of its logo to be affixed on the AKA license plates. DST authorizes the use of its logo to be affixed on the DST license plates. The Foundation authorizes the use of its logo to be affixed on the Foundation license plates. For each of these types of license plate, the bill requires a payment of a royalty fee of not less than $25 but not more than $100 per license plate issued to be paid to either the respective organization or the county treasurer. The owner or lessee of the vehicle annually applies to the respective organization for use of such logo and, upon the payment of the appropriate royalty, receives a logo use authorization statement to be presented at the time of registration.

An applicant for a Gadsden flag license plate makes an annual payment of $25 to the county treasurer. Any fee received will be used to support the Kansas State Rifle Association. The bill requires the Gadsden flag license plate to have a background design, emblem, or colors that designate the license plate as a Gadsden flag license plate.

Renewal of Registration

The bill states a vehicle owner or lessee can apply for the license plate not less than 60 days prior to their registration renewal date, on a form prescribed and furnished by the Director of Vehicles (Director), Kansas Department of Revenue. The bill requires the applicant to provide the annual logo use authorization statement provided by the respective organization or make the royalty or fee payment to the county treasurer. The bill does not allow registration or license plates to be transferred to any person other than the applicant, but the Director can transfer the Braden's Hope for Childhood Cancer, proud educator, AKA, DST, or Foundation license plate from a leased vehicle to a purchased vehicle.

The bill specifies renewals of registration are annual, upon payment of the license plate fee, and in accordance with the license plate issuance cycle. The bill prohibits renewal of registration until the applicant has paid the county treasurer the logo use royalty payment or Gadsden flag license plate fee or presents the annual logo use authorization statement. Without proof of paying the fee, the applicant is required to return the license plate to the treasurer of the county of the person's residence.

Requirements of the Respective Organizations

The bill requires the sponsors of the Braden's Hope for Childhood Cancer, proud educator, AKA, DST, and Foundation license plates to:

- Provide an email address to all county treasurers for an applicant to contact for information concerning the application process or the status of the license plate application; and

- Design the license plate, with the approval of the Director.

Consent – Release of Motor Vehicle Registration Information

The bill requires an applicant, as a condition of receiving one of the new distinctive license plates for which a logo use royalty is paid and any subsequent registration renewal of such plate, to consent to the Division of Vehicles (Division) authorizing the Division's release of motor vehicle record information—the applicant's name, address, logo use royalty payment amount, plate number, and vehicle type—to the respective organization and the State Treasurer.

Remittance of Annual Logo Use Royalty Payments or Fees

For each of the license plates, the bill requires the annual logo use royalty payments collected by the county treasurers to be remitted and paid to the benefiting entity as provided in continuing law:

- For the Braden's Hope for Childhood Cancer license plate, to the appropriate designee of Braden's Hope for Childhood Cancer;

- For the proud educator license plate, to the Kansas Independent College Association or other designee of the Kansas Educators Support Foundation;

- For the AKA license plate, to the appropriate designee of AKA;

- For the Gadsden flag license plate, to the designee of the Kansas State Rifle Association;

- For the DST license plate, to the appropriate designee of DST; and

- For the Love, Chloe Foundation license plate, to the Foundation.

Military Service License Plates

The bill authorizes a distinctive license plate indicating service in the U.S. Army, the U.S. Navy, the U.S. Marine Corps, the U.S. Air Force, the U.S. Coast Guard, or the U.S. Space Force to be issued to the owner or lessee of a passenger vehicle, truck of a gross weight of 20,000 pounds or less, or a motorcycle on or after January 1, 2022. The bill allows any resident of Kansas who is a current member or an honorably discharged veteran of one of the military branches as specified by the bill to apply for a distinctive license plate indicating such military service. To be issued a distinctive license plate, the owner or lessee of such vehicle, truck, or motorcycle must submit satisfactory proof to the Director that such owner or lessee is currently serving or separated and honorably discharged from one of the military branches listed above.

The bill requires the application to be made at least 60 days prior to a person's renewal of registration date on a form designated by the Director. The license plate is issued for the same time period as other license plates and is subject to regular license fees, but is exempt from the personalized license plate fee as specified in continuing law. No license plate or registration issued pursuant to the bill is transferable to any other person. In the event of death of any person issued a distinctive military service license plate, the surviving spouse or other family member is entitled to keep possession of the plate but is not permitted to display it on any vehicle.

The bill also requires renewals of registrations to be made annually in the manner provided in continuing law, and no renewal is allowed until an applicant has filed the required form with the Director. If no form is filed, an applicant is required to return the distinctive license plate to the county treasurer of such applicant's residence.

The distinctive military service license plates established by the bill are also exempt from requirements for a minimum number to be ordered before issuance or for continuance, or payment of a fee to develop the license plate.

Upon satisfactory proof submitted to the Director, in accordance with rules and regulations adopted by the Secretary of Revenue, any person issued a distinctive military service license plate under the provisions of the bill may request that the license plate be printed to indicate that such person is a retired member of the applicable military service branch.

Reporting by License Plate Sponsoring Organizations

The bill requires any organization that receives payment from any fee imposed on the issuance or renewal of a distinctive license plate to submit, not later than May 1 each year, a report on its prior year's finances to the House Committee on Transportation, the Senate Committee on Transportation, Kansas Legislative Research Department, and the State Treasurer. The bill requires the report to include the total amount of moneys the organization received from the distinctive license plate fee from the prior year and the list of expenditures that those moneys were spent on by the organization.

Developing and Continuing Distinctive License Plates

For distinctive license plates, the bill reduces the minimum number that must be guaranteed for initial issuance of the plate from 500 to 250. Under continuing law, the Director is required to discontinue the issuance of any distinctive license plate authorized on and after July

1, 2004, if certain minimum numbers of the license plates are not used. The bill reduces the number that must be guaranteed before initial issuance and issued before the end of the second year of sales from 500 to 250 and the number to be issued or renewed during any subsequent two-year period from 250 to 125.

The bill reduces from $20,000 to $5,000 the maximum nonrefundable amount to be submitted by a sponsoring organization of a distinctive license plate to defray costs of the Division to develop the distinctive license plate.

For educational institution license plates, the bill reduces the minimum number that must be guaranteed for initial issuance of the plate from 500 to 100. Under continuing law, the Director is required to discontinue the issuance of any educational institution license plate if certain minimum numbers of the license plates are not used. The bill reduces the number that must be issued before the second year of sales from 500 to 100 and the number to be issued or renewed during any subsequent two-year period from 250 to 50.

For the In God We Trust and Choose Life license plates, the bill reduces the minimum order requirement for issuance from 1,000 to 100 and reduces the corresponding transfer from the State Highway Fund to the Distinctive License Plate Fund from $40,000 to $4,000. [*Note:* In God We Trust license plates are being issued.]

Personalized License Plate Background

The bill authorizes the background for a standard license plate on a passenger vehicle to be used for a personalized license plate on a passenger vehicle and specifies the applicable fee.

Firefighter Training Fee

The bill requires a $10 annual firefighters training fee payment to be collected by county treasurers for each firefighter license plate issued. The fee is deposited into the Firefighters Training Fund, which the bill creates. The bill authorizes expenditures from the fund to be made for purposes of providing financial support related to honoring or training Kansas firefighters or any general use that supports Kansas firefighters. The bill requires payments from the Firefighters Training Fund to be made monthly to the designee of the Kansas State Firefighters Association.

Under continuing law (KSA 2020 Supp. 8-1,141), an applicant for a firefighter license plate must also pay a $40 distinctive license plate fee when a plate is issued.

License Plate Locations for Concrete Mixer Trucks and Dump Trucks; HB 2167

HB 2167 adds two exceptions to law requiring a license plate to be attached to the rear of a motor vehicle. The bill allows, for concrete mixer trucks, the option to attach a license plate to the front of the vehicle rather than to the rear of the vehicle and requires a license plate for a dump truck with a gross weight of 26,000 pounds or more to be attached to the front of the vehicle. The requirement for a dump truck to display a license plate on the front of the vehicle does not apply to a vehicle registered as a farm truck.

The bill requires a law enforcement officer to issue a warning citation to anyone in violation of the new dump truck license plate location requirement until January 1, 2022.

Eisenhower Legacy Transportation Program Modifications; Senate Sub. for HB 2201

Senate Sub. for HB 2201 modifies certain provisions related to the Eisenhower Legacy Transportation Program (Eisenhower Program).

The bill authorizes the Secretary of Transportation (Secretary) to let to construction any modernization or expansion project under the Eisenhower Program that would utilize federal stimulus funds regardless of whether at least one phase of each of the remaining Transportation Works for Kansas Program (T-Works) modernization and expansion projects has been let. Former law required at least one phase of each modernization or expansion project selected for construction during T-Works to be let before any Eisenhower Program modernization or expansion project is let to construction. The bill prohibits federal stimulus funds from being expended for modernization and expansion projects under the Eisenhower Program without approval by an appropriation or other act of the Legislature, or approval of the State Finance Council as a matter of legislative delegation, when the Legislature is not in session.

For purposes of bonding, the bill removes adjustments to projected State Highway Fund (SHF) revenues related to historical average annual increases or decreases, and to transfers. Continuing law prohibits the maximum annual debt service on all outstanding bonds issued by the Secretary, which are payable solely from the SHF, from exceeding 18 percent of projected SHF revenues. Continuing law also states projected SHF revenues for any fiscal year for which actual revenues cannot be determined are deemed to be the actual revenues for the most recently completed fiscal year.

The bill states bonds issued for the purpose of refunding will not be subject to the maximum debt limitations on the issuance of bonds by the Secretary under T-Works or the Eisenhower Program or dollar limits for bonds issued under previous similar programs.

The bill reduces the minimum costs for a project for which alternative delivery procurement methods could be used from $100.0 million to $10.0 million.

The bill clarifies transfers from the SHF to the Broadband Infrastructure Construction Grant Fund will occur each July 1, rather than each July.

Collection of Emergency Contact Information; HB 2245

HB 2245 adds law authorizing the Division of Vehicles (Division), Department of Revenue, to collect emergency contact information and provides for the use of such information by law enforcement agencies.

The bill requires the Division to maintain emergency contact information for holders of valid Kansas driver’s licenses, instruction permits, or non-driver’s identification cards beginning no later than July 1, 2022.

The bill requires the Division to maintain in its files a record of the name, address, and telephone number of each individual the holder authorizes to be contacted if the holder is injured or dies in a vehicular accident or another emergency situation.

The bill requires the contact information to be kept confidential. The bill exempts these records from provisions of the Kansas Open Records Act and states the provisions providing for confidentiality of records expire on July 1, 2026, unless the Legislature reviews and reenacts the provisions, pursuant to the Kansas Open Records Act, prior to July 1, 2026. The bill authorizes disclosure only to law enforcement officers (as defined in continuing law) in Kansas or another state for the purpose of making contact with a named individual to report the injury or death of the holder.

The bill requires the Division to include a place on an application for a driver's license, instruction permit, or non-driver's identification card for an applicant to list not more than two emergency contacts. Applicants are not required to provide the emergency contact information. The bill also requires the application to have a statement describing the confidential nature of the information and state that, by providing the information, the applicant consents to the limited disclosure and use of the information.

The bill requires the Division to establish forms and procedures posted on its website and to include a method for adding, amending, or deleting emergency contact information electronically or delivering or mailing a paper form to the Division.

The bill states its provisions do not prohibit the Division from disclosing information to the holder of the driver's license, instruction permit, or non-driver's identification card, or such holder's authorized agent, or as permitted in continuing law regarding disclosure to specified entities for specified purposes.

Designating Certain Memorial Highways and Memorial Bridges; HB 2247

HB 2247 designates portions of highway in Johnson, Marshall, and Norton counties as memorial highways and designates certain bridges in Cowley, Riley, and Seward counties as memorial bridges.

The bill designates the portion of K-67 in Norton County from the southern limits of the Norton Correctional Facility to the northern limits of the Norton Correctional Facility as the COII Trenton J. Brinkman Memorial Highway. According to testimony, Officer Brinkman was a correctional officer at the Norton Correctional Facility who was killed in a vehicle accident on his way to work, and was respected both in the community and by inmates of the correctional facility.

The bill designates bridge no. 54-88-17.86 (013) located on US-54 in Seward County as the Jack Taylor Memorial Bridge, and bridge no. 54-88-17.1.87 (006) located on US-54 in Seward County as the Max Zimmerman Memorial Bridge. According to testimony, Mr. Taylor and Mr. Zimmerman were actively involved in their community and instrumental to key transportation initiatives in southwest Kansas.

The bill designates bridge no. 0081-B0058 located on US-77 in Riley County as the PFC Loren H. Larson Memorial Bridge. According to testimony, PFC Larson was a graduate of Blue Valley High School in Randolph, served in the 1st Cavalry Division of the U.S. Army, and was killed in action in the Vietnam War.

The bill designates bridge no. 0018-009 located on US-166 in Cowley County as the SGT Tyler A. Juden Memorial Bridge. According to testimony, SGT Juden was a decorated U.S.

Army paratrooper, infantryman, and sniper killed in action in Afghanistan during his second tour of duty.

The bill designates a portion of US-69 in Johnson County, from I-435 to 135th Street, as the Senator Dennis Wilson Memorial Highway. According to testimony, Senator Wilson's public service included military service and election to the Kansas House of Representatives and the Kansas Senate and being director of the Office of Unclaimed Properties/Director of Administration/Director of Government Affairs in the Office of the State Treasurer, Johnson County Treasurer, Executive Director of the Kansas Lottery, and a member of the WaterOne board of directors.

The bill designates a portion of K-7 in Johnson County, between K-10 and West Santa Fe Street, as the Senator Bud Burke Memorial Highway. According to testimony, Senator Burke's public service included involvement in the military and the University of Kansas and election to the Kansas House of Representatives and the Kansas Senate. He served as President of the Senate from 1989 to 1997.

The bill designates a portion of US-77 from the western city limits of Blue Rapids to the eastern city limits of Waterville, in Marshall County, as the CPL Allen E. Oatney and SP4 Gene A. Myers Memorial Highway. The designation of Prairie Parkway is removed from this portion of US-77. According to testimony, CPL Oatney graduated from Valley Heights High School in 1969 and died in 1970 in Cambodia. SP4 Myers graduated from Waterville High School in 1966 and died in Vietnam in 1969.

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

Exempting Municipal Motor Grader Operators from CDL Requirements; HB 2295

HB 2295 exempts municipal motor grader vehicles from requirements of the Kansas Uniform Commercial Driver's License Act.

Under continuing law, five types of vehicles are listed as exempt from the Act: farm vehicles, vehicles operated by firefighters, military vehicles operated by military personnel, commercial vehicles used solely for private noncommercial use, and certain farm tractors moved by implement dealers. The bill adds a sixth exemption for motor grader vehicles operated by an employee of a municipality, if such employee is operating the motor grader vehicle within the boundaries of such municipality.

"Municipality" is defined under continuing law referenced by the bill to mean any county, township, city, school district, or other political or taxing subdivision of the state, or any agency, authority, institution, or other instrumentality thereof.

Peer-to-Peer Vehicle Sharing Program Act; HB 2379

HB 2379 enacts the Peer-to-Peer (P2P) Vehicle Sharing Program Act.

The bill is effective and in force from and after January 1, 2022.

Definitions

The bill establishes several definitions associated with P2P vehicle sharing, including:

- "Peer-to-peer vehicle sharing," meaning the authorized use of a shared vehicle by an individual other than the shared vehicle's owner through a P2P program:
    - P2P vehicle sharing does not mean rental or lease of a motor vehicle for the purposes of law regarding an excise tax on certain lease or rental vehicles; and
    - Does not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Vehicle Dealers and Manufacturers Licensing Act (Act);
- "Peer-to-peer vehicle sharing program," meaning a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration:
    - The term does not mean a rental car company, a lessor, or a service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle; and
    - Does not include the use of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- "Vehicle sharing program agreement," meaning the terms and conditions applicable to a shared vehicle owner, a shared vehicle driver, and a P2P vehicle sharing program that govern the use of a shared vehicle through a P2P vehicle sharing program:
    - Vehicle sharing program agreement does not include a rental agreement; and
    - Does not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- "Shared vehicle," meaning a vehicle that is available for sharing through a P2P vehicle sharing program:
    - Shared vehicle does not mean a rental car or rental commercial-type vehicle; and
    - Does not include a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;

- "Shared vehicle driver," meaning the individual authorized to drive the shared vehicle by the shared vehicle owner under a vehicle sharing program agreement:
    - Shared vehicle driver does not include a lessee; and
    - Does not include the operator of a vehicle that is used for demonstration purposes or the operator of a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- "Shared vehicle owner," meaning the registered owner, or person or entity designated by the owner, of a vehicle made available for sharing to shared vehicle drivers through a P2P vehicle sharing program:
    - Shared vehicle owner does not include a person or entity in the business of providing rental vehicles to the public, a leasing company, or a rental car company; and
    - Does not include an owner of a vehicle that is used for demonstration purposes or a leased, temporarily loaned, or borrowed vehicle owned by a new or used vehicle dealer licensed under the provisions of the Act;
- "Vehicle sharing delivery period," meaning the period of time during which a shared vehicle is being delivered to the location of the vehicle sharing start time, if applicable, as documented by the governing vehicle sharing program agreement;
- "Vehicle sharing period," meaning the period of time that commences with the vehicle sharing delivery period or, if there is no vehicle sharing delivery period, that commences with the vehicle sharing starting time and, in either case, that ends at the vehicle sharing termination time; and
- "Vehicle sharing termination time," meaning the earliest of the following:
    - Expiration of the agreed-upon period of time established for the use of a shared vehicle according to the terms of the vehicle sharing program agreement if the shared vehicle is delivered to the location agreed upon in the vehicle sharing program agreement;
    - When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner (owner) and shared vehicle driver (driver) as communicated through a P2P vehicle sharing program and the alternatively agreed upon location is incorporated into the vehicle sharing program agreement; or
    - When the registered shared vehicle owner or the shared vehicle owner's authorized designee takes possession and control of the shared vehicle.

Liability Coverage

The bill requires, with exceptions specified in the bill, a P2P vehicle sharing program to assume liability of an owner for bodily injury or property damage to third parties for uninsured and underinsured motorist or personal injury protection losses during the vehicle sharing period

in amounts stated in the P2P vehicle sharing program agreement. The bill requires coverage to be not less than the coverage required in the Kansas Automobile Injury Reparations Act (KAIRA).

Notwithstanding the definition of "vehicle sharing termination time," a P2P vehicle sharing program does not assume owner liability when the owner:

- Makes an intentional or fraudulent material misrepresentation or omission of fact to the P2P vehicle sharing program before the vehicle sharing period in which the loss occurred; or

- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the vehicle sharing program agreement.

However, the assumption of liability applies to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses by damaged third parties as required by the KAIRA.

The bill requires a P2P vehicle sharing program to ensure that, during each vehicle sharing period, the owner and the driver are insured under a motor vehicle liability insurance policy that provides coverage in amounts no less than those prescribed in KAIRA. The policy must:

- Recognize that the vehicle insured under the policy has been made available as a shared vehicle and is used through a P2P vehicle sharing program; or

- Not exclude the use of the vehicle by a shared vehicle driver.

The bill provides the requirement for motor vehicle liability insurance can be satisfied by such insurance maintained by an owner, a driver, a P2P vehicle sharing program, or a shared vehicle owner or a shared vehicle driver and a P2P vehicle sharing program.

Insurance satisfying this requirement is considered as primary during each vehicle sharing period and, if a claim occurs in another state with insurance policy coverage amounts that exceed the minimum amounts set forth in state law during the vehicle sharing period, the coverage described in the bill satisfies the difference in minimum coverage amounts, up to the applicable policy limits.

The insurer or P2P vehicle sharing program assumes primary liability for a claim when it is, in whole or in part, providing the insurance required by the bill and in these additional instances:

- A dispute exists as to who was in control of the shared vehicle at the time of the loss or as to whether the shared vehicle was returned to the alternatively agreed-upon location; and

- The P2P vehicle sharing program does not have available, did not retain, or fails to provide information required under recordkeeping provisions in the bill.

The bill also requires, if the insurance maintained by an owner or driver has lapsed or does not provide the required coverage, insurance maintained by the P2P vehicle sharing

program to provide such coverage beginning with the first dollar of the claim and to have the duty to defend such claim. The bill states coverage under the P2P vehicle sharing program insurance shall not be dependent on another motor vehicle insurer first denying a claim nor shall another motor vehicle insurance policy be required to first deny a claim.

The bill states nothing in the section pertaining to liability coverage shall be construed to:

- Limit the liability of the P2P vehicle sharing program for any act or omission of the program itself that results in injury to any person as a result of using a shared vehicle through the program; or

- Limit the ability of the P2P vehicle sharing program to contractually seek indemnification from the owner or the driver for economic loss sustained by the program resulting from a breach of the terms and conditions of the vehicle sharing program agreement.

Lienholder Notice

The bill requires, between the time that a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and the time the owner makes a vehicle available as a shared vehicle on the program, the program to notify the owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through such program, including use without physical damage coverage, could violate the terms of the contract with the lienholder.

Exclusions; Liability Coverage

The bill permits an authorized insurer writing motor vehicle liability insurance in Kansas to exclude any and all coverage and the duty to defend or indemnify for any claim afforded under an owner's motor vehicle liability insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;

- Personal injury protection coverage, as defined in KAIRA;

- Uninsured and underinsured motorist coverage;

- Medical benefits coverage, as defined in KAIRA;

- Comprehensive physical damage coverage; and

- Collision physical damage coverage.

The bill further states nothing in this section (coverage exclusions) invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, hire, or any business use; invalidates, limits, or restricts an insurer's ability to underwrite any insurance policy; or invalidates, limits, or restricts an insurer's ability to cancel and non-renew insurance policies.

Recordkeeping

The bill requires P2P vehicle sharing programs to collect and verify records pertaining to the use of a vehicle, including, but not limited to:

- The times used;
- Vehicle sharing period pick up and drop off locations;
- Fees paid by the shared vehicle driver; and
- Revenues received by the shared vehicle owner.

The bill also requires the program to provide this information, upon request, to the owner, the owner's insurer, or the driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The bill requires the program to retain the records for a time period not less than the applicable personal injury statute of limitations.

Vicarious Liability; Exemption

The bill exempts a P2P vehicle sharing program and a shared vehicle owner from vicarious liability in accordance with 49 USC § 30106 (provisions of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users – applying to rented or leased motor vehicle safety and financial responsibility) and under any state or local law that imposes liability solely based on vehicle ownership.

Indemnification

The bill provides that a motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek recovery against the insurer of the P2P vehicle sharing program if the claim is:

- Made against the owner or the driver for loss or injury that occurs during the vehicle sharing period; and
- Excluded under the terms of its policy.

Insurable Interest

The bill provides, notwithstanding any other law, statute, rule, or regulation to the contrary, a P2P vehicle sharing program shall have an insurable interest in a shared vehicle during the vehicle sharing period. The bill further states nothing in this section (insurable interest) shall be construed to require a P2P program to maintain the coverage mandated by provisions of the bill relating to liability coverage.

The bill permits a P2P vehicle sharing program to own and maintain as the named insured one or more policies of motor vehicle liability insurance that provides coverage for:

- Liabilities assumed by the P2P program under a P2P vehicle sharing program agreement;

- Any liability of the owner;

- Damage or loss to the shared vehicle; or

- Any liability of the driver.

Disclosures to Shared Vehicle Owner; Driver

The bill requires every vehicle sharing program agreement made in Kansas to disclose the following information to the owner and driver, as appropriate:

- Any right of the P2P vehicle sharing program to seek indemnification from the owner or driver for economic loss sustained by the P2P program resulting from a breach of the terms and conditions of the P2P vehicle sharing program agreement;

- A motor vehicle liability insurance policy issued to the owner for the shared vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the P2P vehicle sharing program;

- The P2P vehicle sharing program's insurance coverage on the owner and the driver is in effect only during each vehicle sharing period and that, for any use of the shared vehicle by the driver after the vehicle sharing termination time, the driver and the owner may not have insurance coverage;

- The daily rate, fees and, if applicable, any insurance or protection costs that are charged to the shared vehicle owner or the shared vehicle driver;

- The owner's motor vehicle liability insurance may not provide coverage for a shared vehicle; and

- If there are conditions under which a driver must maintain a personal motor vehicle liability insurance policy with certain applicable coverage limits on a primary basis in order to reserve a shared motor vehicle.

The bill also requires every vehicle sharing program agreement made in Kansas to provide an emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

Driver's License; Data Retention

The bill prohibits a P2P vehicle sharing program from entering into a P2P vehicle sharing program agreement with a driver unless the driver who will operate the shared vehicle:

- Holds a driver's license issued by the state of Kansas to drive vehicles of the class of the shared vehicle;

- Is a nonresident who:

  - Has a driver's license issued by the state or country of the driver's residence that authorizes the driver to drive vehicles of the class of the shared vehicle;

  - Is at least the legal age required of a resident to drive in Kansas; or

  - Otherwise is specifically authorized by the State of Kansas to drive vehicles of the class of the shared vehicle.

The bill also requires P2P vehicle sharing programs to maintain a record of the name, address, driver's license number, and place of issuance of the driver's license of the driver and any other person who will also drive the shared vehicle.

Equipment Responsibility

The bill places sole responsibility on a P2P vehicle sharing program for any equipment, such as a GPS system or other special equipment, that is installed in or on the shared vehicle to monitor or facilitate the vehicle sharing transaction. The bill also requires the P2P program to agree to indemnify and hold harmless the owner for any damage to or theft of such equipment during the vehicle sharing period the owner did not cause. The P2P program has the right to seek indemnity from the driver from any loss or damage to such equipment that occurs during the sharing period.

Safety Recalls

Between the time a vehicle owner registers as a shared vehicle owner on a P2P vehicle sharing program and when the owner makes a vehicle available as a shared vehicle on the P2P program, the bill requires the P2P program to verify there are no outstanding safety recalls on the shared vehicle and notify the shared vehicle owner of the following requirements:

- If a vehicle owner receives an actual notice of a safety recall, the owner may not make such vehicle available as a shared vehicle on a P2P vehicle sharing program until the safety recall repair has been made;

- If an owner receives actual notice of a safety recall on a shared vehicle while the shared vehicle is available on the P2P vehicle sharing program, the owner must remove the shared vehicle from the P2P program as soon as practicable after receiving the notice and must not replace it on the program until the safety recall repair has been made; and

- If an owner receives an actual notice of a safety recall while the shared vehicle is being used and is in the possession of a driver, as soon as practicable after receiving such notice, the owner shall notify the P2P vehicle sharing program about the safety recall, so the shared vehicle owner may address the repair.

Definition Amendments

The bill amends the definitions section of the Kansas Collision Damage Waiver Act to add the following exclusions:

- "Lessor" does not include a P2P vehicle sharing program or a shared vehicle owner;
- "Lessee" does not include a shared vehicle driver;
- "Rental agreement" does not include a vehicle sharing program agreement; and
- "Rental motor vehicle" does not include a shared vehicle.

Kansas Energy Choice Act; SB 24

SB 24 creates the Kansas Energy Choice Act.

The bill defines the terms "municipality" and "utility service" for the purpose of prohibiting a municipality from imposing any ordinance, resolution, code, rule, provision, standard, permit, plan, or any other binding action that prohibits, discriminates against, restricts, limits, impairs, or has a similar effect on an end-use customer's use of a utility service, defined as the retail provision of natural gas or propane.

The bill states it should not be construed in its interpretation to restrict the ability of a municipality, as defined in the bill, to limit an end use customer's use of a utility service if that end use customer is the municipality.

Crimes Related to Critical Infrastructure Facilities; SB 172

SB 172 amends the Kansas Criminal Code regarding crimes involving property by eliminating the crime of tampering with a pipeline and establishing four new crimes: trespassing on a critical infrastructure facility (CIF), aggravated trespassing on a CIF, criminal damage to a CIF, and aggravated criminal damage to a CIF. The bill also allows a judge to order restitution for property damage to any victim of the four new crimes.

Right to Peacefully Protest

The bill includes a "whereas" clause that states the provisions of the bill protect the right to peacefully protest for all Kansans and citizens of the four sovereign nations within the state's borders while also protecting the critical infrastructure located within the state.

Definition of Critical Infrastructure Facility

The bill defines a CIF, as used in the bill, as any:

- Petroleum or alumina refinery;
- Electric generation facility, substation, switching station, electrical control center, electric distribution or transmission lines, or associated equipment infrastructure;
- Chemical, polymer, or rubber manufacturing facility;
- Water supply diversion, production, treatment, storage, or distribution facilities and appurtenances, including, but not limited to, underground pipelines and a wastewater treatment plant or pump station;
- Natural gas compressor station;

- Liquid natural gas or propane terminal or storage facility;

- Facility that is used for wireline, broadband, or wireless telecommunications or video services infrastructure, including backup power supplies and cable television headend;

- Port, railroad switching yard, railroad tracks, trucking terminal, or other freight transportation facility;

- Gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas, propane, or natural gas liquids;

- Transmission facility used by a federally licensed radio or television station;

- Steelmaking facility that uses an electric arc furnace to make steel;

- Facility identified and regulated by the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards program, facility operated by the Office of Laboratory Services under the supervision of the Secretary of Health and Environment, or the National Bio and Agro-Defense Facility or Biosecurity Research Institute at Kansas State University;

- Dam that is regulated as a hazard class B or class C dam by the state or federal government;

- Natural gas distribution utility facility, or natural gas transmission facility, including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, belowground or aboveground piping, a regular station, or a natural gas storage facility;

- Crude oil, including Y-grade or natural gas liquids, or refined products storage and distribution facility, including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, belowground or aboveground pipeline or piping, and truck loading or offloading facility; or

- Portion of any belowground or aboveground oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or any other storage facility that is enclosed by a fence or other physical barrier or clearly marked with signs prohibiting trespassing that are obviously designed to exclude intruders.

Crimes Related to Critical Infrastructure Facilities

The bill eliminates the crime of tampering with a pipeline and creates four new crimes.

Trespassing on a Critical Infrastructure Facility

Under the bill, trespassing on a CIF means, without consent of the owner or the owner's agent, knowingly entering or remaining in:

- A CIF; or

- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies trespassing on a CIF as a class A nonperson misdemeanor.

Aggravated Trespassing on a Critical Infrastructure Facility

Under the bill, aggravated trespassing on a CIF means, with the intent to damage, destroy, or tamper with a CIF or impede or inhibit operations of the facility, knowingly entering or remaining in:

- A CIF; or

- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies aggravated trespassing on a CIF as a severity level 7 nonperson felony.

Criminal Damage to a Critical Infrastructure Facility

Under the bill, criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF. The bill classifies criminal damage to a CIF as a severity level 6 nonperson felony.

Aggravated Criminal Damage to a Critical Infrastructure Facility

Under the bill, aggravated criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF with the intent to impede or inhibit operations of the facility. The bill classifies aggravated criminal damage to a CIF as a severity level 5 nonperson felony.

Damages

The bill declares nothing in the bill would prevent an owner or operator of a CIF that has been damaged from pursuing any other remedy in law or equity and a person who commits these crimes may also be prosecuted for, convicted of, and punished for any other offense regarding crimes involving property (continuing law) or criminal trespass on a nuclear generating facility (continuing law). The bill allows a judge to order restitution for damages associated with these crimes.

Plugging of Abandoned Wells; HB 2022

HB 2022 amends law concerning the filing of complaints and investigations pertaining to abandoned wells, responsible parties for plugging abandoned wells, and funds used by the Kansas Corporation Commission (KCC) for plugging abandoned wells.

Definitions

The bill amends the definition of "well" to include "penetration of the surface of the earth." In that definition, the bill also amends the purpose of drilling a well to include providing cathodic protection to prevent corrosion to tanks or structures.

With regard to KCC investigations of abandoned wells, the bill defines "abandoned well" as a well that is not claimed on an operator's license that is active with the KCC and is unplugged, improperly plugged, or no longer effectively plugged.

Filing of Complaints

The bill amends the reasons to file a complaint with the KCC secretary to include abandoned wells that are causing or likely to cause:

- Loss of any usable water;
- Pollution of any usable water strata;
- Imminent loss of any usable water; or
- Imminent pollution of any usable water.

The bill requires the KCC to investigate such complaints and also authorizes the KCC to take appropriate action or issue any order according to the Kansas Administrative Procedure Act (KAPA).

Responsibility for Plugging Abandoned Wells

The bill requires the KCC to hold proceedings in accordance with KAPA if the KCC determines a well is abandoned and has reason to believe a person is legally responsible for the proper care and control of such well. After such proceedings, the bill allows the KCC to issue

orders obligating a person to plug the well or to cause the well to be brought into compliance, if the KCC finds that such person is legally responsible.

The bill limits persons that could be held legally responsible for proper care and control of an abandoned well to one or more of the following:

- Any person, including any operator, causing pollution or loss of usable water through the well;
- The most recent operator to produce from or inject or dispose into the well; however, if no production or injection has occurred, the person that caused the well to be drilled;
- The person that most recently accepted responsibility for the well through written documentation that adequately identifies the well and expressly transfers responsibility for such well;
- The operator that most recently filed a completed transfer report with the KCC in which such operator accepted responsibility for the well;
- The operator that most recently plugged the well if no KCC funds were used; and
- Any person that does any of the following to an abandoned well without KCC authorization:
    - Tampers with or removes surface or downhole equipment attached to the well;
    - Intentionally destroys, buries, or damages the well;
    - Intentionally alters the physical status of the well in such a way that will result in an increase in plugging costs; or
    - Conducts any physical operations upon the well.

The bill also allows any person who has no obligation to plug, replug, or repair a well to seek reimbursement for plugging a well from the Abandoned Oil and Gas Well Fund, if such well has been abandoned for five or more years. The bill requires the KCC to promulgate rules and regulations for the reimbursement process.

The bill states a person who plugs, replugs, or repairs an abandoned well shall not become legally responsible for the care and control of that well. The bill allows any abandoned well to be plugged by any person if such person has written consent from a surface owner of the land upon which the well is located and if such person is licensed by the KCC in accordance with the KCC's rules and regulations.

The bill also clarifies individuals would not be entitled to reimbursement for plugging of an abandoned well unless approved by the KCC.

Abolishing the Well Plugging Assurance Fund

The bill amends law concerning funds used by the KCC to plug abandoned wells.

The bill allows for the deposit of all moneys previously credited to the Well Plugging Assurance Fund to be credited to the Abandoned Oil and Gas Well Fund, and the bill removes the limitation of the Abandoned Oil and Gas Well Fund to be used only for investigating abandoned wells and well sites of which the drilling began before July 1, 1996.

The bill transfers all moneys in and liabilities of the Well Plugging Assurance Fund to the Abandoned Oil and Gas Well Fund and abolishes the Well Plugging Assurance Fund on July 1, 2021.

The bill also removes requirements for the transfers from the Conservation Fee Fund and the State General Fund to the Abandoned Oil and Gas Well Fund.

Repealing an Interagency Agreement

The bill repeals KSA 55-163, which pertains to an interagency agreement between the KCC and the Secretary of Health and Environment for a management plan for integrating field operations for the regulation of oil and gas operations.

Utility Financing and Securitization Act; Senate Sub. for HB 2072

Senate Sub. for HB 2072 creates the Utility Financing and Securitization Act (UFSA), which allows for the securitization of utility assets to recover energy transition costs for electric public utilities whose retail rates are subject to the jurisdiction of the Kansas Corporation Commission (KCC). The UFSA also allows electric and natural gas public utilities whose retail rates are subject to the KCC to pursue securitization to help finance qualified extraordinary expenses, such as fuel costs incurred during extreme weather events. The bill amends the provisions of the Kansas Energy Security Act and the Uniform Commercial Code to conform to the new provisions created in the UFSA.

Utility Financing and Securitization Act

Definitions

The bill defines various terms used throughout the UFSA, including these key terms.

"Electric public utility" means the same as defined in KSA 66-101a and includes a for-profit electric utility whose retail rates are subject to the jurisdiction of the KCC. The definition does not include a cooperative that has opted to deregulate or an electric public utility owned by one or more such cooperatives.

"Energy transition costs" includes, at the option of and upon application by an electric public utility, and as approved by the KCC, any of the pretax costs that the electric public utility has incurred or will incur that are caused by, associated with, or remain as a result of a retired, abandoned, to-be-retired, or to-be-abandoned electric generating facility that is the subject of an

application for a financing order filed under the UFSA where such early retirement or abandonment is deemed reasonable and prudent by the KCC through a final order issued by the KCC.

As used in this definition, pretax costs, if determined reasonable by the KCC and not inconsistent with a KCC order granting predetermination regarding retirement or abandonment of the subject generating facility, include, but are not limited to, the undepreciated investment in the retired or abandoned electric generating facility and any facilities ancillary thereto or used in conjunction therewith, costs of decommissioning and restoring the site of the electric generating facility, other applicable capital and operating costs, accrued carrying charges, and deferred expenses. Such pretax costs are reduced by applicable tax benefits of accumulated and excess deferred income taxes, insurance, and scrap and salvage proceeds, and include the cost of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

Energy transition costs also include pretax costs that an electric public utility has previously incurred related to the retirement of such an electric generating facility occurring before the effective date of the UFSA.

"Financing order" means an order from the KCC pursuant to the UFSA that authorizes:

- The issuance of securitized utility tariff bonds in one or more series;
- The imposition, collection, and periodic adjustments of a securitized utility tariff charge;
- The creation of securitized utility tariff property; and
- The sale, assignment, or transfer of securitized utility tariff property to an assignee.

"Public utility" means an electric or natural gas public utility whose rates are subject to the jurisdiction of the KCC.

"Qualified extraordinary costs" include, at the option of and upon application by a public utility and as approved by the KCC, costs of an extraordinary nature that the public utility has incurred before, on, or after the effective date of the UFSA that would cause extreme customer rate impacts if recovered through customary rate-making, including, but not limited to, purchases of gas supplies, transportation costs, and fuel and power costs including carrying charges incurred during anomalous weather events.

"Securitized utility tariff bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity date as determined reasonable by the KCC, but not later than 32 years from the issue date, that are issued by an electric public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance KCC-approved energy transition costs and financing costs and that are secured by or payable from securitized utility tariff property, or an electric or natural gas public utility or assignee pursuant to a financing order, the proceeds of which are

used directly or indirectly to recover, finance, or refinance KCC-approved qualified extraordinary costs and financing costs that are secured by or payable from securitized utility tariff property.

"Securitized utility tariff charge" means the amounts authorized by the KCC to provide a source of revenue solely to repay, finance, or refinance securitized utility tariff bonds and financing costs and that are nonbypassable charges imposed on and part of all retail customer bills, including bills to special contract customers collected by an electric or natural gas public utility or its successors or assignees, or a collection agent, in full, separate and apart from the electric or natural gas public utility's base rates.

Such charges are to be paid by all existing or future retail customers receiving electrical or natural gas service from the public utility or its successors or assignees under KCC-approved rate schedules or special contracts, even if a retail customer elects to purchase electricity or natural gas from an alternative electricity or natural gas supplier following a fundamental change in regulation of public utilities in Kansas.

"Securitized utility tariff costs" means either energy transition costs or qualified extraordinary costs.

"Securitized utility tariff property" includes all rights and interests of a public utility, its successor, or assignee under a financing order, including the right to impose, bill, charge, collect, and receive securitized utility tariff charges authorized under the financing order and to obtain periodic adjustments to such charges authorized under the bill and as provided in the financing order.

The definition also includes all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

"Special contract" means the terms of a contract governing the supply of electricity that has been approved by the KCC that is not included in generally applicable rate schedules.

Financing Order

Application schedule for recovery of energy transition costs. The bill allows an electric public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of energy transition costs. In applying for the financing order, the electric public utility can file an application to issue securitized utility tariff bonds in one or more series; impose, charge, and collect securitized utility tariff charges; and create securitized utility tariff property related to the recovery of energy transition costs.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 135 days from the date a completed application is filed. The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and authorized by the bill, or deny any application for a financing order in a final order, within 135 days of receiving a complete application as authorized by the UFSA. Such final order is subject to judicial review and deemed as arising from a rate hearing.

As a prerequisite of filing an application, the bill requires an electric public utility to obtain an order from the KCC under the KCC process for predetermination under KSA 66-1239 finding retirement or abandonment of the subject generating facility to be reasonable.

Application schedule for recovery of qualified extraordinary costs. The bill allows a public utility, in its sole discretion, to apply to the KCC for a financing order for the recovery of qualified extraordinary costs. In applying for the financing order, the public utility can file an application to issue securitized utility tariff bonds in one or more series, charge and collect securitized utility tariff charges, and create utility tariff property related to the recovery of qualified extraordinary costs.

Within 25 days after a complete application is filed, the bill requires the KCC to establish a procedural schedule that requires the KCC to issue a decision on the application no later than 180 days from the date a complete application is filed. The KCC is required to take final action to approve, approve subject to conditions the KCC considers appropriate and that are authorized by the bill, or deny any application for the recovery of qualified extraordinary costs and a financing order in a final order within 180 days of receiving a complete application as authorized by the UFSA. The final order is subject to judicial review and deemed as arising from a rate hearing.

Contents of financing order application. The bill outlines the requirements of the application, including these key elements:

- A description:
    - Of the electric generating facility or facilities that the electric public utility has retired or abandoned, or proposes to retire or abandon, prior to the date that all undepreciated investment relating thereto has been recovered through rates and the reasons for undertaking such early retirement or abandonment. If the electric public utility is subject to a separate KCC order or proceeding relating to such retirement or abandonment (predetermination under KSA 66-1239), the bill requires that application to include a description of the order or other proceeding; or
    - Of the qualified extraordinary costs that the public utility proposes to recover and how customary rate-making treatment of such costs would result in extreme customer rate impacts;
- A description of the securitized utility tariff costs the applicant proposes to recover with the proceeds of the securitized utility tariff bonds;
- An indicator of whether the public utility proposes to finance all or a portion of the securitized utility tariff costs using securitized utility tariff bonds. If the public utility proposes to finance a portion of the securitized utility tariff costs, the public utility is required to identify the specific portion in the application;
    - By electing not to finance all or any portion of such securitized utility tariff costs using securitized utility tariff bonds, a public utility is not deemed to waive its right to recover or request recovery of such costs pursuant to a separate proceeding with the KCC;

- An estimate of the financing costs related to the securitized utility tariff bonds;

- An estimate of the securitized utility tariff charges necessary to recover the securitized utility tariff costs and all financing costs, the period for recovery of such costs, and a description of the proposed financing structure, including the proposed scheduled final payment dates and final maturity of the securitized utility tariff bonds; and

- A comparison between the net present value of the costs to customers that are estimated to result from the issuance of securitized utility tariff bonds and the costs that would result from the application of the traditional method of financing and recovering the undepreciated investment of facilities that may become energy transition costs from customers. The bill requires the comparison to demonstrate that the issuance of securitized utility tariff bonds and the imposition of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers or will avoid or mitigate rate impacts on customers.

Review and findings by the KCC. After notice and hearing on an application for a financing order, the KCC is authorized to issue a financing order if the KCC finds:

- Securitized utility tariff costs described in the application are just and reasonable; and

- Proposed issuance of securitized utility tariff bonds and the imposition and collection of securitized utility tariff charges are expected to provide net quantifiable rate benefits to customers when compared to the costs that would result from the application of the traditional method of financing and recovering the securitized utility tariff costs with respect to energy transition costs or avoid or mitigate rate impacts on customers.

The bill details the elements that must be contained in a financing order issued by the KCC in response to an application filed by a public utility, including these key elements:

- An approved customer billing mechanism for securitized utility tariff charges, including a specific methodology for allocating the necessary securitized utility tariff charges among the different customer classes, including special contract customers, and a finding that the resulting securitized utility tariff charges will be just and reasonable; provided that the amount of securitized utility tariff charges allocated to special contract customers in connection with the securitization of energy transition costs does not exceed the benefits from the retirement or abandonment of the subject electric utility generating assets that are assigned or allocated to special contract customers. The bill requires the securitized utility charges allocated to special contract customers as a result of a financing order regarding a retirement or abandonment to be offset by net quantifiable rate benefits of at least the same amount. The initial allocation of securitized utility tariff charges remains in effect until the public utility files a general rate base proceeding;

  - Once the KCC's order regarding the general base rate proceeding becomes final, the bill requires all subsequent applications of an adjustment mechanism regarding securitized utility tariff charges to incorporate changes in the allocation of costs to customers, as detailed in the KCC's order from the public utility's most recent general base rate proceeding;

- A finding the proposed issuance of securitized utility tariff bonds and the imposition and collection of a securitized utility tariff charge are expected to provide net quantifiable rate benefits to customers as compared to the traditional methods of financing and recovering securitized utility tariff costs from customers or to avoid or mitigate rate impacts to customers;

- An approved plan for the public utility, by means other than on the monthly bill, to provide information regarding the benefits of securitization obtained for customers through the financing order;

- A finding that the structuring, pricing, and financing costs of the securitized utility tariff bonds are expected to result in the lowest securitized utility tariff charges, consistent with market conditions at the time the securitized tariff bonds are priced and the terms of the financing order;

- A statement specifying a future rate-making process to reconcile any differences between the actual securitized utility tariff costs financed by securitized utility tariff bonds and the final securitized utility tariff costs incurred by the utility or assignee provided that any such reconciliation shall not affect the amount of securitized utility tariff bonds or the associated security tariff charges by customers;

- In a financing order granting authorization to recover energy transition costs by issuing securitized utility tariff bonds, a procedure for the treatment of accumulated deferred income taxes and excess deferred income taxes in connection with the retired or abandoned, or to-be-retired or -abandoned, electric generating facility. The accumulated deferred income taxes, including excess deferred income taxes, shall be excluded from the rate base in future rate cases, and the net tax benefits relating to amounts that will be recovered through issuance of securitized utility tariff bonds shall be credited to retail customers by reducing the amount of such securitized utility tariff bonds that would otherwise be issued. The customer credit shall include the net present value of the tax benefits, calculated using a discount rate equal to the expected interest rate of the securitized utility tariff bonds, for the estimated accumulated and excess deferred income taxes at the time of securitization, including timing differences created by the issuance of securitized utility tariff bonds amortized over the period of the bonds multiplied by the expected interest rate on such securitization utility tariff bonds;

- In the case of securitized utility tariff bonds issued to recover energy transition costs, provisions that specify the timing of rate-making and regulatory accounting actions required by the financing order to protect the interests of customers and the electric public utility, which shall be limited to the following requirements, to the extent that the KCC:

  - Has issued an order granting predetermination and prescribing rate-making parameters or regulatory accounting for retirement or abandonment of the subject electric public utility generating assets, then the electric public utility shall be permitted to implement and effectuate such rate-making parameters or regulatory accounting mechanisms; and
  - Has not issued an order granting predetermination prescribing rate-making parameters or regulatory accounting to credit customers with the benefits from retirement of the subject electric public utility generating assets, then the KCC shall address such matters in the financing order and customers shall receive the benefits as determined by KCC order simultaneously with the inception of the collection of securitized utility tariff charges; and

- Any other conditions the KCC deems appropriate that are consistent with the bill.

A financing order issued to a public utility must permit, and may require the creation of, the public utility's securitized utility tariff property that is conditioned upon the sale or other transfer of the securitized utility tariff property to an assignee and the pledge of the securitized utility tariff property to secure securitized utility tariff bonds.

Annual filing. The bill requires a public utility that has been issued a financing order to file with the KCC, at least annually, an application or letter applying the adjustment mechanism based on estimates of consumption for each rate class and other mathematical factors and requesting administrative approval to make the applicable adjustments. The KCC's review of the filing is limited to determining if any mathematical or clerical errors are present in the application of the adjustment mechanism relating to the appropriate amount of any over-collection or under-collection of securitized utility tariff charges and the amount of an adjustment.

The adjustments ensure the recovery of revenue is sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges with respect to the securitized utility tariff bonds approved under the financing order. Within 30 days after receiving a public utility's application or letter, the KCC is required to either approve the application or letter or inform the public utility of any mathematical or clerical errors present in its calculation, and, if there are errors, the public utility may correct its error and refile its request. The time frames previously described apply to the refiled request.

Irrevocability and KCC requirements. Upon the transfer of the securitized utility tariff property to an assignee or the issuance of securitized utility tariff bonds, whichever occurs first, a financing order becomes irrevocable. The KCC is prohibited from amending, modifying, or terminating the financing order by a subsequent action or reduce, impair, postpone, terminate, or otherwise adjust securitized utility tariff charges approved in the financing order, with the exception of changes made *via* the adjustment mechanism.

The public utility retains sole discretion on whether securitized utility tariff bonds should be issued after the issuance of a financing order. The KCC is required to afford the public utility flexibility in establishing the terms and conditions for the securitized tariff bonds to accommodate changes in market conditions.

Issuance advice letter. The public utility is required to provide to the KCC, to the extent requested and prior to the issuance of each series of bonds, an issuance advice letter following the determination of the final terms of such series of bonds no later than one day after the

pricing of the securitized utility tariff bonds. The KCC has the authority to designate a representative from KCC staff to observe all facets of the process undertaken by the public utility to place the securitized utility tariff bonds to market so the KCC's representative can be prepared, if requested, to provide the KCC with an opinion on the reasonableness of the pricing, terms, and conditions of the securitized utility tariff bonds on an expedited basis. The form of such issuance advice letter must be included in the financing order and must indicate the final structure of the securitized utility tariff bonds and provide the best available estimate of total ongoing financing costs.

The issuance advice letter reports the initial securitized utility tariff charges and other information specific to the securitized utility tariff bonds to be issued, as the KCC may require. Unless an earlier date is specified in the financing order, the public utility may proceed with the issuance of the securitized utility tariff bonds unless, prior to noon on the fourth business day after the KCC receives the issuance advice letter, the KCC issues a disapproval letter directing that the bonds as proposed not be issued and including the basis for that disapproval.

In performing the responsibilities regarding the issuance advice letter, the KCC may engage a financial adviser and counsel as the KCC deems necessary.

An adversely affected party may petition for judicial review of the financing order.

Refinancing, retiring, or refunding securitized utility tariff bonds. The bill describes the process the KCC may commence for issuing a subsequent financing order regarding refinancing, retiring, or refunding securitized utility tariff bonds or any subsequent issue of a financing order.

KCC Powers and Duties

In exercising its powers and carrying out its duties regarding any matter within its authority, the KCC cannot consider:

- Securitized utility tariff bonds issued pursuant to a financing order to be the debt of the public utility other than for federal and state income tax purposes;
- Securitized utility tariff charges paid under the financing order to be the revenue of the public utility for any purpose; or
- Securitized utility tariff costs or financing costs specified in the financing order to be the costs of the public utility.

The bill states no public utility is required to file an application for a financing order. The KCC does not have the power to order or otherwise directly or indirectly require a public utility to use securitized utility tariff bonds to recover securitized utility tariff costs or to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure.

The bill outlines additional elements the KCC may not consider in the securitization application process. The KCC cannot approve an application for a financing order associated with an asset retirement or abandonment if the application does not establish that the

securitization of the specified retired or abandoned generating facility provides net quantifiable rate benefits to customers as required under the UFSA.

Customer Energy Bills

The bill requires the customer bills of a public utility that has obtained a financing order and caused securitized utility tariff bonds to be issued to explicitly reflect that a portion of the charges on the customer bill represents securitized utility tariff charges approved in a financing order issued to the public utility, and, if the securitized utility tariff property has been transferred to an assignee, a customer bill must include a statement that the assignee is the owner of the rights to the securitized utility tariff charges and the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to the customer must indicate the securitized utility tariff charge and the ownership of the charge. The public utility is required to also include on the bill the securitized utility tariff charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

Failure to meet these requirements by the public utility does not invalidate, impair, or otherwise affect any financing order, securitized utility tariff property, securitized utility tariff charge, or securitized utility tariff bond.

Property Rights and Procedures

The bill states all securitized utility tariff property specified in the financing order constitutes an existing, present, intangible property right or interest, notwithstanding that the imposition and collection of securitized utility tariff charges depends on the public utility to which the financing order is issued performing its servicing functions relating to the collection of securitized utility tariff charges and on future electricity or natural gas consumption.

The bill describes the nature of securitized utility tariff property and the powers of a public utility to transfer, sell, convey, or assign the securitized utility tariff property. The bill describes the process of payment if a public utility defaults on any required remittance of securitized utility tariff charges and the process if a public utility reorganizes, becomes insolvent, files for bankruptcy, or is sold or merged with another entity.

Security Interest

The bill describes the timeline for creation, perfection, and enforcement of a security interest in the securitized utility tariff property and the conditions in which a security interest may be created. The bill states the security interest attaches without physical delivery of collateral or other act and is perfected upon the filing of a financing statement with the Office of the Secretary of State.

Sale, Assignment, or Other Transfer

The bill describes the requirements and process for any sale, assignment, or other transfer of securitized utility tariff property, the conditions under which a transfer of an interest in securitized utility tariff property may occur, and when the transfer of an interest in securitized utility tariff property may be enforced.

Description of Securitized Utility Tariff Property

The bill outlines the description of a securitized utility tariff property that must be included when such property is transferred to an assignee in a sales agreement, purchase agreement, or other transfer agreement; granted or pledged to a pledgee in a security agreement, pledge agreement, or other security document; or indicated in any financing statement. The bill requires the description to indicate or describe the financing order that created the securitized utility tariff property and state the agreement or financing statement covers all or part of the property described in the financing order.

Financing Statements

The Secretary of State is required to maintain all financing statements filed to perfect a sale or other transfer of securitized utility tariff property and any security interest in securitized utility tariff property. All financing statements are governed by the Uniform Commercial Code.

Choice of Laws

The bill requires the laws of Kansas to govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of security interest in any securitized utility tariff property.

Liability of Securitized Utility Tariff Bonds

The bill provides securitized utility tariff bonds shall not be considered debts of the State; neither the State nor any political subdivisions, agencies, or instrumentalities of the State shall be liable for such bonds; and all securitized utility tariff bonds shall have on the face thereof the statement: “Neither the full faith and credit nor the taxing power of the State of Kansas is pledged to the payment of the principal of, or interest on, this bond.”

Investment in Securitized Utility Tariff Bonds

The bill lists the entities that may legally invest in securitized utility tariff bonds.

Prohibited Actions

The bill lists the actions the State may not engage in, including impairing the value of the securitized utility tariff property and the securitized utility tariff bonds or the rights and remedies of bondholders, assignees, or other financing parties.

Discretion of Public Utility

A public utility has sole discretion to determine the method by which it expends or invests the proceeds received from the issuance of securitized utility tariff bonds.

Kansas Energy Security Act

The bill amends the Kansas Energy Security Act regarding the KCC procedure for rate-making and predetermination to add that, prior to retiring or abandoning a generating facility, or within a reasonable time after retirement or abandonment if filing before retirement or abandonment is not possible under the circumstances, a public utility may file with the KCC an application for a determination of rate-making principles and treatment. That determination will apply to recovery in wholesale or retail rates for the costs to be incurred by the public utility to acquire such public utility's stake in the generating facility or to reflection in wholesale or retail rates of the costs to be incurred and the cost savings to be achieved by the public utility in retiring or abandoning such public utility's stake in the generating facility, including, but not limited to, the reasonableness of such retirement or abandonment.

The bill amends certain provisions regarding KCC orders considering the retirement or abandonment of generating facilities.

Uniform Commercial Code

The bill amends provisions of the Uniform Commercial Code to reflect any new security interests that may be created under the provisions of UFSA.

Electric Vehicle Charging; HB 2145

HB 2145 exempts from the definition of "public utility" the marketing and sale of electricity purchased through a retail electric supplier in such supplier's certified service territory for the sole purpose of the provision of electric vehicle charging services to an end user.

Construction of Urban Electric Transmission Lines; HB 2321

HB 2321 requires certain electric utilities—all electric utilities excluding municipal utilities, electric cooperatives, or their subsidiaries—to take steps before exercising eminent domain to acquire an interest in land or beginning work related to the construction of an urban electric transmission line. For the purposes of the bill, "urban electric transmission line" means any line or line extension that is at least 2.5 miles in length; traverses at least 2.5 contiguous miles through a city of at least 300,000 people; and is designed to transfer at least 69, but less than 230, kilovolts of electricity.

Electric utilities are required to:

- Provide notice to the city in which the project is proposed at least six months prior to construction with preliminary plans, including the locations and dimensions of equipment to be installed relative to existing infrastructure, with visual examples;

- Conduct an open house in such city that:

    - Allows affected landowners to provide public comment;

  - Is attended by a commissioner and a staff person of the Kansas Corporation Commission (KCC); and
  - Is held on a weekend day or after 5:00 p.m. on a weekday;

- Provide notice of the proposed construction and open house to:
  - All landowners and tenants of property within 660 feet of proposed improvements;
  - The governing body of the city and its infrastructure planning authority; and
  - The KCC;

- Publish notice of the time, place, and subject of the open house in a local newspaper; and

- Obtain any required permits.

Provisions of the bill do not apply to construction or repair required due to physical damage.

Kansas Corporation Commission Regulation of Wire Stringing Activities; HB 2367

HB 2367 amends law to clarify the Kansas Corporation Commission has authority to regulate the activities or facilities of an otherwise jurisdictional entity with regard to wire stringing along or across streets, highways, or public places.

Veterans Home; Tuition Waiver Grants; HB 2021

HB 2021 authorizes the Kansas Development Finance Authority (KDFA), on and after July 1, 2021, to issue bonds, not to exceed $10.5 million, for the purpose of financing the construction of a state veterans home facility located in northeast Kansas, including, but not limited to, in Douglas, Jefferson, Leavenworth, Shawnee, and Wyandotte counties. Proceeds from the sale of bonds would constitute the State's required 35.0 percent match for a specified federal grant program. The maturity date on the bonds cannot be later than 20 years from the initial issuance. Debt service could be paid from the State General Fund or any appropriate special revenue fund. The bill requires the KDFA and the State Finance Council to approve the issuance of any bonds for this purpose.

Additionally, the bill amends a statute that established tuition waiver grants of the State Board of Regents for dependents and spouses of public safety officers and those who died in or as a result of military service on or after September 11, 2001, to extend benefits to additional persons. The bill adds eligibility for dependents and spouses of public safety officers injured or disabled while performing duties as a public safety officer and dependents and spouses of those entitled to compensation for a service-connected disability of at least 80 percent as a result of injuries or accidents sustained in combat after September 11, 2001. The bill adds a definition of "public safety employee" to include employees of a law enforcement office, fire department, emergency medical services provider, or state correctional institution and adds public safety employees to the definition of "public safety officer."

Subject to appropriations, any Kansas educational institution that enrolls without charge of tuition or fees any dependent or spouse of a public safety officer may file a claim with the State Board for reimbursement of the amount of such tuition and fees. The bill would cap total reimbursement for tuition reimbursements in any fiscal year, at $350,000.

APPROPRIATION BILLS

HB 2007 (Mega bill), **SB 159** (Omnibus bill), and **HB 2134** (Education budget bill) include adjusted funding for fiscal year (FY) 2021 and funding for FY 2022 for all state agencies and for FY 2023 for select state agencies. SB 159 also includes various claims against the State. The FY 2021 revised budget totals $21.0 billion, including $7.5 billion from the State General Fund (SGF). The approved budget is an all funds increase of $1.6 billion, or 8.3 percent, and an SGF decrease of $56.1 million, or 0.7 percent, from the FY 2020 actual expenditures. The FY 2022 budget totals $20.5 billion, including $8.1 billion SGF. The budget is an all funds decrease of $522.1 million, or 2.5 percent, and an SGF increase of $677.0 million, or 9.1 percent, from the FY 2021 approved budget.

TECHNICAL BILLS

Senate Sub. for Sub. for HB 2397 This bill reconciles amendments to statutes that were amended more than once during the current and prior legislative sessions. For such statutes, the bill repeals one version and amends the continuing version with noncontradictory amendments from the repealed version to create a single version of the statute containing all amendments.

BILLS VETOED BY THE GOVERNOR

Bills Vetoed

SB 29

This bill would have amended law in the Insurance Code governing specially designed policies and short-term policies to update references to short-term limited duration (STLD) policies. The bill would have specified a policy period of less than 12 months and a policy that offers renewal or extension periods up to a maximum policy period of 36 months total in duration for STLD policies.

The bill also would have removed language specifying the benefits or services that could be included in specially designed policies and language required to be included in contracts and application material by insurance companies issuing STLD policies.

SB 55

This bill would have created the Fairness in Women's Sports Act and required interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by public educational institutions to be designated based on biological sex.

The bill also contained findings of the Legislature regarding the differences between biological males and females. The findings further discussed the biological differences with regard to athletics.

House Sub. for Sub. for SB 273

This bill would have created the COVID-19 Small Business Relief Act for the purpose of providing compensation for certain businesses, as defined by the Act, impacted by an order making a restriction related to the COVID-19 pandemic.

Among its provisions, the bill would have established the COVID-19 Small Business Relief Claims Board to decide claims submitted under the Act; established a COVID-19 Small Business Claims Relief Fund in the State Treasury administered by the Legislative Coordinating Council to pay accepted claims; and provided criteria for evaluation of relief including the impact of the order making a restriction, any extraordinary contributions by the business that benefited Kansans, and any governmental grants, loans, unemployment benefits, or other relief previously granted to the claimant. The bill also would have prohibited any claimant pursuing a claim under the Act from filing any civil action for damages, monetary relief, or compensation for a governmental taking against the State, political subdivision, or employee thereof. The Act would have expired January 1, 2025.

HB 2039

This bill would have would have required, beginning in the 2022-2023 school year, students enrolled in an accredited public, private, or parochial high school to pass a civics test, or series of tests, as part of the Kansas required courses of instruction for graduation. The civics test, or series of tests, would have been composed of a total of 60 questions selected from the naturalization test administered by the U.S. Citizenship and Immigration Services.

The bill also would have amended law regarding personal financial literacy education in state curriculum standards and would have required, for grades 10, 11, and 12, a personal financial literacy course to be at least one semester or two quarters in length. Public, private, and parochial high schools would have been required to implement personal financial literacy courses in the 2022-2023 and 2023-2024 school years and students would have been required to pass the personal financial literacy course as a requirement for graduation beginning in the 2024-2025 school year.

Sub. for HB 2089

This bill would have would have created law related to firearm safety education programs conducted in public school districts and established these provisions as the "Roy'Ale Act." The bill would have permitted a local board of education to provide firearm safety education programs. The State Board of Education would be directed to establish curriculum guidelines for a standardized firearm safety education program, which the bill would have required to include accident prevention. The bill would have provided that specific programs are to be used based on the grade level of students (*e.g.,* guidelines for Kindergarten through grade 5 would have been based on the Eddie Eagle Gunsafe program offered by the National Rifle Association).

The bill would have further provided, if a local school board elects to provide firearm safety education, the instruction must be in accordance with the guidelines established by the State Board. Further, if a local school board elected to provide firearm safety education courses, the bill would have required the instruction to be offered to ensure all students are provided the opportunity to take the course.

Bills Vetoed (Line Item, Appropriations)

SB 159

This bill (the Omnibus appropriations bill), includes various mid-year expenditure adjustments as well as funding for bills enacted by the 2021 Legislature. The bill also includes appropriations for various claims against the State.

University of Kansas Medical Center	(Line Item) *Midwest Stem Cell Therapy Center* – Section 46(a) would have added $500,000 from the State General Fund to the University of Kansas Medical Center for clinical trials on a COVID-19 treatment using MSCTC-0010 cells developed at the Midwest Stem Cell Therapy Center.
HB 2007	This bill includes adjusted funding for fiscal year (FY) 2021 and FY 2022 for state agencies and FY 2021 and FY 2022 capital improvement expenditures for a number of state agencies.
State Bank Commissioner	(Line Item) *Per Diem Increase for Kansas Banking Board Members* – Section 4(b) would have increased the per diem for members of the State Banking Board from $35 to $100 for FY 2021.
Legislative Coordinating Council	(Line Item) *Room 221-E* – Sections 29(d), a portion of 30(a) and 31(a) would have designated Room 221-E of the Statehouse as the meditation room. (Line Item) *Federal Coronavirus Relief Funding* – Section 30(c) would have required a recommendation by the Legislative Budget Committee and approval by the Legislative Coordinating Council before any federal coronavirus relief funds could be spent.
Department of Commerce	(Line Item) *Public Broadcasting Facility Relocation* – Sections 69(j), 70(i), 71(a), and 72(a) would have prohibited any appropriation from the Economic Development Initiatives Fund to a public broadcasting station that moved to a different location or has a plan to move to a different location.
Kansas Department for Aging and Disability Services	(Line Item) *Protected Income Level for the Program of All-Inclusive Care for the Elderly (PACE)* – Section 80(e) would have required the Kansas Department for Aging and Disability Services (KDADS) to increase the protected income level to 300.0 percent of the federal supplemental security income for those in PACE. (Line Item) *Moratoriums at State Psychiatric Hospitals* – Sections 84(s) and 85(a) would have prohibited KDADS from making any expenditures that would impose a moratorium on admissions at any state psychiatric hospital through June 30, 2023. (Line Item) *Request for Proposals for PACE* – Section 84(t) would have required KDADS to issue a request for proposals from potential providers interested in participating in PACE.

	(Line Item) *Larned State Hospital and Larned Correctional Mental Health Facility Pay Parity* – Section 84(w) would have required KDADS to provide the same starting salary and wages for entry-level positions at Larned State Hospital as those provided at the Larned Correctional Mental Health Facility.
Kansas Department for Children and Families	(Line Item) *Hope Ranch Pilot Program* – Section 87(a) would have required the agency to provide $300,000 to the Hope Ranch for Women organization for FY 2022.
Kansas State University-Polytechnic Campus	(Line Item) *Surplus Property* – Section 101(a) would have allocated $160,080 to the Kansas State University-Polytechnic campus with the stated intention to reimburse the campus for revenue that was received by the Kansas Public Employees Retirement System from the sale of surplus property under KSA 75-6609(f)(1).
Kansas State University-Extension Systems and Agricultural Research Programs	(Line Item) *4-H* – Sections 103(d) and 104(d) would have prohibited any expenditures by Kansas State University or Kansas State University-Extension Systems and Agricultural Research Programs that would require participants to wear face coverings or have a COVID-19 vaccination to participate in any 4-H organization, unit, event, or activity.
Kansas Highway Patrol	(Line Item) *Aircraft Trade-in and Purchase of Single-engine Aircraft* – Sections 121(a) and 121(f) would have required the Kansas Highway Patrol to trade in two aircraft and purchase one aircraft. (Line Item) *Capitol Police and State Troopers Pay Parity* – Section 122(h) would have required the Kansas Highway Patrol to make expenditures to provide salary and wage parity between the Capitol Police and State Troopers.
Statewide Adjustments	(Line Item) *2.0 Percent Reduction if Performance-based Budget Objectives Are Not Met* – Section 140 would have lapsed 2.0 percent of agency SGF budgets if the agencies failed to submit a performance-based budget. (Line Item) *Prohibiting Expenditures to Issue or Enforce Statewide Mask Mandate* – Section 141 would have prohibited any expenditures to issue or enforce a statewide mask mandate. (Line Item) *E-verify Provisions* – Section 142 would have required state agencies and some bidders, contractors, or employers who contract with the State to participate in E-verify for FY 2022 and FY 2023.

	(Line Item) *Unemployment Insurance Modernization Request for Proposal Restrictions* – Section 143 would have required legislative oversight of Unemployment Insurance Modernization bids.
Kansas Board of Regents	(Line Item) *State University Capital Renewal Initiative* – Section 163(a) would have provided $10,292,230 for the State University Capital Renewal Initiative for deferred maintenance projects at the state universities.

BILLS VETOED BY THE GOVERNOR, BUT OVERRIDDEN

SB 50

This bill requires the collection and remittance of certain taxes by marketplace facilitators. The bill also amends income tax law regarding fraudulent unemployment benefits, itemized and standard deductions, business income related to 2017 federal legislation, corporation return filing, net operating losses, and the business expensing deduction.

HB 2058

This bill amends law related to the recognition and issuance of a concealed carry license, creates two classes of licenses, and creates the Kansas Protection of Firearms Rights Act.

Sub. for HB 2166

This bill adds several types of license plates; adds reporting requirements for organizations sponsoring distinctive license plates; amends requirements for distinctive license plate development, continuing distinctive license plates, and personalized license plate backgrounds; and requires an annual payment of a $10 firefighters training fee for each new or renewed firefighter license plate starting January 1, 2022. The new distinctive license plates to be issued on and after January 1, 2022, are military branch license plates and five license plates for which royalty fees will be paid: Braden's Hope for Childhood Cancer, proud educator, Alpha Kappa Alpha, Delta Sigma Theta, and the Love, Chloe Foundation license plates. The bill also authorizes a Gadsden flag license plate, for which a fee applies.

Senate Sub. for HB 2183

This bill amends and creates law pertaining to elections and voting, including advance voting ballots, registered voter information reporting, assistance with the return of advance ballots, advance ballot return deadlines, the authority of the Secretary of State, duties of election officials, electioneering, and election funding. The bill also creates the crime of false representation of an election official.

HB 2332

This bill creates and amends law concerning addresses maintained for registered voters, solicitation of advance voting ballot applications, alteration of election laws, and the crime of election tampering. The bill also establishes a process for the handling of temporary vacancies created by officers or employees of the State or political subdivisions of the State due to military service.

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